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‘’Employment and Self-Employment in Platform Work”

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Chapter 1 – An overview over the economy of digital work platforms in The Netherlands and legal debates.

Platform work is nowadays an ever-developing phenomenon in the world, which is also the case in The Netherlands. Because platform work gives, up to a certain extent, workers freedom in the times they work, how many days they work, for which wage and so on a preliminary conclusion might be that platform work is the best way a worker can be active on the labour market. However, platform work is not always sunshine and daisies. It is true that a worker can determine how much they work and therefore how much they earn, but platform work could have its downsides too. Especially from a legal point of view. This chapter will therefore function as an introduction on platform work and its legal sides and gaps in The Netherlands. First of all, the origins and rise of (digital) platform work will be briefly discussed. Second of all, particular platforms and their markets in the Netherlands. Third of all, the economic, social and political importance of digital work platforms in The Netherlands will be discussed and finally, the different types of work platforms in the Dutch legal academic literature will be displayed.

1.1. Origins and rise of (digital) platform work

Platform work did not originate in The Netherlands, but in the United States of America (hereafter: US). It once came to be as a new form of working as a consequence of a growing need of flexible labour and the rise of technological platforms.[1] More about the rise of (digital) work platforms and the origins of platform work in the US later on. Flexibilization of work could furthermore be traced back to a major development in history, namely the economic and social trend of digitalisation. Due to the increase and innovations of means of communication and information, the landscape of labour markets slowly shifted from analogue to digital. By further digitalization of society later on information could be exchanged worldwide more simply and faster, which meant workers could find jobs quicker. An effect of this is that competition on the labour markets between countries became fiercer. By offering short-term employment contracts companies were able to react to this increased competition on the labour markets.[2]

Together with the flexibilization of work, the development of digital platforms have contributed to the rise of platform work. The invention of the world wide web or internet in 1969 has also played a large role in this. The internet made it possible to make contact with others and exchange information worldwide a lot easier and faster. Therefore, the internet became the online infrastructure to store, save and exchange data.[3] Especially in the 1990s,

[1] Grossman & Woyke 2015; Kenney & Zysman, 2016.
[2] Baldwin 2006.
[3] Kenney & Zysman 2016.

when most people gained access to the internet.[4] This could be defined by the term '*cloud computing'* or saving data '*in the Cloud*'. This *Cloud* made it possible for users to access stored and saved data from multiple devices all around the world. Even though the *Cloud* could be defined in an array of ways, the *Cloud* should be defined in the context of this report as the infrastructure where online work platforms were developed. More specifically when it comes to platform work, digital platforms are about the market of supplying and demanding services.[5]

In 2005 another milestone was reached. In this year, the American tech-giant Amazon founded Mechanical Turk. This became one of the first crowdsourcing marketplaces for individuals and businesses to outsource processes and jobs online. Most of these jobs were short term, relatively simple and easily reviewed by the client. But more importantly, it became possible for clients to find willing and able workers on a very large scale for low to minimal wages. Because work could be outsourced to larger groups of workers online, the first term given to platform work, became *crowd work.* In certain cases however, and this was because certain jobs were so small and temporary, another term that was used was *micro work.*[6]

Within the first digital platforms, algorithms of all kinds and types could be, but most importantly were, integrated in order to match supply and demand even better and more efficiently. The algorithm in these instances could be defined as a calculating method where data would be coordinated in order to accomplish a certain aim, namely matching supply and demand on the (digital) market on services. By integrating algorithms on work platforms this aim of matching supply and demand became much easier and quicker.[7] This means that together *cloud computing* or *Clouds* and the integration of algorithms were the technological foundations on which digital work platforms were built and rose to become more and more used by companies and workers.

1.2. Digital work platforms in The Netherlands

As mentioned before, digital work platforms got used more and more by workers in The Netherlands. In this section a few examples of them will be displayed.

1.2.1. Uber and Uber Eats

Uber is a well-known company worldwide. Founded and established in the USA, but based in 72 countries all around the globe according to the website.[8] Uber focuses mainly on connecting drivers and customers, but in a way that Uber cannot be seen as a taxi company. Chauffeurs use their own cars and connect with their passengers via a mobile application, the

[4] Roeters, Rözer en Van der Torre, 2021, p. 34.
[5] Kenney & Zysman 2016.
[6] Roeters, Rözer en Van der Torre 2021, p. 34.
[7] Kenney & Zysman 2016.
[8] https://www.uber.com/nl/nl/.

so-called Uber-app. The chauffeurs who work with the Uber-app are not employed by Uber so they work for themselves as independent drivers. At least, that is how Uber profiles the ways the company works. Although the so-called Uber-drivers get paid directly by the passenger for each ride and not by Uber, payment goes through the Uber-app. Uber then takes a commission for each ride that is connected through Uber. That is the way Uber generates revenue. In The Netherlands, Uber and their platform, the Uber-app, are subject to a lot of debate. A considerable number of drivers who work through Uber argued that they should be qualified as employees with Uber as their employer. However, Uber denied this statement. More about the Dutch cases against Uber later on in this chapter and the second chapter.

Another company launched by Uber is called Uber Eats. This company was launched in 2014, according to their website, and is an online food ordering and delivery platform.[9] According to their website, Uber Eats operates in more than 6,000 cities globally across 45 countries. This data, however, dates from December 2021. The way Uber Eats works is in a way equal to the way their parent company Uber works. Drivers for Uber Eats need to download an application where they can accept orders that are coming in. Within the same app, the drivers get the address of the restaurant where they can pick up the food and the address of the customer. Each driver who works through Uber Eats needs to account for the revenue they make and then can bill Uber Eats on a weekly basis. This shows that, just like Uber, Uber Eats does not have any employees and just connects restaurants and their customers with a delivery driver who is self-employed and delivers the food. Per each delivery connected through the Uber Eats-app, Uber Eats gets a commission. This is the way Uber Eats makes revenue. In The Netherlands, Uber Eats is popular in the larger cities, but had strong and fierce competitors in other companies, especially in the company summarised next.

1.2.2. Deliveroo

Deliveroo is, like Uber Eats, another online food ordering and delivery platform and was founded in 2013 and established in the UK. According to their website, Deliveroo operates, as per January 2022, in 11 countries, mostly in Western Europe, the Middle East and Asia.[10] The way Deliveroo works is mostly equal to Uber Eats as mentioned above. Drivers for Deliveroo have to download an application by which they can accept orders that are coming in. Within the same app, the drivers get the address of the restaurant where they can pick up the food and the address of the customer. Each driver that works through Deliveroo needs to account for the revenue they make and then bill Deliveroo. This is used by Deliveroo as an argument that, just like Uber Eats, Deliveroo does not have any employees and just connects restaurants and their customers with a delivery driver who is self-employed and delivers the food. Per each delivery connected through the Deliveroo-app, the company gets a commission of 25 to 30% of the ordered value of food. This is the way Deliveroo makes revenue. In The Netherlands, Deliveroo has been popular in the larger cities, but in response to debates regarding the legal

[9] https://www.ubereats.com/nl.
[10] https://deliveroo.nl/nl/.

status of the drivers that work through Deliveroo the company has decided that it will cease its activities in The Netherlands. This meant that from 30 November 2022 Deliveroo is no longer active in The Netherlands.[11] More about the legal debates and Dutch court cases later on in this chapter and in the second chapter.

1.2.3. Helpling

Helpling is a booking and payment platform that connects customers and screened local house cleaners. The company was founded in the UK in 2012. The way Helpling works is, according to their website, that a customer enters their postcode first. Then the customer can choose from available cleaners in their area. The customer can thereafter choose a plan. This can be seen as a kind of subscription where the customer can choose on which dates, time and by which frequency they would like to have their properties cleaned. After that the customer can choose a price range of how much they offer and send a request to the chosen cleaner. This cleaner then has to accept the request by which the connection has been made between the customer and the cleaner.[12] The prices cleaners ask is up to themselves. However, payment goes through the Helpling-platform. This means that the customer pays the cleaner and that Helpling only takes a commission for providing the means by which the connection between the customer and cleaner has been made. This means that Helpling states that it does not employ the cleaners, but only offers the platform on which cleaners can present themselves to be hired by customers. Debates regarding the legal status of cleaners that worked through Helpling arose in The Netherlands. Helpling had even been summoned to the Dutch courts by a Dutch trade union, which ultimately led to Helpling being declared bankrupt in The Netherlands.[13] However, more about the legal issues regarding Helpling later on in this chapter and the second chapter.

1.2.4. Temper

Temper B.V. (hereafter: Temper) is a Dutch online platform that connects freelance workers and possible clients. Temper was founded in 2016 in Amsterdam. Temper focuses mostly on more short term assignments in catering, logistics and retail. The company is active nationwide in about 20 larger cities in the Netherlands. In 2018, Temper and the large trade union FNV collaborated with the aim of making the catering industry more attractive for freelance workers.[14] The way Temper works is in three relatively easy steps. First of all, the freelance worker has to make a profile on the Temper platform. In this profile the freelance worker can let clients know they are available and what kind of work they are offering. Second of all, the freelance worker picks the assignments on the Temper platform they would like to do. It is then up to the client to accept that worker for that particular assignment. Third

[11] Deliveroo, 28 November 2022: *Deliveroo stopt in Nederland*, https://riders.deliveroo.nl/nl/nieuws/closed.
[12] https://www.helpling.co.uk/howitworks.
[13] Dutch Insolvency Register (www.insolventies.rechtspraak.nl) under Insolvency number F.13/23/10.
[14] https://www.fnvhoreca.nl/actueel/nieuws/2107/: '*FNV Horecabond en Temper verbreden samenwerking en gebruiksvergoeding freelancers verdwijnt*'; Rik Winkel, '*Ruzie binnen FNV over platformbedrijven laait op.'*, Het Financieele Dagblad of 12 November 2018.

of all and this comes to be once the freelance worker gets selected by the client to do the assignment, the freelance worker gets paid by the client through the Temper platform within three business days.[15]

Just as often as the other platforms beforementioned, the legal status of the freelance workers that work through Temper is a subject of legal debates. Especially the larger trade unions, such as FNV and CNV negotiate with Temper about working conditions and pay. Temper has even been accused by the trade unions of hiring bogus self-employed persons.[16] Eventually, Temper got summoned to the Dutch courts in October 2020 by FNV and CNV. The trade unions argued that Temper is a disguised employment agency and that Temper should treat their workers as employees.[17] More about legal debates regarding digital working platforms in the next chapter.

1.2.5. YoungOnes

The last digital work platform we discuss is similar to Temper. It is called YoungOnes and was founded in 2017 as a tech-startup. YoungOnes displays itself as an 'on-demand freelance platform' by matching supply and demand for short term assignments. The company is mostly active in logistics, deliveries, cleaning, retail and catering. As of now, YoungOnes has over 300,000 freelance workers and over 5,000 active clients in the Netherlands and the UK that find assignments through the online work platforms the company provides.[18]

The way YoungOnes works is similar to Temper as well. YoungOnes makes it possible to start and work as a freelance worker in six simple steps. First, the worker has to download the digital platform app. Through this app, the worker gets access to the online work platform YoungOnes provides. Second, the worker has to make an online profile on the YoungOnes-app. By this way, the worker can promote himself and show for which kind of assignments he is available. Third of all, the worker has to follow a mandatory onboarding course that YoungOnes provides. In this course the worker gets taught the ins and outs of the YoungOnes-platform and working as a freelancer. After successfully following the onboarding course, YoungOnes does an ID-check before the worker is ready to start his career through YoungOnes. In the fourth step, the worker is ready to find assignments. The worker picks the assignments he prefers to do on the online work platform by which the client gets a notification to show a worker is willing and able to do the assignment. The client then has to select the preferred worker by which the match is made through YoungOnes. After the worker has completed the assignment he has to administer the assignment in the YoungOnes-app. The client then gets notified and has to accept the finished assignment. This final step is a necessity for the worker in order to receive pay. Once the client has accepted the finished

[15] https://go.temper.works/#video.
[16] Rik Winkel, '*Vakbonden betichten Temper van ontduiking cao.*', Het Financieele Dagblad of 22 July 2020.
[17] Rik Winkel, '*Vakbonden slepen werkplatform Temper voor rechter.',* Het Financieele Dagblad of 22 October 2020; Maarten van Gestel, '*Vakbonden slepen flexwerkapp Temper voor de rechter.',* NRC Dagblad of 22 October 2020.
[18] Perskit - YoungOnes, *YoungOnes* 2022.

assignment, YoungOnes takes care of payment and makes sure the worker receives this wage.[19]

1.3. The economic, social and political importance of digital work platforms in the Netherlands

In The Netherlands, the Central Statistical Office (hereafter: CBS) did research on platform work and gave a statistical overview of platform work and its popularity. The data the CBS presented was based on a pilot and showed that of all Dutch workers between the ages of 15 and 75, 0,7 percent had worked at least an hour through an online work platform in June 2022. The entire research pilot took place over the first six months of 2022, which resulted in these numbers. The aforementioned percentage of 0,7 results in 86,000 workers. Most workers were active in offering purchased goods through online work platforms, namely 20 percent of all platform workers. Vlogging and blogging is another frequent activity, namely 17 percent of all platform workers. Other frequent activities are offering IT-services, tutoring and domestic work, namely 12, 11 and 9 percent of all platform workers respectively. Of all platform workers, 64 percent is male and 36 percent are female. Out of the entire group of platform workers, the average age ranges from teenager to mid-twenties as the most overrepresented group. The majority of 54 percent of platform workers earn less than a quarter of their income through platform work. This indicates that platform work is mostly smaller jobs, which are often done by students who work on the side to fund their education or lifestyle for example. As much can be concluded out of the hours platform workers actually work. According to the CBS, 44 percent of platform workers work less than 10 hours a month through online platforms. Just as low as 12 percent of all platform workers earn their entire income through platform work. This shows that platform work is mostly part time and functions as an addition to other work for most workers in the Netherlands. Perhaps peculiar, but not a lot of Dutch workers are active on platform markets. Just as low as 0,7 percent of all Dutch workers are actively working through online work platforms.[20]

Based on these statistics there can be three distinguished groups of platform workers. The first group are self-employed professionals that find their clients through digital work platforms, because of efficiency reasons, such as technicians, bricklayers, gardeners and other technical professionals. This group of platform workers do not experience problems with platform work, because they can find assignments whatsoever, so they do not necessarily need the digital work platforms to find work. The second group of platform workers are those that earn their entire income through platform work. This type of workers get especially struck by problems and influenced by outcomes of legal discussions in regard to platform work. Their income is dependent on work they can find through digital work platforms. So no work because of illness or incapacitation means no income and leads in time to precarious situations for this group. This is a major flaw of being self-employed and being dependant of

[19] https://youngones.com/nl/starten-als-freelancer/.
[20] Klijs, Kösters and Smits 2022, p. 555 – 559.

digital work platforms to earn income. The third group is the middle ground between the two other groups. This type of platform workers have additional income through platform work, but another (parttime) job and income next to platform work.

