



International Seminar on Comparative Labour Law

'Employment and Self-employment in
Platform Work'

National report – POLAND
Adam Mickiewicz University
Poznań



FACULTY OF LAW
AND ADMINISTRATION

Authors

Julia Grzybowska

Natalia Przewoźniak

Martyna Kaczmarek

Kamil Szostak

with

prof. UAM dr hab. Michał Skąpski

dr Jakub Gołaś (ed.)

Supplementary information:

The report was prepared for the International Seminar on Comparative Labour Law, which focused on the issue of *'Employment and Self-employment in Platform Work'* from a national perspective. The report was prepared by a group of four law students under the supervision and support of two academics from Adam Mickiewicz University - Faculty of Law and Administration – Department of Labour and Social Law.

The seminar was organised by the Europa-Universität Viadrina Frankfurt (Oder) and the European Working Group on Labour Law from 8 to 12 May 2023.

Table of contents

Questionnaire	5
Theme I. The economy of digital work platforms in Poland	7
1. Economic, social and political importance of digital work platforms in Poland	8
1.1. General remarks	8
1.2. Examples of platforms operating in Poland	8
1.3. A statistical picture of platform work in Poland.....	8
1.4. The political dimension of platform work in Poland	9
2. Characteristics determining the status of digital platforms	10
3. Specific status of platform work in the passenger transport sector	11
Theme II. The question of classification of platform workers	12
1. General remarks	13
2. Employment Contract and Alternative Forms of Employment in Polish Law - Employment Relationship vs Civil Law Contractual Obligations	13
3. Practical dilemmas – platform workers on the Polish labour market	19
Theme III. Do platform workers in Poland enjoy special legal protection? An overview over the labour law debate	21
1. Working time and health & safety rules in the case of platform work in Poland	22
1.1. General remarks	22
1.2. Working time and platform work.....	23
1.3. Health & Safety Rules and platform work.....	23
2. The problem of limited legal liability of digital work platforms for workers’ actions	26
3. Platform work vs statutory labour law in Poland. Are there general labour law regulations that apply to platform work?.....	26
4. Are there any workers’ rights related to the algorithmic management?.....	28
5. The problem of the lack of relevant national case law addressing the legal status of platform workers in Poland	29
Theme IV. The influence of collective labour law for the platform sector.....	30
1. General remarks	31
2. Theoretical aspects of the trade union rights of the platform workers	31
3. Practical aspects of the trade unions rights of platform workers.....	33
3.1. General remarks	33

3.2.	First platform workers' unions in Poland	33
3.3.	Latest examples of collective action by platform workers in Poland	34
4.	Competition law and collective actions of self-employed workers and platform workers.....	36
Theme V. Potential impact of proposed EU legislation on platform work in Poland.....		37
1.	Addressing the existing gaps in protection of platform workers in Poland	38
2.	(How) would the Polish legal system be affected by the current proposal for a Directive on improving working conditions in platform work?	39



Questionnaire

Please note that the following sub-questions (a), b), etc.) do not have to be answered one by one. These questions are only meant to explain what is meant by the principal questions (1.-5.):

1. Give an overview over the economy of digital work platforms and the legal debates in your country. Use the following question for this overview:

- a) What is the (economic, social, political) importance of digital work platforms in your country?
- b) Which types of work platforms have been described, in particular in the academic literature in your country? Which types have been subject of legal debates and/or court decisions?

2. In most legal systems, the question of classification of platform workers has been a primary issue when it comes to debating digital platform work. Explain the legal debate (and, if they exist, court/tribunal cases). Use the following question for this discussion:

- a) Explain the categories that exist for legal classification under the law of your country. What are the main criteria and indicators used?
- b) Describe for a couple of platforms the type of contracts that have been given to platform workers and how these are similar to or different from an employment contract. What are the main criteria that are disputed in these cases, and how do courts deal with these?