As shown hereinabove, platform work and digital work platforms play a statistically small, but within this group an important part in Dutch society. However, platform work and the market on platform work is uncertain. Platform workers are often uninsured, which leads to loss of income once they become ill, incapacitated or get into a situation where they are without work, so become unemployed. Furthermore, and this acknowledges the Dutch government according to Dutch philosopher and professor René ten Bos as well, this means that platform workers may be in a precarious situation. More in particular because the position of platform workers becomes more unsafe.[21] This uncertainty of platform workers on the labour market is a consequence of the platform economy, according to Dutch labour law professor and lawyer Jaap van Slooten.[22] The Dutch government is keeping a close eye on developments in the platform economy and platform work in particular. Together with the business sector, the government was and is trying to find effective regulations of this relative new form of labour.[23]

Another economic, social and political development concerning platform work is an independent study on platform work by a branch of the Royal Dutch Academy of Sciences, the Rathenau Institute in collaboration with Utrecht University. The aim of this study was to add to an existing research to lead digital possibilities and opportunities as a consequence of digitalisation in the right direction.[24] The primary aim of this study was therefore not focused on platform work specifically. However, the conclusions of and recommendations based on this study are useful in legal discussions in regard to platform work. The Rathenau Institute concluded with points of attention and recommendations to the Dutch Government. First of all, the Rathenau Institute identified that it should be avoided that society with a current accessibility to information gets enclosed by a certain type of (digital) work platform. The Institute recommends that the Dutch government has a task in promoting a larger variety of (digital) work platforms, such as not-for-profit platforms and (digital) work platform cooperatives. Second of all, the Dutch government has to keep the entry barriers of new work platforms as low as possible. The recommended way to achieve this goal is by facilitating this by competition policy. This may result in a situation that current monopolistic work platforms will experience more competition by new competitive work platforms. Workers will get more opportunities this way and have fairer working conditions, such as wage and other (financial) benefits. The Institute identified that this is a current problem in the Netherlands. Third of all,

[21] Jeannine Julen, *´We moeten de platformeconomie omarmen, maar hoe?'* Trouw (newspaper) of 27 December 2018.
[22] Hendarin Mouselli and Hinke Wever, *'Arbeidsrecht en platformwerk sluiten niet op elkaar aan.'* Flexnieuws.nl on 29 August 2018.
[23] Hinke Wever and Hendarin Feyli, *'Platformeconomie, hoe werkt het voor alle deelnemers?'* Flexnieuws.nl on 16 November 2017.
[24] Frenken, Van Waes, Smink and Van Est 2017, p. 5.

the Dutch government has a very important task in clarifying the legal status of workers connected to (digital) work platforms. The Institute recommends one of four different qualifications:

1. Freelance-status, which is the current situation within most work platforms;
2. Employee-status, which will lead to more protection by law regarding, but not limited to, social security and wage;
3. 'Worker'-status, which is a qualification often used in the UK. This means in the essence that a worker is a freelancer, but with a minimum wage and other social rights;
4. A new status by altering competition legislation, which makes it possible for freelance workers to partake in collective negotiations.

Fourth of all, to limit the power on the market of certain (digital) work platforms, the government has to develop policy which enables platform workers to manage their ratings and to maintain these ratings when they transfer to or use another (digital) work platform. This will lead to more freedom for a platform worker and makes switching platforms easier. According to the Institute, most importantly in regard to the aforementioned is data portability, which can be compared to the right of consumers to keep their mobile phone numbers when they switch from phone providers.[25] Conclusion is that the Dutch government has an important task to protect platform workers more by law. Platform workers are often qualified as self-employed workers that work through online working platforms, according to the platforms. Being self-employed is often even a requirement to work through online platforms. By Dutch law, a self-employed worker has considerably less protection as an employee when it comes to (for example) continued payment when the worker is ill or when it comes to social security. Namely, a self-employed worker is under Dutch law not eligible for unemployment benefits or other social rights. More about the legal qualification of platform workers later on in this report.

However, (digital) work platforms made the first move in regard to discussions whether freelance workers on work platforms should be qualified as employees or not. Six digital work platforms (including Temper, Deliveroo, Uber, Helpling and YoungOnes) drafted a social agreement to regulate this somewhat better in collaboration with the Dutch government. With this agreement digital working platforms tried to keep the advantages of platform work for platform workers. These advantages are more flexible and accessible work. Apart from the advantages, these digital work platforms also tried to improve the social security for platform workers.[26] A research institute called Motivaction International BV surveyed on behalf of the digital work platforms amongst platform workers themselves about their opinions regarding

[25] Frenken, Van Waes, Smink and Van Est 2017 (summarised), page 1-3.
[26] Elfanie Toe Laer, '*Platformbedrijven willen polderen.'* Het Financieele Dagblad of 1 June 2021.

their work and an advise by the Dutch Social and Economic Council in regard to freelance work.[27] Perhaps controversially, but most of the questioned platform workers did not want to be qualified as employee out of fear of losing their freedom to switch assignments or jobs easier.[28] This shows that platform work plays an important role within the Dutch society. Furthermore, the largest (digital) working platforms are meddling in political debates and negotiations regarding platform work and the legal status of platform workers.

As aforementioned, platform work is a flexible way of work. This meant during the COVID-19 pandemic that platform workers could often work where other workers could not, because of lockdowns and safety against infecting colleagues with COVID-19. Especially platform workers active in deliveries were quite busy during the pandemic, because shops and restaurants were closed and shifted their commerce through delivery and online shopping. On the other hand, the pandemic had a side effect where working conditions deteriorated, because the supply of work was considerably larger than the demand in most sectors. Most platform workers also had no economic safety net, which meant platform workers had little to no income. The COVID-19 pandemic therefore also showed the vulnerability of platform works in crises.[29] Luckily, the pandemic is over and COVID-19 is controlled. This meant that platform work in the delivery sector has decreased drastically, but also gave platform workers active in other sectors possibilities to start working again and change their precarious situation.

1.4. Digital work platforms in Dutch legal academic literature

In Dutch legal academic literature, the discussion about the legal qualification of platform workers is a relevant and well-discussed topic by scholars. In this section the different types of online work platforms in legal academic literature are displayed.

According to Dutch legal scholars there are three types of economies on platform work. The first one is the *gig economy*. This type of platform work focuses on manual labour where supply and demand for (mostly short-term) engagements is met through apps and websites. The second one is the *sharing economy*. This type of platform work focuses on sharing goods, such as letting properties and vehicles through apps and websites. The third one is the *platform economy.* This type of platform work focuses on facilitating services by means of an app or website. However, only in the *gig economy* is where the interesting legal discussions lay, because labour by a worker plays an important role in this type of platform work, which role there is not or considerably less in the other types.[30] This is mostly because of the fact

[27] Hanne Obbink, '*Uber en Deliveroo: Chauffeurs en maaltijdbezorgers willen helemaal niet in loondienst.*', Trouw of 8 October 2021; Rik Winkel, '*Platformbedrijven: onze mensen willen helemaal geen vast contract.*', Het Financieele Dagblad of 8 October 2021.
[28] Audenaert, Koot and Wattimury 2021, page 20.
[29] Netherlands Institute for Social Research, 15 January 2021, https://www.scp.nl/actueel/nieuws/2021/01/15/platformwerk-biedt-flexibiliteit-en-ruimte-maar-ook-onrust-en-onzekerheid.
[30] Verburg 2019, §6.2.

that in the *gig economy* a worker has to physically do the work for the customer directly at their house or at the requested time with the customer present, whereas in the other types a product gets delivered to the customer or a middleman functions as an intermediary between the customer and the platform worker.

Further legal academic literature covers comparisons of platform work with other types of work, such as payrolling and work through employment agencies. Especially when it comes to the legal qualification of platform work in regard to aforementioned types of work. Platform work is in a way comparable with payrolling and work through employment agencies, because a payroll worker or temporary worker gets provided to a company that needs workers in a certain field of expertise for a duration of time. Platform work has similarities, but is mostly different by the duration of work. Platform work is often very short-term, namely (for example) a day of gardening through YoungOnes or Temper, an Uber-taxi to the airport or a pizza delivery to a certain address through Deliveroo. Payrolling and temporary work is often for a few months or a year, where work through a platform has seldom a duration of longer than a day or few days.[31]

Furthermore, online work platforms are influential on labour participation, because these platforms play a role in the means people earn income. As mentioned before, platform work is often a way to earn additional income, but this does not mean that platform work has zero to none effects on the Dutch labour markets. On the one hand, work platforms bring more activity and more work. But work platforms also give low-educated and people with a distance to the labour market better chances of earning a living. Work platforms therefore offer new and better chances to workers and job seekers. On the other hand, and this is a negative side, platform work has a side effect that working conditions are often poorer, which results in the fact that platform work often does not meet requirements of decent work anymore. This is mostly because platform work is seen as cheap labour. It is also a possibility that platform work might even substitute or repress regular work in time according to legal academics. This is mostly given to the unsure status of platform workers, because platform workers are often wrongly qualified as self-employed.[32] This shows that in Dutch legal academic literature, platform work is often present to critical annotation, because of its negative side effects and the unsure legal qualification of platform workers.

In regards to the unsure legal qualification of platform workers, Dutch legal academics argue that work platforms who are transparent in the qualification of the workers that work through the platforms are future-proof. This argument is supported by the fact that most work platforms handle platform workers through a mock construction. This construction is in the essence that the platform requires workers to be self-employed and that they therefore have the freedom to determine the working hours, wage and the way they work, but this is not the case. Work platforms often determine working hours, parameters to determine wage and

[31] Heeger-Hertter 2022, §10.2.2.
[32] Heeger-Hertter 2022, §10.3.4.

instruct the platform workers in the way they should work.[33] As more thoroughly displayed later on, these features characterise an employment agreement under Dutch law, which means that platform workers might not be self-employed after all. This discussion and the use of mock constructions is the core of most debates regarding the legal qualification of platform workers.

[33] Verburg 2019, §6.3.1.

Chapter 2 – Classification of platform workers

In this chapter the classification of platform workers will be examined. Firstly, the different categories that exist for legal classification in the Dutch law will be explained and the first question *'What are the main criteria and indicators used'* will be answered. Secondly, several platforms will be examined, looking specifically at the type of contract that has been given to platform workers and the way in which the platforms are similar to or different from an employment contract. Then, the second question *'What are the main criteria that are disputed in these cases, and how do courts deal with these?'* will be answered.

2.1 Categories legal classification under the Dutch law

In most legal systems the classification of platform workers has been one of the most important issues when it comes to the debate about digital platform work. In the Netherlands the classification of platform workers has been a hot topic of continuing debate. By 2021, approximately 1.4 million individuals worked through on-location and online digital labour platforms in the Netherlands.[34] There are a multitude of court and tribunal cases in which is ruled on the classification of specific platform workers. For example, on the 24th of March this year the Dutch Supreme Court ruled on a fundamental case between FNV, the largest Dutch trade union, and online meal delivery company Deliveroo.[35] Other examples are Helpling and Uber, which are platforms on which the court will rule in the near future.[36] These cases, among others, will be discussed in this report. It is suspenseful what the court will rule on these. If the Supreme Court ruling on Deliveroo is followed, things could go sideways for the other platforms. These courts have been waiting for the ruling on Deliveroo. Above-mentioned cases will be discussed in section 2.2.3 and following.

The most frequently asked question in the literature of labour law on platform work concerns the qualification of the (employment) contract between the work platform and the platform worker. This qualification is important because of the known function of the employment contract, namely the right to both employment law and (derivatively) social security law protection. It is therefore crucial to determine whether the platform workers can qualify as employees, which would mean that they would have an employment contract with the platform (at least) during the performance of their work, or whether they are contractors and thus perform platform work on the basis of a contract of services.[37]

[34] European Commission, 'Study to support the impact assessment of an EU initiative to improve the working conditions in platform work', 22 October 2021, p. 96.
[35] Dutch Supreme Court 24 March 2023, ECLI:NL:HR:2023:433 (*Deliveroo / FNV*).
[36] Subdistrict Court of Amsterdam 13 September 2021, ECLI:NL:RBAMS:2021:5029 (*FNV/Uber*); Dutch Court of Appeal 21 September 2021, ECLI:NL:RBAM:2019:4546 (*FNV/Helpling*).
[37] Houwerzijl, Montebovi & Zekić 2021/1.3.1.

There is no legal definition of platform work. Consequently, there is no specific legislation in this area.[38] Therefore, the following categories of legal classification under the Dutch law are important. Book 7 of the Dutch Civil Code (hereafter: 'DCC') deals with 'Particular agreements', Specifically, the topic of 'contract of services' is set out in Title 7.7 and the topic of 'employment contracts' in Title 7.10. In other countries, Labour law is laid down in another code. In our case, employment contract law happens to be in Title 7.10. Those falling within the scope of Article 7:610 DCC are automatically covered by the other laws. These persons are thus subject to all employment law regulations.

Within Book 7 DCC, three articles are of great importance.

2.1.1 Article 7:610 DCC

Article 7:610 paragraph 1 DCC states in which situation an employment contract exists:
"*An employment contract is an agreement under which one of the parties ('the employee') engages himself towards the opposite party ('the employer') to perform work for a period of time under supervision of this opposite party in exchange for payment.*". [39]

For the classification of an employment contract, the three prominent elements required are[40]:

1. A worker undertakes an obligation to perform work;
2. Against payment of wages;
3. Under supervision of an employer.

When there is a conflict between statutory provisions, the statutory provisions of Title 7.10 prevail.[41] Statutory provisions of Title 7.10 are for example employee rights, such as vacation, vacation allowance, sickness pay, entitlement to the transition allowance, etc.[42] These rights will be discussed in further detail in chapter 3.

Work

The first requirement of an employment contract is that the employee is obliged to perform work. The term 'work' is understood broadly and can include any activity. The nature of the agreed-upon work is not important and can vary greatly.[43] However, the work must be of value for the other party.[44] In platform work, it is hard to imagine that the 'work' element has

[38] Houwerzijl, Montebovi & Zekić 2021/3.2.
[39] Translation by Jacobs 2015, p. 65.
[40] Bouwens, Duk & Bij de Vaate 2020, p. 4.
[41] Article 7:610 paragraph 2 DCC.
[42] Proposal for a Directive of the European Parliament and of the Council on Improving Working Conditions in Platform Work, European Commission, Brussel, 9 December 2021, 2021/0414, p.2.
[43] Bouwens, Duk & Bij de Vaate 2020, p. 4.
[44] Eleveld 2017/38.

not been met.[45] For example, in the Deliveroo case there was no discussion as to whether the Deliveroo riders (who would deliver meals) performed work.[46]

Furthermore, in principle the work must be performed personally. The employee can be replaced by a third party only with the employer's permission.[47] An agreement where someone can be freely substituted will not easily be considered an employment contract.[48] The question is whether the platform allows employees to be replaced by a third party. The conditions under which platform workers work, often include the provision that there is no obligation to perform the work personally and that the worker may be substituted. Sometimes without restrictions at all, sometimes the substitute must also fulfil some basic conditions.[49] This issue has been addressed in the Deliveroo rulings. According to the Supreme Court, the freedom of substitution laid down in the contract is not in itself incompatible with the existence of an employment contract and must be considered in light of all the circumstances of the case.[50]

Remuneration

The second requirement is that the employee receives a remuneration in exchange for the work that he performed. The employer is obliged to pay the employee for the work that has been done.[51] The remuneration generally consists of wages.[52] Usually, wages will be set in money.[53] This is never questioned in case law.[54]

The platform workers to which this report refers do not work for free, so there is certainly remuneration. The question is whether the platform worker's compensation is due from the platform. This question has so far been underemphasized in the various rulings or not addressed due to the facts. It is not always evident what the contractual relationships are and how payments are made.[55]

Case law, for example the Deliveroo rulings, but also other qualification cases, do address the manner in which wages are paid, namely via invoices, whether or not under the charging of VAT, etc. These modalities, just like the obligation to perform work personally, are indications of characteristics that may or may not correspond to the employment contract, and, in our opinion, do not so much relate to the core element of 'remuneration' of the definition of article 7:610 DCC.[56]

[45] Houwerzijl, Montebovi & Zekić 2021/3.4.3.
[46] Dutch Supreme Court 24 March 2023, ECLI:NL:HR:2023:433, paragraph 2.4.2 (*Deliveroo / FNV*).
[47] Article 7:659 paragraph 1 DCC.
[48] Dutch Supreme Court 13 December 1957, ECLI:NL:HR:1957:3.
[49] Houwerzijl, Montebovi & Zekić 2021/3.4.3.
[50] Dutch Supreme Court 24 March 2023, ECLI:NL:HR:2023:433, paragraph 3.3.5 (*Deliveroo / FNV*).
[51] Bouwens, Duk & Bij de Vaate 2020, p. 6.
[52] Article 7:617 paragraph 1 DCC.
[53] Bouwens, Duk & Bij de Vaate 2020, p. 7.
[54] Dutch Supreme Court 24 March 2023, ECLI:NL:HR:2023:433 (*Deliveroo / FNV*).
[55] Houwerzijl, Montebovi & Zekić 2021/3.4.4
[56] Ibid.

Under supervision of

The third requirement is that the employee performs work under supervision of the employer, which contains a relationship of subordination.[57] The nature of the work may imply that the person performing labour enjoys a high degree of freedom and independence in the performance of his duties. To the extent that there is a high degree of freedom, it can be classified as subordinate. In case a worker has a (rather) high degree of freedom to perform his/her tasks, it can still be an employment contract. The employer can unilaterally issue binding rules or instructions to the employee.[58] The authority of the employer to give instructions does not have to relate to the content of the stipulated work. This element is the main element that distinguishes a contract of employment from other contracts which involve labour. The distinction is important, because the matters of protection differ from those two contracts.[59]

The authority criterion can lead to uncertainty and ambiguity, because it is an open concept that must be assessed on the basis of all facts and circumstances of the case and in conjunction with other elements of the definition of employment. Thus, it involves holistic weighing.[60] The statutory definition says 'under supervision of'. That term gives room to consider when assessing the authority criterion to not only look whether or not the employer has the possibility to give concrete directions or instructions to the worker, but also take into account whether the person concerned functions structurally within a labour organisation and the worker who is responsible for the economic risk of the work.[61] So it depends on all the facts and circumstances whether platform workers fulfil this element.

The relationship of subordination was also addressed in the ruling on cleaning platform Helpling. [62] Helpling provides households with domestic help. Households and cleaners create a profile in the application app and can meet each other there. Once household and cleaner have found each other, the arrangements continue through Helpling and Helpling continues to earn from the arrangements. The court ruled that there was no relationship of subordination. The worker can do the work as she pleases, determines the rate to be agreed upon with the household and must follow the instructions of the household. The platform merely facilitates.[63]

[57] Article 7:660 DCC.
[58] Bouwens, Duk & Bij de Vaate 2020, p. 8.
[59] Jacobs 2015, p. 66.
[60] Houwerzijl, Montebovi & Zekić 2021/3.4.5.
[61] Asser/Heerma van Voss *7-V* 2020/20.
[62] Subdistrict Court of Amsterdam July 1 2019, ECLI:NL:RBAMS:2019:4546 (*FNV/Helpling*).
[63] Subdistrict Court of Amsterdam July 1 2019, ECLI:NL:RBAMS:2019:4546, paragraph 13 (*FNV/Helpling*).

2.1.2 Article 7:400 DCC

The second article of importance is article 7:400 DCC. If the element 'remuneration' or 'under supervision of' is missing, there is usually a contract of services within the meaning of article 7:400 DCC. Article 7:402 DCC is applicable on self-employed persons. Self-employed workers are also obliged to follow up instructions, not from the employer but from the contracting party.[64] Therefore, the distinction between a contract of employment and a contract of services contracts which involve labour is not always simple. Whether the contract is an employment contract within the meaning of article 7:610 DCC or a contract of services within the meaning of article 7:400 DCC, depends on whether the requirements of each agreement are met separately. More on this later.

It is important to determine whether the agreement is an employment contract or a contract of services, because these contracts are accompanied with levels of protection of workers. Self-employed workers for example do not receive a monthly different wage but get paid by sending invoices. In addition, the self-employed workers must pay their own taxes and take care of their own retirement savings. The self-employed also face great financial risks if they get sick or can't work for other reasons. Another important difference in self-employment is the lack of protection against dismissal.[65]

2.1.3 Article 7:610a DCC

The final article of importance is article 7:610a DCC. If there is uncertainty concerning the relationship of parties, article 7:610a DCC can be important. The article states the legal presumption of an employment contract. According to article 7:610a DCC, an employment contract is presumed to exist when a person is performing work for someone, against remuneration by that other person and during a period of more than three months, weekly or during more than twenty hours per month. This is a presumption of evidence. The plaintiff can suffice to allege and, if necessary, prove the three elements of article 7:610a DCC have been met. If this is fulfilled, the existence of an employment contract is assumed, unless the other party provides evidence to the contrary.[66]

This is in line with the regulations that the European Commission is currently developing. In December 2021, the European Commission proposed a directive to improve working conditions in platform work, the so-called 'Directive of the European Parliament and of the Council on improving working conditions in platform work'.[67] The European Commission is working on regulations which, in short, assume that there will be a reverse burden of proof: if the platform company denies that a platform worker is an employee, the platform company must provide proof of that fact. This will be discussed in chapter five.

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[64] Bouwens, Duk & Bij de Vaate 2020, p. 9.
[65] RVO 2021.
[66] Bouwens, Duk & Bij de Vaate 2020, p. 11-12.
[67] Proposal for a directive of the European Parliament and of the Council on Improving Working Conditions in Platform Work, European Commission, Brussel, 9 December 2021, 2021/0414.

2.2 Court and tribunal cases

This chapter elaborates on how the key elements of an employment contract and a contract of services (as described in the previous chapter) play out in court cases in the case of platform workers. Firstly, the importance in qualifying an agreement according to the case X vs. the City of Amsterdam as the decision that serves as a general guideline is set out. Then the platforms Deliveroo, Temper and Uber are being discussed, focusing on the type of contracts that have been given to platform workers and how these are similar to or different from an employment contract.

2.2.1 X vs. the City of Amsterdam

The Dutch Supreme Court ruled in the case X vs. the City of Amsterdam on the qualification of a contract.[68] The Supreme Court ruled that in qualifying an agreement, the only thing that is important is whether the rights and obligations the parties agreed upon fulfill the legal description of the employment contract.[69] The Supreme Court distinguishes two phases in qualifying the agreement: (i) the interpretation phase and (ii) the qualification phase. In the interpretation phase the rights and obligations the parties have agreed upon are being examined. This requires looking at 'the sense which the parties, in the given circumstances, could reasonably attribute to these provisions on both sides and what the parties could reasonably expect from each other in this respect'.[70] After the establishment of these rights and obligations, the court can assess whether that agreement meets the requirements of an employment contract. This is the so-called qualification phase.[71] Thus, the party intent is irrelevant to the qualification, but it is relevant to the question of what the parties agreed upon.[72]

There are a lot of references to this judgement in other cases. After this judgement, it became clear that the emphasis will lie even more on how the parties actually carry out the contract of services.[73] Thus, if the parties lean (too) much on the parties' intentions, there is a greater risk that there is an employment contract. If the requirements of an employment contract are met, the agreement is an employment contract, regardless of what the intentions of the contract were. So this contains a holistic approach. However, there are still many cases in which it is unclear whether a platform employee is working under an employment contract.

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[68] Dutch Supreme Court 6 November 2020, ECLI:NL:HR:2020:1746, *NJ* 2021/116 (*X vs. The City of Amsterdam*).
[69] Ibid., paragraph 3.2.2 (*X vs. The City of Amsterdam*).
[70] Dutch Supreme Court 13 March 1981, ECLI:NL:HR:1981:AG4158, *NJ* 1981/635 (*Haviltex*), the so-called Haviltex formula that is applied to employment contracts.
[71] Dutch Supreme Court 6 November 2020, ECLI:HR:2020:1746, *NJ* 2021/116, paragraph 3.2.3 (*X vs. The City of Amsterdam*).
[72] Houweling, *AR* 2020-1345.
[73] Ibid.

2.2.2 Helpling

The *FNV/Helpling* case is a comparable case.[74] Helpling is, as already mentioned in paragraph 1.2, a platform that connects households and cleaners. Households and cleaners can both create a profile on the platform. The cleaner can manage and fill their own calendar and determine the hourly rate for which household work is performed. Helpling has set a minimum and a maximum hourly rate. Helpling further maintains a user manual that outlines the rules for using the platform. It also states that if a cleaner receives three negative feedbacks, they will be removed from the platform.[75] After an appointment between the household and the cleaner has taken place, Helpling – if the cleaner agrees – sends an invoice in the cleaner's name for the work performed, which is then sent by the cleaner to the customer.[76] The agreement between Helpling and the cleaner is referred to by Helpling as User Agreement. This agreement itself is not in writing. The agreements or provisions relevant to the performance of this agreement are laid down in the general terms and conditions applicable between Helpling and the cleaner and between Helpling and the customer.[77]

With the help of FNV, a cleaner started a procedure against Helpling, claiming primarily that there is an employment contract within the meaning of article 7:610 DCC between the cleaner and Helpling.[78] According to the Subdistrict Court of Amsterdam, there is a lack of authority on Helpling's side to give orders. This would lead to the fact that the relationship between the cleaner and Helpling could not be categorised as an employment contract.[79] However, the Court of Appeal decided differently.[80] This Court stated that, among other things, the fact that the payment of wages is performed in a manner that is prescribed by Helpling entailed exercising authority over the cleaner.[81] The requirement of an employment contract is thus fulfilled.[82]

2.2.3 Uber

Another relevant case is *FNV/Uber*, in which the Court was (once again) asked to qualify the legal relationship between the platform Uber and platform workers.[83] The Uber drivers were self-employed workers for Uber, according to Uber.[84]

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[74] Subdistrict Court of Amsterdam 1 July 2019, ECLI:NL:RBAMS:2019:4546 (*FNV/Helpling*).
[75] Ibid., paragraph 1.4.
[76] Ibid., paragraph 1.7.
[77] Ibid., paragraph 1.8.
[78] Ibid., paragraph 2.
[79] Ibid., paragraph 13.
[80] Dutch Court of Appeal 21 September 2021, ECLI:NL:RBAM:2019:4546 (*FNV/Helpling*).
[81] Ibid., paragraph 3.14.3.
[82] Ibid., paragraph 3.17.1.
[83] Subdistrict Court of Amsterdam 13 September 2021, ECLI:NL:RBAMS:2021:5029 (*FNV/Uber*).
[84] Ibid., paragraph 1.9.