3. Digital work platforms have raised particular questions; because of new types of work organisation and contracts, specific protection may be necessary. Give an overview over the labour law debate on these questions in your country, using the following lead questions:

- a) Are there discussions on the application of working time and health&safety rules on digital platforms in your country, e.g. has the liability of the platform for the safety of its workers been an issue in your country? How about the legal responsibility of the platform if a worker makes a mistake?
- b) Is there other general labour law regulation that has been critically discussed in relation to particular problems of digital platform work? If you don't find general labour law rules for specific problems (such as self-employment on digital platforms): In which areas of the law do you find general rules? (You don't need to analyse these rules in detail)
- c) How about rights relating to algorithms; how are these discussed in relation to digital platform work in your country?
- d) Have there been any court/tribunal cases on such issues?

4. Explain the influence of the law on collective action for the platform sector. These are the leading questions here:

- a) Have there been any examples for collective organisations, protests, trade union action or similar by digital platforms workers in your country?
- b) (How) Is competition law applied to collective action or collective agreements by self-employed workers and platform workers in particular?
- c) What is the role of collective rights in this debate?

5. The EU Commission has put forward a Proposal for a Directive on improving working conditions in platform work. Give your opinion on it, in view of your answers to the previous questions:

- a) Does the Commission proposal appropriately address the existing gaps in protection of platform workers?
- b) (How) Would "your" national law would be affected by the current proposal?



Theme I. The economy of digital work platforms in Poland

1. Economic, social and political importance of digital work platforms in Poland

1.1. General remarks

Digital work platforms are of a growing importance in Poland. They attract more and more individuals both on the consumer and 'worker' site. It seems that an important element in the popularisation of this atypical form of work was undoubtedly the COVID-19 epidemic, which made platforms, especially in the goods delivery sector, very popular. It is also worth noting that platform work - as a relatively new phenomenon on the Polish labour market - is still outside the main interest of state authorities, which currently do not have effective methods and tools to control this form of paid work¹.

1.2. Examples of platforms operating in Poland

In the case of Poland, the work organised and carried out with the use or support of online platforms has various manifestations, which, as in the case of other countries, make it difficult to clearly classify and characterise the described phenomenon. Simplifying the complexity of platform work, in the case of the Polish market we can distinguish the following examples of selected types of platforms:

- transportation platforms (Uber, Bolt);
- food-delivery platforms (Uber Eats, Glovo, Wolt, Pyszne.pl, DeliGoo) ;
- grocery and shopping-delivery platforms (Glovo, Everli);
- cleaning platforms (Handy, Pozamiatane.pl);
- handyman' platforms (Fixly, Sir Local);
- Gigs, specialized tasks (Oferia pl., Useme.com, Napiszeprace.pl).

There are both local and international work platforms in Poland, with very different business profiles. It is difficult to speak of a set of uniform characteristics. There is a simple model based on connecting clients with contractors, who individually determine the terms of future cooperation. There are also platforms where the scope of control, supervision and influence over the activities of the contractors or the price of the services is extensive. Another characteristic of the platforms operating in Poland is that they bring together extreme groups of economically active people. On the one hand, there are platforms with specialised contractors with very high skills (e.g. programmers, graphic designers, lawyers). On the other hand, there are platforms with low-skilled contractors who work on single, non-specialised tasks for low pay.

1.3. A statistical picture of platform work in Poland

There is no reliable data available on the economic magnitude of digital working platforms for the Polish economy, nor on their total turnover. The reason for this may be that the very concept of such platforms is ambiguous. Undoubtedly, their position on the

¹ Cf. *Jak kurierzy Uber Eats obchodzą obowiązek zezwolenia na pracę w Polsce*, <https://www.rp.pl/praca-emerytury-i-renty/art1252671-jak-kurierzy-uber-eats-obchodza-obowiazek-zezwolenia-na-prace-w-polsce> [Accessed: 25.04.2023].

Polish market has grown rapidly in recent years. It is worth noting that as already in 2016, 15% of respondents from Poland in the Flash Eurobarometer study declared that they were users of digital work platforms, either as service providers or customers².