As mentioned before, the relationship of subordination is the most distinctive criterion in the distinction between an employment contract and another employment relationship, and thus decisive in determining whether there is an 'employee' or a self-employed worker.[85] Especially the presence of a relationship of subordination was at issue. According to the Subdistrict Court of Amsterdam, technology is so prevalent that the criterion 'supervision' is less direct and often digital.[86] Among other elements, the following elements were considered important for accepting the relationship of subordination in this case. Firstly, Uber drivers can only drive for Uber via the Uber app. Secondly the terms and conditions for this app must be accepted before performing work. Thirdly, these terms and conditions were set by Uber and can be changed by Uber without the consent of the drivers.[87] The Court concludes that the system set up by Uber results in the actual performance having all the characteristics of an employment contract. Therefore, the agreements between Uber and the drivers who committed themselves in person to Uber must be qualified as an employment contract as referred to in article 7:610 DCC.[88]

2.2.4 Deliveroo

Introduction

A well-known case in the Netherlands at this very moment is the Deliveroo case.[89] This case focuses on the legal question whether the meal delivery drivers of Deliveroo are working on the basis of an employment contract within the meaning of article 7:610 paragraph one DCC.[90]

Facts

Deliveroo is a British digital platform on which customers could order and pay meals from independent restaurants. Deliveroo operated in the Netherlands until the end of 2022.[91] The Deliveroo riders deliver the meals to customers and the Deliveroo-app contains the information regarding the orders and locations of restaurants and customers. Since 2015 the Deliveroo riders have worked on the basis of a temporary employment contract. According to this employment contract, the Deliveroo riders were required to work a minimum of one weekend shift and one evening shift per week (i) and to adhere to a specific deadline for reporting availability (ii) and to respond to calls from the employer. Three failures to comply would constitute an urgent reason for instant dismissal according to the employment contract. Besides this, the Deliveroo riders were required to be dressed in Deliveroo clothing and use a Deliveroo thermobox while working. Furthermore, the drivers were not permitted to work for

[85] Ibid., paragraph 25.
[86] Ibid., paragraph 26.
[87] Ibid., paragraph 27.
[88] Ibid., paragraph 34-35.
[89] Dutch Supreme Court 24 March 2023, ECLI:NL:HR:2023:433 (*Deliveroo / FNV*).
[90] Subdistrict Court of Amsterdam 15 January 2019, ECLI:NL:RBAMS:2019:198, *JAR* 2019/23, paragraph 17 (*FNV/Deliveroo*).
[91] Dutch Supreme Court 24 March 2022, ECLI:NL:HR:2023:433, paragraph 2.1 (*Deliveroo/FNV*).

other delivery services.[92] However, since 2018, Deliveroo riders were working on the basis of contract of services within the meaning of article 7:400 DCC.[93]

FNV, the Dutch Trade union, stood up for the Deliveroo riders. FNV filed a collective action against Deliveroo. According to FNV, the Deliveroo riders should be qualified as employees under article 7:610 DCC and the riders are therefore entitled to employee rights. The criteria of article 7:610 DCC were met, according to FNV. The FNV states that the situation under which the Deliveroo riders work on the basis of contract of services, would not be substantially different from the situation under which the Deliveroo riders work on the basis of employment contracts in terms of the supervision and remuneration. Also, the legal presumption was invoked. The average duration of the assignments is longer than three months and more than twenty hours per month and therefore legitimises the legal presumption of the existence of an employment contract.[94]

Amsterdam Court of Appeal

Deliveroo appealed the judgement of the Subdistrict Court of Amsterdam. The Amsterdam Court of Appeal ruled in 2021. The ruling X vs. Amsterdam was considered relevant in this case.[95] Based on the rights and obligations agreed upon between the parties, the Court assessed that the elements of 'work', 'wages' and 'under supervision of' have been met. Firstly, work is performed in carrying out an order to deliver meals. The Court of Appeal ruled that the fact that the Deliveroo riders had the freedom by which the work can be performed, which may indicate the absence of an employment contract, does not lead to the conclusion that there cannot be an employment contract.[96] Secondly, Deliveroo paid the Deliveroo riders per order delivered. The manner in which the payment of wages by Deliveroo is made, indicates the presence rather than the absence of an employment contract.[97] Thirdly, Deliveroo developed the algorithm 'Frank' and constantly adjusts it, thus Deliveroo had considerable interference with respect to how the work is performed. This indicates subordination, according to the Court of Appeal. [98]

Furthermore, the Deliveroo riders do not manifest themselves as an entrepreneur in society, because restaurants and customers see the delivery riders as part of Deliveroo and not as an independent entrepreneur. According to the Court of Appeal, the absence of being an entrepreneur of most Deliveroo riders is consistent with its conclusion that the manner in which Deliveroo has the Deliveroo riders perform the work is more indicative of an authority

[92] Subdistrict Court of Amsterdam 15 January 2019, ECLI:NL:RBAMS:2019:198, *JAR* 2019/23, paragraph 1.1-1.2 (*FNV/Deliveroo*).
[93] Ibid., paragraph 1.4 (*FNV/Deliveroo*).
[94] Subdistrict Court of Amsterdam 15 January 2019, ECLI:NL:RBAMS:2019:198, *JAR* 2019/23, paragraph 4 (*FNV/Deliveroo*).
[95] Dutch Court of Appeal Amsterdam 16 February 2021, ECLI:NL:GHAMS:2021:392, *JAR* 2021/62, paragraph 3.4 (*FNV/Deliveroo*).
[96] Ibid., paragraph 3.7.8 (*FNV/Deliveroo*).
[97] Ibid., paragraph 3.8.4 (*FNV/Deliveroo*).
[98] Ibid., paragraph 3.9.8 (*FNV/Deliveroo*).

relationship. Therefore, the manner in which Deliveroo allows work to be performed by delivery riders indicates an authority relationship rather than the absence of an authority relationship.[99] The Court of Appeal ruled that all things considered only the fact that the Deliveroo riders have freedom by which the work can be performed, indicates absence rather than the presence of an employment contract. All other elements, for example the method of payment of wages, the exercised authority and the other circumstances mentioned, indicate the presence of an employment contract rather than its absence.[100] Deliveroo has appealed the Court's ruling.[101]

Supreme Court

On 24th of March 2023 the Supreme Court ruled on the Deliveroo case.[102] The Supreme Court states that the judgement of the Court of Appeal that the agreements with Deliveroo should be qualified as an employment contract, does not demonstrate an incorrect view of the law.[103] According to the Supreme Court, the Court of Appeal did not misunderstand the foregoing and gave adequate reasons why, despite said freedom, the agreement in this case should be qualified as an employment contract.[104] Whether the requirements for an employment contract are met, depends on the further circumstances of the case. As a result, assessing whether an employment contract exists is a very case-by-case approach.[105]

At this moment, the Dutch and European legislator are focusing on the establishment of further general rules and starting points with regard to circumstances that determine the qualification as an employment contract, for example the question whether there is cause for further interpretation of the concept 'under supervision of', with the embedding of the work in the organisation of the person for whom the work is performed. Therefore, the Supreme Court sees no cause for legal development on these issues at this time.[106]

Uber, among others, will have followed this case suspiciously. For Uber, no clarity has emerged. The Supreme Court ruled that all the circumstances of the case must be assessed in context. This ruling is about Deliveroo. The question is whether this ruling affects other meal delivery companies.[107]

We will further elaborate on the protection of platform workers in chapter 3.

[99] Ibid., paragraph 3.9.10-3.9.12 (*FNV/Deliveroo*).
[100] Ibid., paragraph 3.9.10-3.12.2 (*FNV/Deliveroo*).
[101] Dutch Supreme Court 24 March 2023, ECLI:NL:HR:2023:433 (*Deliveroo/FNV*).
[102] Ibid.
[103] Ibid., paragraph 3.3.4-3.4 (*Deliveroo/FNV*).
[104] Dutch Supreme Court 24 March 2023, ECLI:NL:HR:2023:433, paragraph 3.4 (*Deliveroo/FNV*).
[105] Dutch Supreme Court 24 March 2023, ECLI:NL:HR:2023:433, paragraph 3.2.5 (*Deliveroo/FNV*).
[106] Dutch Supreme Court 24 March 2023, ECLI:NL:HR:2023:433, paragraph 3.2.6 (*Deliveroo/FNV*).
[107] NOS Nieuws 2023.

Chapter 3 – Applicability of specific rights and rules

As demonstrated in the last chapter, the court cases in the Netherlands target the question whether a certain platform worker qualifies as an employee under Dutch law. The answer to that question determines whether any social rights apply to a specific person. In this chapter, the term 'employee' will be used for someone that has an employment contract under Dutch law. In this chapter, you will find many references to provisions of Book 7, Title 10 of the Dutch Civil Code. In the Netherlands, this title functions as a kind of Law on the Employment Contract.

While there have been some court cases about the qualification of employees in the Netherlands, there are no cases that only specifically target one of the social rights that will be mentioned. Therefore, we can only theoretically speculate about the applicability of social rights for platform workers who have a contract of service. Perhaps trade unions will advocate for certain social rights to apply to platform workers in the future. This possibility will be discussed further in chapter 4.

Multiple authors have differentiated several topics that should be considered when discussing social rights. For example, five topics have been differentiated in some Dutch legal literature that deserve attention (and roughly correspond with the topics that are mentioned in the questionnaire) when protecting platform workers against the platform: (1) the commission (reward for performance) and the volume of assignments, (2) the power of the platform to change the agreement, (3) the power of the platform to terminate the agreement, (4) the liability for accidents of platform workers, and (5) the control of the quality and reliability of the participants.[108] Each of these subjects will be explained in more detail.

3.1. Commission/Minimum Wage

3.1.1. For employees

The employer is obliged to pay the employee's wages at the time that was specified in the contract, according to article 7:616 Dutch Civil Code.

Article 7 section 1 of the Law on Minimum Wage and Minimum Holiday Allowance says that the employee who has reached the age of 21 is entitled to a wage from the employer for the work performed by him in employment, at least up to the amount set by or pursuant to the following articles under the name minimum wage. Employee within the scope of this law refers to someone who is employed under a labour contract under civil law (article 2 section 1).

[108] M.S. Houwerzijl, S.H.M. Montebovi & N. Zekić, 'Monografieën Sociaal Recht - Platformisering, algoritmisering en sociale bescherming', *Wolters Kluwer* 2021, par. 6.4.

Article 8 regulates the minimum wage over each payment term. To put it simply, the minimum wage over a month is currently 1934,40 EUR, over a week it is 446,40 EUR and over a day it is 89,28 EUR

From 1 January 2024, the minimum wage will be set per hour. The minimum hourly wage will then amount to 12,40 EUR gross per hour. This change will ensure that the minimum hourly wage is the same for everyone, regardless of the length of the working week. Under the current system, someone who works longer receives a proportionally lower minimum hourly wage. The new scheme will make work more rewarding.[109]

Additionally, local regulations and collective agreements may stipulate that an allowance is added to the wage for irregular shifts. Civil servants, for example, are entitled to an allowance of 65% on top of their hourly wage for the hours they worked on Sundays pursuant to Article 2 sub c of the Regulation on Allowance for Irregular Services.

3.1.2. For contract of service

In the case of a contract of service, if the agreement has been entered into by the contractor in the exercise of his profession or business (but where there is no employment contract), the client also owes him remuneration pursuant to Article 7:405 paragraph 1 of the Dutch Civil Code.

Since 2018, some contracts of services can count on a statutory minimum wage.[110] However, this does not apply to someone who works as a self-employed person and is regarded as an entrepreneur by the tax authorities.[111] According to article 2 section 2 sub b of the Law on Minimum Wage and Minimum Holiday Allowance, the employment relationship is also understood to mean the employment relationship of the person who, pursuant to a contract for services with another person for remuneration, performs work, unless this agreement was entered into in the course of business or in the independent exercise of a profession. Thus, even when not having a contract of employment, a person could still be eligible for the statutory minimum wage.

3.1.3. Consequences for platform workers

Platformworkers could fall under the scope of the Law on Minimum Wage and Minimum Holiday Allowance in the case of contract of service. However, as article 2(2)(b) demonstrates, if the platform worker is independent in the exercise of his profession, the law concerning minimum wage does not apply, but that is very unlikely in most cases. In the case of a platform worker that is an employee over 21 years of age, the platform worker definitely has a right to the statutory minimum wage. Either the contract, the customary wage or the

[109] W. Klomp, 'Ontwikkelingen rondom minimumuurloon', *ABU* 2022.
[110] *Kamerstukken I* 2016/17, 33623, nr. J.
[111] 'Wanneer krijg ik minimumloon?', *Rijksoverheid*.

reasonable wage further determines the wages of platform workers that do not have a labour contract according to article 7:405 Dutch Civil Code.

Because platform work is often done by people who have not yet reached the age of 21, it is also relevant to look into the Decision on Minimum Youth Wage. According to this decision, employees who have reached the age of 15 but have not reached the age of 21 have the right to a minimum wage. For youths, there are several categories for different age groups that determine what percentage of the minimum wage they are entitled to. As an example, a fifteen year old is entitled to 30% of the minimum wage, while a twenty year old is entitled to 80% of the minimum wage.