There is no doubt that these figures are significantly underestimated and that the current size of the platform economy is much wider. An important driving force for the development of the platform economy in Poland was undoubtedly the period of the COVID-19 pandemic, which clearly encouraged potential customers to satisfy their consumption needs remotely³. Statistical studies clearly show that the number of users of platform applications in the delivery and passenger transport sectors multiplied during the period under review⁴.

The overall effect seems to be positive: after all the platforms serve to meet customers' needs and provide competitive and flexible work opportunities. The operation of the platforms is beneficial because they solve real social problems. For example, food delivery apps allow people with limited physical mobility to shop for food from the comfort of their own homes.

1.4. The political dimension of platform work in Poland

The operation of the platforms face some political challenges in Poland. For instance, left-wing politicians have advocated for regulating activities of digital platforms in the field of employment⁵. Another example of the response to the analysed phenomenon is the fact that transportation platforms were protested by traditional taxi drivers, who see platform drivers as unfair and unregulated competition⁶. And finally, the fact that most of the persons providing services with the use of platforms do not have employment contracts, but instead collaborate based on civil law provision-of-services contracts, has provoked debates on the social and legal security of such persons. This debate accelerated in 2022 after the EU Directive proposal, which aims at imposing a presumption of an existence of the employment relationship for such persons.

The phenomenon of platform work in Poland has also been recognised by the Ombudsman himself, who in 2019 asked the State Labour Inspectorate to inspect the working

² M. Dobrzyńska, *Praca platformowa. Wyzwania dla bezpieczeństwa i higieny pracy w Polsce*, 'Praca i zabezpieczenie społeczne' 2020, Vol. 6.

³ M. Beręsewicz, D. Nikulin, *COVID-19 and the gig economy in Poland*, 2010, 10.13140/RG.2.2.35239.88486.

⁴ M. Beręsewicz, D. Nikulin, M. Szymkowiak, K. Wilak. (2021), *The gig economy in Poland: evidence based on mobile big data*, 2010, p.16-22, 10.13140/RG.2.2.17726.41288.

⁵ For instance the far-left 'Together Party' has proposed to impose maximum margins for food delivery apps (*Partia Razem chce wprowadzenia maksymalnych marż dla dostawców żywności. To uderzenie w Glovo i Uber Eats*, wiadomoscihandlowe.pl, 18.11.2020. Available online at < <https://www.wiadomoscihandlowe.pl/artykul/razem-chce-wprowadzenia-maksymalnych-marz-dla-dostawcow-zywnosci-to-uderzenie-w-glovo-i-uber-east>>.).

⁶ Protest taksówkarzy. Atak na "samochód Ubera", <https://wiadomosci.onet.pl/warszawa/warszawa-protest-taksowkarzy-zaatakowano-samochod-z-napisem-uber/sg7q8hx> [Accessed: 25.04.2023].

conditions of couriers working with the Uber Eats platform⁷. The inspection, which was carried out by the District Labour Inspectorate in Warsaw, came to some cursory conclusions⁸. Firstly, it was established that the platform in question formally does not operate in Poland. Secondly, it was found that only Uber Poland LTD, which is a subsidiary of a company registered in the Netherlands, formally operates in Poland. Uber Poland formally employs only 20 employees, who perform administrative and clerical tasks related to the operation of the application. Thirdly, the company did not employ any couriers and was not in the business of delivering food or transporting people. Fourthly, the food couriers were usually formally self-employed or had a so-called 'unregistered business' (legal business that does not need to be registered because of low income). Fifthly, the inspectorate confirmed that couriers, as entrepreneurs, can legally outsource their work to others. Sixthly, it has been noted that the activity of couriers is of a complex nature and is based on numerous relationships with various partners who mainly provide technical and organisational support to the couriers. Seventhly, as the Chief Labour Inspectorate itself pointed out, the work carried out by the platform worker is not, in the opinion of the Inspectorate, typical work, being more akin to the execution of orders in the context of a business activity than to an employment relationship⁹.