As a result of the difficulties that platform workers face when trying to organise collectively, they cannot receive an extra allowance for irregular shifts on the basis of collective agreements. Platform workers in particular would benefit from such an arrangement, because they often work irregular hours. This could include a delivery person for Thuisbezorgd, for example, who has to deliver something at night.[112]

3.2. No assignments/no work

3.2.1. For employees

Sometimes, a worker cannot work. Until January 2020, the Dutch Civil Code housed an article (article 7:627) containing the main rule 'No work, no pay', which had many exceptions. The new mainrule is laid down in article 7:628 section 1 Dutch Civil Code: 'No work, yes pay, unless the employee is responsible for not performing work.' With this change, the burden of proof has shifted to the shoulders of the employer.[113] Paragraph 5 of article 7:628 Dutch Civil Code states that it is possible to deviate from the main rule to the detriment of the employee during the first six months of the employment contract.

In the Netherlands, a special kind of employment contract, called the call agreement, is also possible. This entails that the employee only receives wages when he is called/summoned by the employer. Article 7:628a paragraph 5 of the Dutch Civil Code obliges the employer, in the case of a call agreement, to offer fixed working hours whenever the employment contract has lasted 12 months. This is called the presumption of size.

3.2.2. For contract of service

There are no comparable regulations for contracts of service.

[112] C. Lambregtse, '5 vragen over de platformeconomie', *SER* 2020.
[113] P. Rijcken, 'Geen arbeid, wel loon', *Publiek Arbeidsrecht*.

3.2.3. Consequences for platform workers

A platform worker who is actually self-employed and not bogus self-employed, is not entitled to wages in the event that the platform does not provide him with work. In these cases civil law applies with freedom of contract as the base.[114] In the Deliveroo case, it became clear that Deliveroo riders, who were qualified as employees, should have been paid when they had to wait in restaurants. This is in line with the 'no work, yes pay' rule since the Deliveroo riders are not responsible for having to wait on an order in a restaurant and being unable to perform work as a result. If the platform worker could be an employee and gets no work, then the presumption of size applies and the employer should offer fixed working hours after 12 months. This is completely theoretical for platform workers, because no such cases exist yet.

3.3. Illness

3.3.1. For employees

Sometimes an employee cannot work due to illness. Employees will then be covered by social insurance that may apply to platform workers under certain circumstances. The main rule with regard to continued payment of wages during illness is that the employee retains the right to 70% of his wages for a period of 104 weeks, and for the first 52 weeks at least at the statutory minimum wage applicable to him, if he has not performed the stipulated work because he was unable to do so due to incapacity as a result of illness, pregnancy or childbirth. This is laid down in article 7:629 of the Dutch Civil Code. There are legal exceptions in case the employee deliberately caused his illness or if he hindered his recovery.

Those who no longer have an employer can invoke the Sickness Benefits Act. Article 19 Sickness Benefits Act determines: In the event of incapacity to perform his work as a direct and objective medically determinable consequence of illness, the insured employee is entitled to sickness benefit in accordance with the provisions laid down by or pursuant to this Act. Article 4(1)(a) Sickness Benefits Act makes it clear that self-employed are excluded from this Act.

3.3.2. For contract of service

Self-employed workers are explicitly excluded from the laws that are applicable for employees in the case of illness. Furthermore, no similar articles exist for contracts of service.

3.3.3. Consequences for platform workers

Platform workers that work for intermediary platforms in the form of a contract of service, cannot make a claim on the social security rights when they cannot work. In practice, platform workers are often qualified as bogus self-employed by platforms for this very reason. Big

[114] J. Kloostra, 'Algorithmic pricing: A concern for platform workers?', *European Labour Law Journal* 2021, p. 109.

platforms claim that their workers are self-employed, when in reality, the relationship between the platform and the worker more closely resembles an employer-employee relationship. This leads to situations where platform workers who, in actuality, have a right to aforementioned social rights, are excluded from them. This puts platform workers in a difficult position when they cannot perform work due to illness. On top of that, it is difficult to determine the wages of which the platform worker receives 70%, because of the irregularity of the platform work.

3.4. Unemployment

3.4.1. For employees

Under article 15 of the Unemployment Insurance Act, an employee who is unemployed is entitled to benefits. An employee can claim unemployment benefits, provided that he has at least five working hours less in a calendar week than his average number of working hours per calendar week or has a number of working hours that is at most equal to half of his average number of working hours per calendar week; and is available to accept work (article 16 Unemployment Insurance Act). Another requirement for the benefits is that the employee has at least one working hour per calendar week in at least 26 calendar weeks in the 36 calendar weeks immediately preceding the first day of his unemployment. This is called the reference requirement (article 17 of the Unemployment Insurance Act).

3.4.2. For contract of service

No law on unemployment exists for a contract of service. If people with a contract of service want to be assured of an income in the case they cannot work as a result of illness, disability or an accident, they can take out unemployment insurance.[115] An independent entrepreneur pays an average of € 3,000 gross premium per year for unemployment insurance, so this insurance could be too expensive for small entrepreneurs.[116]

3.4.3. Consequences for platform workers

Due to the irregular work associated with platform work, platform workers are unlikely to satisfy the conditions of the Unemployment Insurance Act, even if they are considered to be in an employment contract. It is in particular unlikely that the reference requirement is met by platform workers, since due to the irregularity and flexibility associated with platform work, they usually do not work at least 26 weeks in the 36 weeks prior to the unemployment. Besides, it is unlikely that platform workers would take out unemployment insurance, as such insurance is expensive and platform workers are often vulnerable persons with few financial resources. It follows that in case of unemployment, platform workers are in a bad position regardless of their position as an employee or independent contractor.

[115] 'Arbeidsongeschiktheidsverzekering', *Belastingdienst*.
[116] 'Kosten arbeidsongeschiktheidsverzekering - Wat kost een AOV?', *Centraal Beheer*.

3.5. Volume of assignments/working time

3.5.1. For employees

In the 'Working Hours Act' article 1:1, an employee is defined as someone who works under the authority of an employer. The employee is obliged to perform work pursuant to an employment contract or appointment under public law.

According to article 5:3 of the Working Hours Act, the employer must organise the work in a way that allows young employees to have an uninterrupted rest period of at least 12 hours in every consecutive period of 24 hours, which includes the hours between 11pm and 6am Furthermore, the employer has to organise the work in a way that allows an employee with the age of 18 years or older an uninterrupted rest period of at least 11 hours in each consecutive period of 24 hours. If necessary because of the nature of the work, the rest period may be shortened once in each consecutive period of 7 times 24 hours to at least 8 hours. The uninterrupted rest period commences on the first time of the day on which the employee performs work.

3.5.2. For contract of service

Questions about availability and working hours are not yet clearly arranged for workers that have a contract of service.

3.5.3. Consequences for platform workers

As previously discussed, platform workers can perform work under the authority of another person. If there is a relationship of authority, then it is more likely that the platform worker falls under the scope of the Working Hours Act, because then article 1:1 sub b Working Hours Act could apply because of the mention of 'under his authority'.

For really self-employed platform workers, there exists no comparable law. The Dutch court has not yet ruled on this, so it is uncertain whether platform workers with a contract of service fall under the Working Hours Act. In the recent Yodel judgement of the Court of Justice, the court stated that a parcel deliverer who, given the circumstances of the case, is really self-employed and not 'bogus self-employed', does not fall under the definition of an employee. Thus, it is likely that platform workers who are actually self-employed fall outside the Working Hours Act.

3.6. Power of platform to change the agreement

3.6.1. For employees

Pursuant to art. 7:660 of the Dutch Civil Code, the employer has the right of instruction to oblige the employee to comply with the regulations regarding the performance of the work as well as with regulations that serve to promote good order in the employer's company. These regulations can be implemented by or on behalf of the employer, but they have to be within the limits of the generally binding regulations, or agreement given to him. The right of instruction is therefore limited by the labour agreement.

Sometimes an employer wants to change (a part of) the labour agreement. Say, when an employer wants to change the remuneration that an employee receives. The power to change the agreement is regulated in art. 7:613 of the Dutch Civil Code. According to this article, the employer can only invoke a written stipulation that gives him the authority to change an employment condition in the employment contract if he has such a weighty interest in the change that the interest of the employee that would be harmed by the change, must yield because of the standards of reasonableness and fairness.

On the basis of good employment practices and conduct befitting a good employee (article 7:611 Dutch Civil Code), the employer and employee are obliged to behave towards each other as a good employer and employee. This means that the employer cannot just change the agreement whenever he wants without consequences. All circumstances of the case must be taken into account, including the nature of the changed circumstances that gave rise to the proposal and the nature and far-reaching implications of the proposal made, as well as - in addition to the interest of the employer and the driven company – the position of the employee concerned to whom the proposal is made and his interest in the employment conditions remaining unchanged.[117]

3.6.2. For contract of service

There is not a similar article for contract of service. Freedom of contract applies when it concerns a contract of service.

3.6.3. Consequences for platform workers

If a platform worker qualifies as an employee, then he is protected by article 7:611 and 7:613 DCC. If a platform worker qualifies as self-employed via a contract of service, then no such protection exists.

[117] Dutch Supreme Court 11 juli 2008, ECLI:NL:HR:2008:BD1847 (Stoof/Mammoet).

3.7. Power of platform to terminate the agreement

3.7.1. For employees

According to the main rule of article 7:669 paragraph 1 Dutch Civil Code, the employer can terminate the employment contract if there are reasonable grounds for this and reassignment of the employee within a reasonable period of time, whether or not with the aid of training, to another suitable position, is not possible or reasonable. In any case, reassignment cannot be reasonably required if there have been culpable acts or omissions on the part of the employee. Examples of reasonable grounds are the termination of activities as a result of taking measures for efficient business operations due to business economic circumstances and illness of the employee as a result of which he is no longer able to perform the stipulated work. In principle, the employer cannot legally terminate the employment contract without the written consent of the employee, unless one of the grounds for exception of Section 7:671 of the Dutch Civil Code apply.

3.7.2. For contract of service

In the case of contract of service, the client can terminate the agreement at any time (article 7:408 paragraph 1 Dutch Civil Code). Except for significant reasons, the contractor may only terminate the agreement if it applies for an indefinite period and does not end upon completion.

3.7.3. Consequences for platform workers

The aforementioned provisions do not appear to be relevant for platform workers, because platform workers can usually end the agreement whenever they want, and the platform grants itself a wide discretionary power to cancel. This is in line with article 7:408 of the Dutch Civil Code.[118]

Because it is easy for a platform to terminate the contract of service and because the platforms often unjustly qualify their workers as self-employed, platform workers live in constant uncertainty with regard to their job security. As a result, platforms can easily get rid of sick platform workers by terminating the contract between them. These platform workers are then left to fend for themselves. A mostly theoretical remedy against this is tort on the basis of article 6:162 Dutch Civil Code. Success on this basis is very unlikely as it has many criteria to be fulfilled, such as damage and causality, which are difficult to prove.

[118] M.S. Houwerzijl, S.H.M. Montebovi & N. Zekić, 'Monografieën Sociaal Recht - Platformisering, algoritmisering en sociale bescherming', *Wolters Kluwer* 2021, par. 6.2.1.

3.8. Safety/Liability for accidents of platform workers

3.8.1. For employees

Article 7:611 Dutch Civil Code decides that the employer and the employee are obliged to behave as a good employer and a good employee towards each other.

Article 7:658 paragraph 1 of the Dutch Civil Code: The employer is obliged to furnish and maintain the premises, equipment and tools in or with which he has the work performed, as well as to take such measures and provide instructions for the performance of the work, to the extent that is reasonably necessary to prevent the employee from suffering damage in the performance of his duties.

Art. 7:658 paragraph 4 of the Dutch Civil Code determines that anyone who, in the exercise of his profession or business, has work performed by a person with whom he does not have an employment contract, is liable for the damage in accordance with paragraphs 1 to 3. In the Davelaar/Allspan case, the Dutch Supreme Court has ruled that article 7:658 of the Dutch Civil Code, is also applicable for persons who are in a position comparable to that of an employee (with regard to the care obligations).[119]

Article 3 of the Health and Safety Act stipulates that the employer is responsible for the safety and health of employees with regard to all aspects related to work and to this end pursues a policy aimed at the best possible working conditions. With regard to the state of science and professional services, the employer pays attention to various working conditions that are included in the Health and Safety Act.

3.8.2. For contract of service

There is no specific regulation for self-employed workers regarding the liability for business risks and claims from customers.

In the case where there is not an employment contract, but a contract of service, art. 7:401 Dutch Civil Code determines that the contractor has a duty of care with regard to the interests of the client. What exactly this 'duty of care' entails is dependent on the specific circumstances of a case. This is reminiscent of the employers' duty of care in the case of a labour contract (article 7:611 Dutch Civil Code), but an employer has a bigger duty of care than a contractor. It is yet unknown what the implications of this are for platforms.[120]

Art. 7:406 of the Dutch Civil Code determines that the client must reimburse the contractor for the expenses associated with the performance of the assignment, insofar as these are not included in the remuneration.

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[119] Dutch Supreme Court 12 maart 2012, ECLI:HR:2012:BV0616 (Davelaar/Allspan).
[120] M.S. Houwerzijl, S.H.M. Montebovi & N. Zekić, 'Monografieën Sociaal Recht - Platformisering, algoritmisering en sociale bescherming', *Wolters Kluwer* 2021, par. 6.2.1.

3.8.3. Consequences for platform workers

In the case of a platform worker that qualifies as an employee, the platform worker enjoys ample protection from the provisions in the Dutch Civil Code and the Health and Safety Act. For platform workers who are not qualified as employees, but who work for a platform that largely determines the form and content of the service, the laws that are applicable for employees could also offer protection. Since in such cases, they are in a position that is comparable to that of an employee.[121]

If the platform is more of an intermediary than a service provider, then this falls outside the scope of the said provisions of the Civil Code. Nonetheless, the client is still liable for damages suffered in the performance of work by a person with whom he does not have an employment contract, but who does work for him (article 7:658 section 4 Dutch Civil Code).

3.9. Control of quality and reliability

It is important that the quality and reliability of the platform workers are at least somewhat managed. Rules regarding control of quality and reliability for customers are not regulated by labour law in the Netherlands, therefore the distinction between employee and contract of service will not be made in this paragraph. An employer or client can make quality agreements with an employee or contractor. This happens on the basis of contract law. Sometimes consumer law protects customers of platforms against unsound business practices. A consumer under consumer law is a natural person who is not acting in the exercise of a profession or business.[122] This means that, as an example, a hotel that recruits its staff via an online platform, is not protected by consumer law. In conclusion, a customer that is not content with the quality or reliability of platform workers cannot use labour law to get their money back. Such a customer would have to look into contract law or, in certain cases, consumer law.

3.10 Algorithms

Algorithms are used by platforms to control the quality and reliability of the platform workers. Platform workers usually have to create a profile on the platform. People that make use of the platform workers can leave a rating on the profile of the platform worker. There is a possibility that the algorithm will stop offering work due to low assessment or refusing work too often. In this way the behaviour of platform workers can be controlled and monitored through the use of algorithms. This can, however, lead to a sense of expendability and job insecurity for the platform workers.[123]

[121] Dutch Supreme Court 12 maart 2012, ECLI:HR:2012:BV0616 (Davelaar/Allspan).
[122] 'Consumentenrecht anno 2022', *Groninger Civilistenblad* 2022.
[123] A.B. Bakker, L. Den Dulk & Y.S. Scharp, 'De impact van platformwerk in Nederland', *Erasmus University Rotterdam* 2022.

Discrimination is also a potential risk when algorithms are used, since algorithms can be used to automatically exclude workers on the basis of protected personal characteristics. To prove discrimination, in particular as a result of rating systems and algorithms, has proven to be extremely difficult. It is becoming more apparent that these systems are biassed and reproduce stereotypes, but to prove the source of such complex forms of discrimination and to identify associated responsibilities, is hard. A start could be to debate about the parameters used and the potentially discriminatory effect of such systems.[124]

National authorities most often do not have access to data about algorithms and the criteria that are used for people. It is therefore hard for national authorities to determine whether or not the use of algorithms is conducted in an unlawful way. The Commission's proposal to improve working conditions in platform work aims to increase transparency around platforms by clarifying existing obligations to notify platform work to national authorities. The new rules oblige platforms to pass on certain information about their activities and the people who work through the platforms to national authorities.[125]

If a platform worker can gather enough information about the business practices of the platform and the use of algorithms, the platform worker could receive protection on the basis of tort (article 6:162 Dutch Civil Code). Tort, however, as has been discussed before, has a very small chance of success, because there is a lot to prove.

It is also possible for platforms to use algorithms to influence the pricing policy. In these cases, users of the platform are subjected to the condition that an algorithm is programmed to generate the price of the service. In less than the blink of an eye, these pricing algorithms can monitor markets and reprice the services of the platform accordingly. Creators of these algorithms can program preconditions in the algorithms. This could lead to problems with regard to competition law (article 101 TFEU). Namely, if platform workers are labelled as undertakings, their inability to freely determine their own tariff is in conflict with article 101 section 1 Treaty on the Functioning of the European Union, as the competition between the platform and workers is affected by this. An exception is possible under paragraph 3 if these business practices contribute to improving the production or distribution of goods or to promoting technical or economic progress, which is possible if there are great efficiency benefits that are associated with it.[126]

In the new proposal by the EU Commission, algorithms are further regulated. More on this in chapter 5.

[124] S. Burri & S. Heeger-Hertter, 'Discriminatie in de platformeconomie juridisch bestrijden: geen eenvoudige zaak', Ars Aequi 2018.
[125] Europese Arbeidsautoriteit, 'EU stelt richtlijn voor om de rechten van platformwerkers te beschermen', *Europese Commissie* 2022.
[126] J. Kloostra, 'Algorithmic pricing: A concern for platform workers?', *European Labour Law Journal* 2022, p. 120-125.

3.11. Other civil protection

As has been shown, the protection of platform workers depends greatly on whether a platform is a provider of a service or an intermediary. Nonetheless, general contract law might offer some more protection.

The EU Directive on Unfair Commercial Practices 2005/29 mentions 'professional diligence' as a general standard to protect platform workers against ill treatment by the platform. 'Professional diligence' largely coincides with the general contractual 'duty of care' and reasonableness and fairness. This means that a party should also take the interests of the other party into account. The disadvantage of this norm is that it is still unclear what it entails. The advantage is that it could, under certain circumstances, offer some protection to platform workers in the execution of their agreement with the platform, if a judge so decides.[127]

[127] M.S. Houwerzijl, S.H.M. Montebovi & N. Zekić, 'Monografieën Sociaal Recht - Platformisering, algoritmisering en sociale bescherming', *Wolters Kluwer* 2021, par. 6.2.1.

Chapter 4 – Collective action

In this chapter we will explain the influence of the law of collective action for the platform sector. We will start with different forms of collective actions and a few examples. Thereafter, we will describe how competition law is applied to collective action and collective agreements by self-employed people and platform workers in particular. Lastly, we will discuss the role of collective rights in this debate.

4.1 Collective action and Dutch law

There are multiple types of collective action. Striking is the most well-known form of collective action, but there are many other forms. Employees may also choose to work slowly or work following all company procedures very precisely. This can slow down work productivity. In addition, employees can temporarily interrupt work or refuse to perform a particular task. They also can set up blockades or hold collective meetings. For the latter, consider a demonstration, for example. Furthermore, employees can suspend or disrupt consultations or collectively call in sick or take leave.[128] Finally, trade unions can decide to take action. They can act on behalf of the employees.

The right to take collective action follows from Article 6 (4) of the European Social Charter (hereinafter ESC). This article has direct effect in Dutch law, which means that the criteria of the ESC must be met. Article G of the ESC can limit the right to exercise collective action. Article G (1) provides as follows:

''The rights and principles set forth in Part I when effectively realised, and their effective exercise as provided for in Part II, shall not be subject to any restrictions or limitations not specified in those parts, except such as are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals."

The Dutch Supreme Court also ruled that there are two important caveats on the right to take collective action.[129] If a collective action does not fall under Article 6(4) ESC, then a collective action is unlawful. Article 6 (4) applies in the context of collective bargaining. However, the right is often limited by article G ESC. In Dutch case law, the interpretation and application of article G often plays a major role. In addition, if a collective action does not fall under the scope of Article 6(4) ESC, the collective action can be tested under Dutch law.[130] The employer can then hold employees liable for damages suffered by them.

Finally, it is important to know if the right to take collective action is also applicable to platform workers. Article 6 (4) ESC describes the term 'workers'. The Committee of Experts

[128] VNG, ''Notitie Collectieve Acties'', vng.nl
[129] Dutch Supreme Court 30 May 1986, ECLI:NL:HR:1986:AC9402 (NS)
[130] Article 6:162 DCC

of the Council of the EU states that it was intended to cover both employees as self-employed. But when required, it can be restricted.[131] Platform workers can fall into the scope of Article 6 (4) ESC when they can be qualified as employees.[132]

4.2 A few examples

Throughout the years, there have been a few examples of protests and trade unions actions. However, there are no 'real' examples of collective actions such as strikes or work interruptions. But collective action does not only include strikes etc., it also includes lawsuits.

The most well-known and biggest trade union of our country, FNV, played a big part in cases against digital platforms. We will make this visible as we discuss the several examples of collective actions, mostly lawsuits started by trade unions. This does not exclude the fact that other trade unions have also played a role in collective actions against digital platforms. In fact, trade unions often join forces to achieve the best result for employees in the Netherlands.

Temper

An example of this is the case of the FNV (Federation of Dutch Trade Union) and the CNV (Christian National Trade Union) against Temper.[133] Temper is a Dutch digital platform that mediates between workers performing platform work and companies. If you sign up at Temper you can choose different jobs. According to Temper, you have the freedom to determine your own work schedule, but trade unions claim otherwise. The FNV and CNV believe that Temper is an employer with employees and therefore employment law is applicable. They claim that Temper arranges, among other things, reporting sick payments and that Temper even determines which jobs you will be offered.

In 2020, they started a lawsuit against the agency due to failed negotiations. At the end of December 2020, a report from the Dutch labour inspection came out. They also conclude that Temper should be qualified as an employment agency.[134] Just a few months ago, the court decided that the trade unions were allowed to proceed with their case. The case is still pending to date.[135]

Uber taxi drivers

Another example of a collective lawsuit is the case against Uber.[136] As mentioned before in chapter 2, Uber claims that the taxi drivers are self-employed without the rights of an employee. Trade unions claim that Uber has the authority to give instructions. They should be

[131] Committee of Experts, Conclusions I, 1969/1970, p. 8.
[132] M. Slabbekoorn, '' Een recht op collectieve actie voor zelfstandigen?'', 26 May 2017, p. 39-40.
[133] Subdistrict Court of Amsterdam 21 December 2022, ECLI:NL:RBAMS:2022:7764
''Collectieve actie van FNV en CNV tegen Temper'', fnv.nl.
[134] Y. de Vries, ''Ook Inspectie SZW concludeert dat Temper een uitzendbureau is'', fnv.nl 15 February 2021.
[135] ''Rechtszaak tegen Temper'', cnv.nl.
[136] Subdistrict Court of Amsterdam 13 September 2021, ECLI:NL:RBAMS:2021:5029 (*FNV/Uber)*

qualified as employees[137]. As a consequence, Uber must apply the collective agreement for taxi drivers in the Netherlands.

The problem with Uber goes beyond the national borders. There have been multiple demonstrations in the Netherlands but also in Brussels and Paris.[138] A demonstration in Amsterdam from last June was organised by the FNV. Taxi drivers were encouraged on social media to join the demonstration. In 2019 the FNV already demanded from the Minister of Infrastructure that measures must be taken to solve this problem.[139] Then again, in June 2020, the FNV sent a letter to the alderman of Traffic and Transport in Amsterdam to restore the unfair traffic market in Amsterdam.[140] But this was not enough. In November 2020, the trade union summoned Uber to comply with the collective agreement for taxi drivers. When Uber did not comply, the FNV started a collective lawsuit against Uber in December 2020. The court decided that Uber is an employer with employees and therefore must comply with the collective agreement of taxi drivers.[141]

Uber decided not to comply with the court's ruling. The FNV then demands a penalty of hundred thousand euros for every day that Uber did not comply with the collective agreement. However, the court rejected the penalty.[142] A few weeks later, taxi drivers blocked the entrance of Uber's headquarters in Amsterdam.[143] Until this day, Uber is still ignoring the court's ruling.

Deliveroo

Another case of the FNV, is the case against Deliveroo as aforementioned and thoroughly described in chapter 2.[144] Deliveroo established itself in the Netherlands in 2015. At that time, only temporary employment contracts were used. After a while, Deliveroo required that workers were self-employed to work at the Deliveroo platform. This change of policy started in 2017. From that moment on, Deliveroo did not renew employment contracts.[145] As a result of this new policy, a demonstration erupted at Deliveroo's headquarters in November 2017. This was supported by the FNV and FNV Riders Union. Riders Union is an association of platform couriers from Deliveroo and UberEats.[146]

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[137] ''Uber-chauffeurs zijn werknemers en hebben recht op een vast loon'', fnv.nl.

[138] ''Driehonderd taxi's uit Europa protesteren tegen Uber in Brussel'', taxipro.nl 8 September 2022.

[139] ''Minister moet ongelijk speelveld in taxisector acuut aanpakken'', fnv.nl 28 February 2019.

[140] Y. de Vries, ''Oproep aan wethouder Dijksma voor een eerlijke taximarkt'', fnv.nl 26 June 2020.

[141] C. Schrijver, ''Uitspraak in Uber-zaak grote overwinning voor chauffeurs'', fnv.nl 13 September 2021.

[142] C. Schrijver, ''FNV teleurgesteld over afwijzen dwangsom Uber'', fnv.nl 19 July 2022.

[143] M. Arets, ''De Uber demonstratie, de FNV en wat dat zegt over het debat over platformen'', zipconomy.nl 30 June 2022.

[144] Dutch Supreme Court 24 March 2023, ECLI:NL:HR:2023:433 (*Deliveroo / FNV*)

[145] Rechtbank Amsterdam, ''Bezorger niet in loondienst van Deliveroo'', rechtspraak.nl 23 July 2018.

[146] A. Changoer en F. Hoogendoorn, ''Fietskoeriers Deliveroo protesteren tegen zzp-model'', parool.nl 14 November 2017.

Deliveroo announced a fare reduction in August of 2019. The platform workers were not satisfied with this news which is why this led to a strike. The couriers protested in several cities of the Netherlands. This caused Deliveroo to reverse the fare reduction.[147]As already discussed in chapter 2, FNV started a lawsuit in 2018 in which they claimed that the platform workers should be qualified as employees.[148] In January 2019, the court ruled in favour of the FNV, which meant that employment law is applicable.[149] The court's ruling was confirmed by the Appeal Court in 2021.[150] Deliveroo still did not agree. They appealed against the Appeal Court's ruling. Deliveroo announced in August 2022 that the company will be leaving the Netherlands by the end of 2022 due to economic reasons. [151] The Dutch Supreme Court ruled in March 2023 that the platform workers are indeed employees.[152]

Until now, there are still many lawsuits by trade unions pending against Deliveroo. These cases mainly concern claims for subsequent payments. In conclusion, it can be said that trade unions have a lot of influence in the fight against the platform economy.

4.3 Competition law

Does competition law play a role in collective actions against platforms? And how is competition law applied to platform workers? These questions will be answered in this paragraph.