2. Characteristics determining the status of digital platforms

In the Polish academic debate the difficulty of clearly defining the term 'digital work platform' is observed. Notwithstanding the debate on the exact scope of this term, it is worth noting that several criteria have been proposed that are useful for classifying types of platform work has been proposed. These criteria are:

- whether the particular platform work in question is of a single type or of a multi-type work;
- the level of difficulty of the tasks and the qualifications required to perform them;
- the method of payment for the platform work (directly from the provider to the client or indirectly via the platform);
- the degree of autonomy of platform users in determining the amount of remuneration;
- whether and how the platform collects additional fees from its users at different stages of the platform's work;
- the degree of autonomy of users in determining how the work is carried out;

⁷ *Zatrudnieni przez aplikację. RPO zabiega o uregulowanie praw pracowników platform internetowych*, <https://bip.brpo.gov.pl/pl/content/prawo-pracownika-platform-zatrudnienia-uber-rpo> [Accessed 25.04.2023].

⁸ *Cf. Jak kurierzy Uber Eats obchodzą obowiązek zezwolenia na pracę w Polsce*, <https://www.rp.pl/praca-emerytury-i-renty/art1252671-jak-kurierzy-uber-eats-obchodza-obowiazek-zezwolenia-na-prace-w-polsce> [Accessed: 25.04.2023].

⁹ *Ibidem*.

- the way of assigning tasks to providers;
- whether the platform provides additional services, such as disputes resolution or e-learning;
- whether the work itself is carried out remotely (online) or in a physical location (offline). While platform work is always ordered online the result can be delivered to the client either remotely or in a physical form¹⁰.

3. Specific status of platform work in the passenger transport sector

It seems that most of the academic discussion treats the subject holistically, rather than in terms of any particular theoretical type outlined above. However, some remarks have been made on specific services provided and the scope of legal requirements related to them. Most of the existing articles relate to transportation platforms. As a result, some legislative changes have been made. The most prominent of these is the so-called *Lex Uber*¹¹, which from the beginning of 2021 has made it legally clear that persons providing transport services for such platforms must hold a taxi licence. As a result, following the adoption of Lex Uber, platform work in the passenger transport sector has been clearly regulated in the Polish legal system, and platform workers in this sector, in order to work legally, must obtain a licence for national road transport in the field of passenger transport by taxi, thus becoming a one-person micro-entrepreneur.

It is also worth noting that there are few judgments of Polish courts related to digital transportations platforms. In the 2022 judgment of the Regional Administrative Court in Łódź¹², it was found that Uber drivers provide transport services in their own name and are therefore entrepreneurs. The ruling follows that of the Regional Administrative Court in Warsaw¹³, which found that being an Uber driver involves carrying out business activities. The rulings were made in connection with the imposition of an administrative fine for violation of road traffic regulations by platform drivers.

¹⁰ G. Gospodarek, *Zatrudnienie w gospodarce platformowej*, Uniwersytet Warszawski, Warszawa 2022, p. 38-39.

¹¹ Act of 16 May 2019 amending the Road Transport Act and certain other acts (The 2019 Journal of Law, Nr 1180).

¹² Cf. Judgment of the WSA in Łódź of 23.03.2022, III SA/Łd 1021/21, LEX No 3334287.

¹³ Judgment of the WSA in Warsaw of 8.02.2021, VI SA/Wa 1860/20, LEX no. 3164685.



Theme II. The question of classification of platform workers

1. General remarks

In the 2018 EUROFOUND report, Poland was listed among the countries with a low level of debate on the issues of digital platform workers. It was pointed out that in the case of Poland- unlike many EU member states - no independent understanding or terminology of platform work has been developed¹⁴. Of course, in the globalised reality and the need to adapt national law to international standards (mainly within the framework of unification and the European Union law), the question of nomenclature fades into the background. What is more important is whether the law responds to the challenges of a changing market and the transformation of economic relations between entities. Finally, for the platform worker himself, it is important whether the state sufficiently protects his interests. However, it should be noted that it is difficult to talk about the protection of individual rights if the legislator and, more broadly, the academic discourse do not attach importance to the existence of such a social group.

Referring again to the 2018 report, it is worth mentioning that in Poland platform work was associated with the concept of "*freelancer*"¹⁵. This resulted from the combination of digital platform work with artistic professions or the IT field. Combining platform work mainly with being a freelancer or outsourcing significantly reduces discussions about platform work. Traditionally, being a freelance work is associated with independence, short-term commitment to employing party and, above all, a high degree of specialisation. However, what at the time of creating the report was associated with the autonomy of a freelancer and a status similar to that of an entrepreneur at the time of the report's preparation, is now turning into a series of renewable contracts with the same client and the loss of competitive attributes¹⁶.

However, some time has passed since the publication of the report and the issue of regulating the legal situation of platform workers has become more relevant, especially with the increasing popularity of micro-jobs and tasks carried out by a large number of low-skilled workers, who often accept poorer working conditions.

2. Employment Contract and Alternative Forms of Employment in Polish Law - Employment Relationship vs Civil Law Contractual Obligations

An obvious point of reference for the classification of platform workers is the employment contract, which is governed by Labour Code¹⁷. However, since the 1990s, other forms of employment have gained enormous popularity on the Polish labour market. The

¹⁴ Eurofound, *Employment and working conditions of selected types of platform work*, Publications Office of the European Union, Luxembourg 2018.

¹⁵ *Ibidem*.

¹⁶ I. Ostoj, *Rozwój gig economy jako wyzwanie dla sfery regulacji rynku pracy*, „Studia prawno-ekonomiczne” , 2019/T. CX, pp. 239–252.

¹⁷ Act of 26 June 1974 - the Labour Code (OJ 2022, item 1510, as amended)(hereinafter: Labour Code or LC).

analysis of the websites of digital platforms (Pyszne.pl, Glovo, etc.) and of the so-called fleet partners operating in Poland shows that the most frequently proposed alternative grounds for employment are civil law contracts – mandate contracts and unnamed contracts for the provision of services. The characteristics of a classic employment contract and an employment relationship governed by Polish law are presented below. We contrast them with the characteristics of the aforementioned civil law contracts. In addition, due to the policy of companies operating in the gig economy, it was decided to familiarise readers with the regulations in the field of self-employment.

In order to distinguish an employment contract from other legal forms regulating the performance of work, the terms "employee-employment" and "non-employee employment" are commonly used. Employee employment of a legal and labour nature is primarily a contractual legal relationship regulated by the provisions of labour law and subject to the regime of this branch of law. The act establishing the employment relationship is a bilateral employment agreement¹⁸. For the sake of clarity, it is important to decode the concept of "employment relationship". The employment relationship is established primarily by the parties signing an employment contract (there are non-contractual ways in Polish law, but they are not relevant to the subject of this study).

Article 22 § 1 LC states that by entering into an employment relationship, an employee undertakes to perform work of a certain type for and under the direction of the employer at a place and time determined by the employer, and the employer undertakes to employ the employee for remuneration. The contractual construction of an employment relationship has been adopted in the Polish legal system, which allows for a clear definition of the entities and the content of this specific obligation¹⁹. There is no doctrinal consensus as to whether the cited article constitutes a legal definition of an employment relationship. For the purposes of this study, it is more important to be able to decipher the characteristics of an employment relationship from this provision²⁰. At the same time, these characteristics make it possible to distinguish the employment relationship from other forms of employment.

According to Teresa Liszcz, the employment relationship is characterised by the following elements

- 1) the personal performance of work of a continuous nature and therefore understood as "work";
- 2) the relationship of subordination between the employer and the employee;
- 3) the employee's exclusive use of the infrastructure provided by the employing entity;

¹⁸ K. W. Baran (ed.), *Prawo pracy i ubezpieczeń społecznych*, Warszawa 2022, p. 39-39; 188.

¹⁹ T. Liszcz, *Prawo pracy*, Warszawa 2020, p. 716.