The purpose of competition law is to ensure fair and effective competition. The foundations of European competition law can be found in Articles 101 and 102 of the Treaty on the Functioning of the European Union. Competition authorities deal with issues such as market sharing, price fixing and cartels. We might have thought competition law would also include collective bargaining agreements but the European Court of Justice has given several rulings on this subject.

This is where labour law and competition collide with each other. A collective bargaining agreement can be seen as price fixing whereas on the other hand the cartel prohibition can be seen as a restriction to the right of collective bargaining. The ECJ had solved this development in the well-known Albany-case.[153] The ECJ decided that collective agreements that improve employment opportunities and employment conditions are not a violation of cartel prohibitions.[154] But the world kept developing and platform work became more and more popular over the years.

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[147] M. Witlox, ''Deliveroo zwicht voor protesterende bezorgers en draait tariefverlaging terug'', rtlnieuws.nl 2 September 2019.
[148] Y. de Vries, ''FNV wint ook in hoger beroep zaak tegen Deliveroo, fnv.nl 16 February 2021.
[149] Subdistrict Court of Amsterdam 15 January 2019, ECLI:NL:RBAMS:2019:198.
[150] Court of Appeal of Amsterdam 16 February 2021, ECLI:NL:GHAMS:2021:392.
[151] M. Arets, ''Deliveroo vertrekt uit Nederland: een analyse'', zipconomy.nl 16 August 2022.
[152] Dutch Supreme Court 24 March 2023, ECLI:NL:HR:2023:443.
[153] Jaspers and Pisarczyk (forthcoming)
[154] ECJ 21 September 1999, case C-67/96 (Albany)

The case of FNV Kiem

Nevertheless, there are cases where collective agreements do not fall outside the scope of Article 101 of the Treaty on the Functioning of the European Union (TFEU). This was addressed in the case of FNV Kiem.[155] In the case of FNV Kiem the trade union, FNV Kiem and the employer organisation, made some regulations for concert substitutes in the collective agreement that was applicable in that sector. This was also allowed under the Dutch law on collective agreements.[156] FNV Kiem was very happy about these agreed regulations and was determined to agree to similar regulations in collective agreements in other industries. This led to a discussion with the Dutch competition authority since they believed these regulations were a violation of competition law.[157] As a consequence of the opinion of the Dutch competition authority, employer organisations terminated the collective agreement.

In 2010 the trade union started a lawsuit against the state of the Netherlands. According to the FNV the agreed regulations were not a violation of competition law but the court rejected the claim.[158] The FNV appealed. Because the answer could not be clearly deduced from the Treaty and case law, the Court of Appeal posed preliminary questions to the European Court of Justice (ECJ).

The ECJ concludes that the national qualification of a self-employed person does not dismiss the possibility that the person is an employee under EU law.[159] A reference is made to the objective criteria for a 'worker' of case law. The national court determines whether these substitutes are in a comparable situation as employees. It should be determined whether they have more substantial independence and flexibility than employees. This includes working hours, the place and the manner of performance.[160] If the substitutes in question will be classified as 'false self-employed' and not as undertakings, Article 101 TFEU will not be applicable if the agreed regulations are justified.[161]

Thus, from the FNV Kiem case it follows that if there is 'false self-employment' with clauses on them they are allowed to adopt a collective labour agreement. It is up to the national courts to decide whether there is false self-employment. It is an important case when it comes to false self-employment. According to the ECJ, a self-employed person can be classified as an employee under certain factors. This is the case when someone acts under the direction of an employer. Whether someone works under the direction of an employer depends on the freedom to choose his work schedule, place and content of his work, whether someone shares

[155] ECJ 4 December 2014, case C-413/13*, FNV Kiem, ECLI:EU:C:2014:2411*
[156] Article 1(2) WCAO
[157] Nederlandse Mededingingsautoriteit, Cao-tariefbepalingen voor zelfstandigen en de Mededingingswet, Visiedocument van de Nederlandse Mededingingsautoriteit, Den Haag, December 2007.
[158] Subdistrict Court of Den Haag 27 October 2010, ECLI:NL:RBSGR:2010:BO3551.
[159] ECJ 4 December 2014, case C-413/13*, ECLI:EU:C:2014:2411 (FNV Kiem),* paragraph 35.
[160] ECJ 4 December 2014, case C-413/13*, ECLI:EU:C:2014:2411 (FNV Kiem),* paragraph 37.
[161] ECJ 4 December 2014, case C-413/13*, ECLI:EU:C:2014:2411 (FNV Kiem),* paragraph 38-41.

in the commercial risks with the employer and whether this person is permanently included in the company.[162]

The above definition of the ECJ is formulated broadly, which leaves a lot of room for interpretation.[163] The definition of the ECJ is not very precise. On the other hand, this case does not exclude agreements for 'false' self-employed persons. Therefore, this case has already been applied to other cases in the Netherlands. For example, it has been determined that the case of FNV Kiem also applies to false self-employed persons in bus transport.[164] The ruling is expected to have consequences for other professions as well. The Dutch Competition authority (ACM) has since amended its guidelines.[165]

ACM Guidelines

After FNV Kiem the ACM started to give attention to the exception in its guidelines. In paragraph 3 they explain in what situations a self-employed worker is an undertaking. Independence is key to classifying a self-employed person as an enterprise. If there is a nominal independence the self-employed worker will not be regarded as an undertaking. They refer to a misclassification of the self-employed. Thus, the cartel prohibition does not apply.

It needs to be assessed whether the situation of the self-employed worker is comparable to the situation of an employee. Then the ACM lists the factors involved.[166] These factors derive from the FNV Kiem case. Finally, a number of examples are discussed to clarify when a self-employed person can and cannot be classified as an undertaking.

Collective bargaining agreements in combination with competition law are then addressed in paragraph 4. The exception of FNV Kiem is clearly discussed. Provisions for self-employed workers who are not undertakings are allowed in collective bargaining agreements. But to determine if the exception is applicable, the parties to a collective bargaining agreement have to distinguish the different types of self-employed workers. They need to make clear who is considered to be an undertaking and who is not.[167] If they fulfil the criteria listed by the ACM the organisations can conclude collective bargaining agreements on work conditions.

Examples in collective bargaining agreements

We have different forms of collective agreement provisions to counter false self-employment, but until now there are only two examples. The vast majority of collective agreements do not (yet) contain such provisions. However, it is often agreed that the use of self-employed workers should be limited as much as possible.

[162] Graef & Van den Boom 2021.
[163] F.J.L Pennings, 'Exceptie van de mededingingsbepalingen voor (schijn)zelfstandigen: de zaak FNV Kiem', NtER 2015, afl. 4, p. 111-116.
[164] Subdistrict Court of Zeeland-West Brabant 11 February 2015, ECLI:NL:RBZWB: 2015:813
[165] ACM, ''Guidelines Price arrangements of self-employed workers'', ACM/INT/461856.
[166] ACM, ''Guidelines Price arrangements of self-employed workers'', ACM/INT/461856, section 28.
[167] ACM, ''Guidelines Price arrangements of self-employed workers'', ACM/INT/461856, section 46-47.

''There is also a contract of services if the contractor charges an hourly rate of at least 150% of the gross hourly wage plus 8% holiday allowance applicable to employees engaged in similar work in comparable circumstances. If less is paid, there is a legal presumption of employment''.[168]

The above follows from the collective agreement for architectural firms. A legal presumption applies. This is also the first collective agreement that entitles a holiday allowance for self-employed workers.

If a solo self-employed is deployed for a job covered by this collective agreement in connection with incidental occasional work and/or work of very short duration and/or work for which special competences are required and where the work situation is (virtually) the same as that of an of an employee, the job and salary structure in this collective agreement forms the basis for remuneration. That means that the (hourly) rate agreed upon corresponds at least to the salary level for the position corresponding salary level, increased by at least 50%.[169]

This follows from the collective agreement of theatre and dance.

4.4 Collective rights

It is well-known that platform workers have a vulnerable employment status which makes the existence of collective rights crucial. An employee in the Netherlands has several rights, such as continued payment of wages during illness, protection against dismissal and holiday pay. As mentioned earlier, the Dutch term of an employee differs from the European term 'worker' of the ECJ. The Dutch term is more strict.

Legislative initiatives

Because the platform economy is playing an increasingly important role in the Netherlands, Member of Parliament Gijs van Dijk drew up an initiative memorandum in 2019 on important issues within the platform economy. He states that the platform economy not only results in great uncertainty for platform workers, but that it also disadvantages employees in their bargaining position and employers in their competitive position. This would put the entire Dutch social security system under pressure.

The memorandum is based on a survey by the SEO (an economic research agency) in 2018. According to that survey, 34,000 people were active in the platform economy in 2018. Compared to 2010, the platform economy had grown eight times. Significant growth is also expected to take place in the coming years.

[168] Article 18 (3) CAO Architectenbureaus 2021-2023
[169] Article 14 (5) CAO Toneel en Dans 2022-2023

Although Dutch labour law can theoretically protect platform workers, they run the risk of losing their job in the event of legal proceedings. The legal process is therefore neither feasible nor effective in practice. Van Dijk indicates that the policy to regulate platform work in the Netherlands is barely getting started. The memorandum then outlines a solution framework from which several proposals follow.

Proposals are made, such as classifying a platform worker as an employee in principle, unless the platform company can prove otherwise. It is also advocated to take into account the annual income of the platform worker to protect the most vulnerable. In addition, it is proposed to also apply the legislation on working conditions and working hours to the self-employed and to give self-employed persons the opportunity to collectively negotiate fees. Finally, it is argued that data protection and participation of platform workers should be improved, as well as the enforcement of legislation in general.[170]

In June 2022, the cabinet issued a response. A number of new reports, recommendations and advice on the platform economy have been published since the initiative memorandum. The minister addresses all the aforementioned proposals step by step and admits that the approach to countering false self-employment can be improved.

Attention is also paid to the case of FNV Kiem. The scope of exceptions to the cartel prohibition may change in the future. The European Commission has recently adopted a directive outlining the room for self-employed persons in competition law to negotiate fees. According to this directive, self-employed persons will no longer fall under the cartel prohibition if they receive at least 50% of their income from a client, work very closely with employees or work via a platform. These self-employed persons will no longer be qualified as undertakings under the above circumstances. The guidelines of the ACM thus show great similarity with the European Commission's view.

In addition, the European Commission strives to stop intervening in price agreements when it concerns self-employed persons in vulnerable positions. The cabinet has responded positively to this proposal of the directive. The cabinet believes that this can help certain groups of self-employed persons, including platform workers, to improve their working conditions and terms of employment. It is indicated that work is being done on the elaboration of a proposal for a directive on platform work, both at national and European level. The minister also states that the coalition agreement also aims to create a better level playing field between employees and self-employed persons.[171]

[170] Kamerstukken II 2018-19, 35 230, nr. 2

[171] Minister SWZ, “Kabinetsreactie op initiatiefnota 'Herovering van de platformeconomie”, 3 June 2022, referentienr. 2022-0000124452

Chapter 5 – Proposal for a Directive

Not only at national level, but also at European level, there is a need to intervene in the platform economy. That is why the European Commission came up with a proposal for a platform directive on December 9, 2021. Consultations with the European social partners have taken place and trade unions see the proposal as promising. For example, Petra Bolster, a member of the executive board of the FNV, said that she is pleased that Europe is continuing the approach where the Dutch government has failed.[172]

In the proposed directive, the holistic approach in which all circumstances of the case are considered, still applies. The European Commission lists seven criteria that determine whether the contractual relationship between a digital labour platform that controls the performance of work and a person performing platform work through that platform, shall be legally presumed to be an employment relationship, namely[173]:

‘’ (a) The digital labour platform determines upper limits for the level of remuneration;
(b) The digital labour platform requires the person performing platform work to respect specific rules with regard to appearance, conduct towards the recipient of the service or performance of the work;
(c) The digital labour platform supervises the performance of work including by electronic means;
(d) The digital labour platform restricts the freedom, including through sanctions, to organise one’s work by limiting the discretion to choose one’s working hours or periods of absence;
(da) The digital labour platform restricts the freedom, including through sanctions, to organise one’s work by limiting the discretion to accept or to refuse tasks;
(db) The digital labour platform restricts the freedom, including through sanctions, to organise one’s work by limiting the discretion to use subcontractors or substitutes;
(e) The digital labour platform restricts the possibility to build a client base or to perform work for any third party.’’[174]

If at least three of these criteria are fulfilled, there is an employer-employee relationship, subject to proof to the contrary.[175] If we compare the presumption of the proposal with the Dutch legal presumption, we see similarities and differences. As discussed in chapter 2 an employment contract is presumed to exist when a person is performing work for someone, against remuneration by that other person and during a period of more than three months,

[172] ‘’EU voorstel beschermt platformwerkers’’, fnv.nl, 8 December 2021.
[173] Article 4 of the Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on improving working conditions in platform work.
[174] Article 4 of the Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on improving working conditions in platform work.
[175] Proposal for a directive of the European Parliament and of the Council on Improving Working Conditions in Platform Work, European Commission, Brussel, 9 December 2021, 2021/0414, p. 34.

weekly or during more than twenty hours per month.[176] So here we see that the material criteria differ from the presumption of the proposed directive. For the most part, the criteria in the proposal overlap with the viewpoints formulated by the Dutch Supreme Court in Deliveroo such as the criteria under a), d) and db). However, there are a number of interesting differences that can be identified. For example, the Dutch Supreme Court mentions the organisational embedding of the platform worker and entrepreneurship by sharing in the commercial risks, as contra-indications for an employment contract.