²⁰ B. Bury, *Podporządkowanie pracownika pracodawcy*, „Państwo i Prawo” 2006, nr 9, p. 57.

- 4) the reception of the results of the work by the employer;
- 5) the employer bearing the risk of the work;
- 6) the need for the employer to bear the cost of remuneration despite the employee's indisposition;
- 7) permanence;
- 8) payment, and
- 9) automatic inclusion of the employee in other legal relationships (e.g. work regulations)²¹.

In order to draw a demarcation line between the employment relationship and alternative forms of employment in Polish law, it is crucial to look at the characteristic of the concept of subordination. Not only is it considered to be a constitutive feature of the employment relationship²², but above all the absence of this feature in the relationship between the digital platform and the service provider is pointed out. Article 22 §1 LC specifies that it is expressed in the performance of work by the employee under the direction of the employer at the time and place specified by the employer. The relationship of subordination also makes it possible to oblige the employee to work beyond the scope specified in the contract, for example in the form of overtime²³. Finally, it is also worth to note that according to Article 100 § 1 LC, an employee is obliged to comply with the instructions of his superior regarding work, provided that they are not contrary to the law or the employment contract. However, the provisions of the Labour Code do not introduce into the system the definition of legal subordination, and those developed by the doctrine – as Anna Musiała notes – in many cases refer to the conditions of the *"socialised economy, where the model of labour relations similar to the model of factory relations prevailed"*²⁴.

Although there is no doctrinal consensus on the conceptual scope of non-employee employment, for the purposes of this study it will be assumed that it includes *"all non-accidental work performance other than employment"* based on the employment relationship as understood by the LC²⁵. Non-employee employment is heterogeneous and we can distinguish, among others, those of a civil law nature and those of an economic law nature²⁶. Among the civil law bases of employment, contracts for the provision of services play a key role that are governed by the provisions of the Civil Code²⁷. Civil law relationships

²¹ T. Liszcz, *Prawo pracy...*, p. 716.

²² M. Wieczorek, *Podstawy zatrudnienia: wybrane zagadnienia*, „Acta Scientifica Academiae Ostroviensis” 2004, no 18, p. 58.

²³ K. W. Baran (ed.), *Prawo pracy...*, p. 173.

²⁴ A. Musiała, *Glosa do Wyroku SN z dnia 7 marca 2006 r., I PK 146/05*, „Gdańskie Studia Prawnicze - Przegląd Orzecznictwa” 2009, No 1/12, p. 128.

²⁵ K. W. Baran (ed.), *Prawo pracy...*, p. 41.

²⁶ *Ibidem*, p. 42 and 45.

²⁷ Act of 23 April 1964 – Civil Code(OJ 2022, no. 1360; hereinafter: Civil Code or CC).

whose subject matter is the provision of services are distinguished from other contractual relationships by their characteristic subject matter. Services are "*activities performed for another person*" ²⁸. The provisions concerning the mandate contract (which is a named contract) apply *mutatis mutandis* to unnamed contracts for the provision of services. Pursuant to Article 734 CC, by means of a mandate contract, the client undertakes to perform a specific legal act on behalf of the principal. Since service contracts are governed by civil law, the parties are free to define their legal relationship (Article 353¹ CC). As a result of this freedom, mandate contracts and contracts for the provision of services similar to a mandate have very few elements of the *essentialia negotii* compared to a classic employment contract.

Table. 1 Comparison of the characteristics of the employment relationship and selected civil law contracts²⁹.