Besides the presumption of employment, the proposal also contains provisions on algorithms (chapter III) and a number of other rights.[177] In the proposal, algorithms are mentioned in the same breath as privacy rights, as the personal data of the persons that perform the platform work is subjected to automated monitoring and automated decision making systems. Certain types of personal data are prohibited by this new proposal from being subjected to automated monitoring and automated decision-making. This is an addition to the General Data Protection Regulation (GDPR), and provides platform workers with a higher level of protection. Platforms may, on the basis of article 5a of the proposal, not process any personal data on the emotional or psychological state of a person, on private conversations, or unrelated to the performing of the platform work. Furthermore, platforms should be transparent on automated monitoring or decision-making systems (article 6). Moreover, people that are responsible for human monitoring of the automated process are given the right to override automated decisions. They are also protected against unfavourable treatment for exercising their functions (article 7).

Although the FNV was positive about the proposal in general, it still points out two points for improvement. They are afraid that the platform will misuse the criteria for the presumption of employment to circumvent the legislation. This risk should be better protected. In addition, they note that algorithmic management is not sufficiently addressed in the proposal.[178]

The Dutch government was also positive about the European Commission's proposal, but they also raised a number of points for attention. The criteria in Article 4 for establishing a presumption are not the only criteria against which a test can be carried out. In another Member State, this may therefore result in a different outcome. Attention is also drawn to the consequences of establishing an employee status. This mainly concerns taxes and premiums to be paid. Finally, the government wonders who will have to invoke the presumption of employment.[179] So there are still many grey areas. Until now, the proposal is still under consideration.

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[176] Article 7:610a DCC
[177] H.H. Voogsgeerd, *''Voorstel van de Europese Commissie voor een ontwerprichtlijn bescherming van platformwerkers, 9 December 2021",* TRA 2022, afl. 3.
[178] ''EU voorstel beschermt platformwerkers'', fnv.nl, 8 December 2021.
[179] Kamerstukken II 2021-22, 22 112, nr. 3299.

Literature list

Asser/Heerma van Voss *7-V* 2020
G.J.J. Heerma van Voss, 'Ondergeschiktheid', in: G.J.J. Heerma van Voss, Mr. C. Assers handleiding tot de beoefening van Nederlands burgerlijk recht, Asser 7-V Bijzondere overeenkomsten – Arbeidsovereenkomst, Deventer: Wolters Kluwer 2020.

Audenaert, Koot and Wattimury 2021
Audenaert, S., Koot, E. and Wattimury, F. (2021), '*SER-advies toekomst arbeidsmarkt sloeg platformwerkers over.*' Research report of Motivaction International BV of 14 October 2021.

Baldwin 2006
Baldwin, R. (2006), *'Globalisation: The Great Unbundling (S)'*. Globalisation challenges for Europe. Helsinki: Finnish Prime Minister's Office, 5–47.

Bouwens, Duk & Bij de Vaate
W.H.A.C.M. Bouwens, R.A.A. Duk & D.M.A. Bij de Vaate, *Van der Grinten Arbeidsovereenkomstenrecht*, Deventer: Wolters Kluwer 2020.

Frenken, Van Waes, Smink and Van Est 2017
Frenken, K., Van Waes, A., Smink, M., Van Est (2017), R., *Eerlijk delen – Waarborgen van publieke belangen in de deeleconomie en de kluseconomie.* The Hague, Rathenau Institute (summarised).

Graef & van de Boom 2021
Graef, I., & van den Boom, J., ''Platformwerkers en het mededingingsrecht: Vloek of zegen voor de sociale bescherming?'' In M. S. Houwerzijl, S. H. M. Montebovi, & N. Zekić (editors), Platformisering, algoritmisering en sociale bescherming: Sociaalrechtelijke uitdagingen in tijden van digitale transformatie (Vol. 2021-1, blz. 135- 158). (Monografieën Sociaal Recht; Nr. 78). Wolters Kluwer.

Grossman & Woyke 2015
Grossman, N. & Woyke, E. (2015). *Serving Workers in the Gig Economy: Emerging Resources for the OnDemand Workforce*. Next: Economy. What's the Future of Work?

Heeger-Hertter 2022
Heeger-Hertter, S. in: *Flexibele arbeidsrelaties*, Under editorship of Kroon, J.P., de Casparis, P., Deventer: Wolters Kluwer 2022.

Houwerzijl, Montebovi & Zekić 2021
M.S. Houwerzijl, S.H.M. Montebovi & N. Zekić (red.), *Platformisering, algoritmisering en sociale bescherming. Sociaalrechtelijke uitdagingen in tijden van digitale transformatie (Monografieën Sociaal Recht nr. 78)*, Deventer: Wolters Kluwer 2021.

Jacobs 2015
A. Jacobs, *Labour Law in the Netherlands*, Alphen aan den Rijn: Kluwer Law International 2015.

Jaspers and Pisarczyk (forthcoming)
Jaspers and Pisarczyk, Collective bargaining in EU Law, in Jaspers, Pennings and Peters, European Labour Law, Chapter 7, Intersentia, Cambridge (forthcoming).

Minister SWZ, "Kabinetsreactie op initiatiefnota 'Herovering van de platformeconomie'", 3 June 2022, referentienr. 2022-0000124452

Kenney & Zysman 2016
Kenney, M., & Zysman, J. (2016). *The rise of the platform economy*. Issues in Science and Technology, 32(3), 61–69.

Klijs, Kösters and Smits 2022
Klijs, B., Kösters, L., Smits, W., *Platformwerk in cijfers*, Tijdschrift voor Arbeidsvraagstukken 2022/38.4, Amsterdam University Press 2022.

Roeters, Rözer and Van der Torre 2021
Roeters, A., Rözer, J. and Van der Torre, A. (2021), *'Platformisering en de kwaliteit van werk: een kennissynthese.'* The Hague, The Netherlands Institute for Social Research.

Slabbekoorn 2017
M. Slabbekoorn, ''Een recht op collectieve actie voor zelfstandigen?'', (masterscriptie) Tilburg 2017.

Verburg 2019
Verburg, L.G. in: Bierens, B. and others, *Onderneming en digitalisering (Onderneming en recht nr. 116) (Conference bundle)*, Under redaction of Jansen, C.J.H., Schuijling, B.A., and Aronstein, I.V., Deventer: Wolters Kluwer 2019.

Journals

Bij de Vaate 2023
D.M.A. Bij de Vaate, 'De werking van het rechtsvermoeden van een arbeidsovereenkomst nader bezien', *Tijdschrift Recht & Arbeid* 2023.

Burri 2018
S. Burri & S. Heeger-Hertter, 'Discriminatie in de platformeconomie juridisch bestrijden: geen eenvoudige zaak', *Ars Aequi* 2018.

Eleveld 2017
A. Eleveld, 'Flextensie en de kwaliteit van de (meerpartijen-) overeenkomst met de re-integrerende bijstandsgerechtigde', *TRA* 2017/38.

Houweling 2020
A.R. Houweling, 'De Groene Amsterdammer in een November Rain. Over de bedoeling van partijen bij de kwalificatievraag in het arbeidsrecht', *AR* 2020-1345.

Kloostra 2021
J. Kloostra, 'Algorithmic pricing: A concern for platform workers?', *European Labour Law Journal* 2021.

Pennings 2015
F.J.L Pennings, 'Exceptie van de mededingingsbepalingen voor (schijn)zelfstandigen: de zaak FNV Kiem', NtER 2015, afl. 4.

Voogsgeerd 2022
H.H. Voogsgeerd, *''Voorstel van de Europese Commissie voor een ontwerprichtlijn bescherming van platformwerkers, 9 December 2021",* TRA 2022, afl. 3.

Reports

ACM, ''Guidelines Price arrangements of self-employed workers'', ACM/INT/461856

Committee of Experts, Conclusions I, 1969/1970.

European Commission 2021
European Commission, 'Commission proposals to improve the working conditions of people working through digital labour platform' press release by the European Commission, 9 December 2021, ec.europa.eu.

European Commission 2021
European Commission, 'Study to support the impact assessment of an EU initiative to improve the working conditions in platform work', 22 October 2021.

Nederlandse Mededingingsautoriteit, Cao-tariefbepalingen voor zelfstandigen en de Mededingingswet, Visiedocument van de Nederlandse Mededingingsautoriteit, Den Haag, December 2007.

Jurisprudence

Lower Courts
Subdistrict Court of The Hague 27 October 2010, ECLI:NL:RBSGR:2010:BO3551.
Subdistrict Court of Zeeland-West Brabant 11 February 2015, ECLI:NL:RBZWB: 2015:813
Subdistrict Court of Amsterdam 15 January 2019, ECLI:NL:RBAMS:2019:198, *JAR* 2019/23 (*FNV/Deliveroo*).
Subdistrict Court of Amsterdam 13 September 2021, ECLI:NL:RBAMS:2021:5029 (*FNV/Uber*).
Subdistrict Court of Amsterdam 21 December 2022, ECLI:NL:RBAMS:2022:7764

Courts of Appeal
Dutch Court of Appeal 21 September 2021, ECLI:NL:RBAM:2019:4546 (*FNV/Helpling*).
Dutch Court of Appeal Amsterdam 16 February 2021, ECLI:NL:GHAMS:2021:392, *JAR* 2021/62 (*FNV/Deliveroo*).

Dutch Supreme Court
Dutch Supreme Court 13 March 1981, ECLI:NL:HR:1981:AG4158, *NJ* 1981/635 (*Haviltex*).
Dutch Supreme Court 30 May 1986, ECLI:NL:HR:1986:AC9402 *(NS)*
Dutch Supreme Court 11 juli 2008, ECLI:NL:HR:2008:BD1847 (*Stoof/Mammoet*).
Dutch Supreme Court 12 maart 2012, ECLI:HR:2012:BV0616 (*Davelaar/Allspan*).
Dutch Supreme Court 6 November 2020, ECLI:NL:HR:2020:1746, *NJ* 2021/116 (*X vs. The City of Amsterdam*).
Dutch Supreme Court 24 March 2023, ECLI:NL:HR:2023:433 (*Deliveroo / FNV*).

European Court of Justice
ECJ 21 September 1999, case C-67/96 (Albany)
ECJ 4 December 2014, case C-413/13*, ECLI:EU:C:2014:2411(FNV Kiem)*

Electronic sources

Subdistrict Court of Amsterdam 2018
Rechtbank Amsterdam, ‘’Bezorger niet in loondienst van Deliveroo’’, rechtspraak.nl, 23 July 2018.

Arets 2022
M. Arets, ‘’De Uber demonstratie, de FNV en wat dat zegt over het debat over platformen’’, zipconomy.nl, 30 June 2022.

Arets 2022
M. Arets, ‘’Deliveroo vertrekt uit Nederland: een analyse’’, zipconomy.nl, 16 August 2022.

‘’Collectieve actie van FNV en CNV tegen Temper’’, fnv.nl.

Changoer & Hoogendoorn 2017
A. Changoer en F. Hoogendoorn, ‘’Fietskoeriers Deliveroo protesteren tegen zzp-model’’, parool.nl, 14 November 2017.

‘’Driehonderd taxi’s uit Europa protesteren tegen Uber in Brussel’’, taxipro.nl, 8 September 2022.

‘’EU voorstel beschermt platformwerkers’’, fnv.nl, 8 December 2021

‘’Minister moet ongelijk speelveld in taxisector acuut aanpakken’’, fnv.nl, 28 February 2019.

NOS Nieuws 2023
NOS Nieuws 24 March 2023, ‘Ook Hoge Raad oordeelt: maaltijdbezorgers Deliveroo waren geen zzp’ers’, nos.nl.

‘’Notitie Collectieve Acties’’, vng.nl

Opdam & Schepers 2020
M. Opdam & R. Schepers 10 November 2020, ‘Partijbedoeling niet (meer) relevant bij kwalificatie arbeidsovereenkomst’, <accessible online: https://kvdl.com/artikelen/partijbedoeling-niet-meer-relevant-bij-kwalificatie-arbeidsovereenkomst (last accessed on 13-2-2023).

‘’Rechtszaak tegen Temper’’, cnv.nl.

RVO 2021
RVO, ‘Dismissal procedures and protections’, business.gov.nl, last updated on 23 February 2021.

Sagel & Timp 2022
S. Sagel & I. Timp, *Deliveroo Riders in Netherlands Are Employees, According to Advocate General,* 20 June 2022, <accessible online https://www.debrauw.com/articles/deliveroo-riders-in-netherlands-are-employees-according-to-advocate-general (last accessed on 15-03-2022).

Schepers 2020
R. Schepers, *Uitspraak Hoge Raad in Deliveroo-zaak: aardverschuiving in zzp-landschap?*, 20 December 2020, <accessible online https://kvdl.com/artikelen/uitspraak-hoge-raad-in-deliveroo-zaak-aardverschuiving-in-zzp-landschap (last accessed on 15-03-2022).

Schrijver 2021
C. Schrijver, ‘’Uitspraak in Uber-zaak grote overwinning voor chauffeurs’’, fnv.nl 13 September 2021.

Schrijver 2022
C. Schrijver, ‘’FNV teleurgesteld over afwijzen dwangsom Uber’’, fnv.nl, 19 July 2022.

‘’Uber-chauffeurs zijn werknemers en hebben recht op een vast loon’’, fnv.nl.

De Vries 2020
Y. de Vries, ‘’Oproep aan wethouder Dijksma voor een eerlijke taximarkt’’, fnv.nl 26, June 2020.

De Vries 2021
Y. de Vries, ‘’FNV wint ook in hoger beroep zaak tegen Deliveroo, fnv.nl, 16 February 2021.

De Vries 2021
Y. de Vries, ‘’Ook Inspectie SZW concludeert dat Temper een uitzendbureau is’’, fnv.nl, 15 February 2021.

Witlox 2019
M. Witlox, ‘’Deliveroo zwicht voor protesterende bezorgers en draait tariefverlaging terug’’, rtlnieuws.nl, 2 September 2019.