<i>Criterion</i>	Employment contract	Contract of mandate (contract for the provision of services)
Parties to the contract	always an employee and an employer	contractor and client (the principal)
Type of legal relationship	by concluding an employment contract, the parties enter into an employment relationship	by concluding a contract of mandate, the parties establish a civil law relationship
Entity providing work	the strictly personal nature of the work	a contractor may subcontract the performance of the order to a third party (if this is in accordance with the contract, is customary or is required by circumstances).
Nature of the contract	contract of due diligence	a contract of due diligence (cf. judgment of the Supreme Administrative Court II GSK 849/19)
Form of contract	requirement of written form, both for conclusion and for amendments	any form permitted by law, provided that the amendment requires the same form as that chosen at the time of conclusion of the contract
Modification of the content of the contract	The content of the employment contract is largely regulated by the mandatory provisions of the LC (cf. Article 29), and the parties have only limited possibilities to modify it.	The content of the mandate contract is governed by the rules of civil law, most of which are dispositive.
Subject of the contract	in the content of the contract, the parties agree on the type of work, but	the contractor undertakes to carry out the activities specified in the contract,

²⁸ Z. Radwański & J. Panowicz-Lipska J., *Zobowiązania - część szczegółowa*, 13th edition, Warszawa 2018, p 164.

²⁹ Developed on the basis of: T. Duraj, *Przyszłość cywilnoprawnych stosunków zatrudnienia*, „Acta Universitatis Lodzensis Folia Iuridica” 2019, No. 88; M. Gersdorf et al., *Prawo pracy. Pytania i odpowiedzi*, Warszawa 2020; T. Liszcz, *Prawo pracy...*; K. Muszyński, *Polityka regulacji zatrudnienia w Polsce. Kryzys ekonomiczny a destandaryzacja stosunków pracy*, Warszawa 2019; Radwański & J. Panowicz-Lipska J., *Zobowiązania...* & M. Wiczorek, *Podstawy zatrudnienia...*

	the specific expression of the employee's duties takes place by giving him instructions; The performance of work under an employment contract consists in being at the disposal of the employer and performing work under his direction and while remaining in a relationship of subordination	while enjoying a high degree of independence.
Risk distribution	the risk of work is borne by the employer - both economically and socially (e.g. in relation to payment of wages during parental leave)	the risk remains with the contractor
Being subject to social security	the employee is compulsorily covered by all the social security schemes (pension and invalidity insurance, sickness insurance and accident insurance)	the Contractor is subject to compulsory old-age, invalidity and accident insurance; sickness insurance is optional
Remuneration	the employment contract is always paid	the principle of paying for the work also applies, but the Contractor may undertake in the contract to carry out the work without paying.
Substantive jurisdiction of the courts	disputes are settled by the labour court	disputes are settled by the civil court

A number of remarks should be added to the above list. The multiplicity of employment bases is characteristic of free market economies and also allows the parties to exercise "freedom to choose the form of employment"³⁰. However, the rights and obligations of the parties to the contract depend on the choice of the basis. As the classical employment contract is closely related to the concept of the welfare state, its conclusion entails a number of protective mechanisms for the job provider³¹. It is not only a matter of minimum wages or ensuring health and safety at work (which also apply to other bases of employment). The employment contract expands the scope of the employer's obligations (e.g. in the area of information duties), but most importantly it offers many more rights to employees. The most important are the reduction of overtime, an increase in overtime pay, the right to paid annual leave and paid parental leave. In addition, the provisions of labour law are more restrictive with regard to the dismissal or termination of an employment contract. Finally, there are

³⁰ Cf. Baran K.W. (ed.), *System Prawa Pracy. Tom VII. Zatrudnienie niepracownicze.*, 1st edition, Warszawa 2015 and T. Duraj, *Przyszłość cywilnoprawnych...*, p. 5.

³¹ K. Muszyński, *Polityka regulacji zatrudnienia...*, p. 53.

issues that are indirectly derived from the wording of the law, i.e. easier access to a housing loan for persons providing work under an employment contract for an indefinite period³².

However, it cannot be overlooked that since the mid-1990s the legislator has begun to counteract the replacement of the employment contract by non-employee forms of employment. Article 22 §1¹ LC stipulates that employment under the conditions provided for an employment relationship is *de facto* such, regardless of the name of the contract concluded. At the same time, this regulation cannot be considered as a presumption of an employment relationship, as it would mean deprivation of the right to choose the basis of employment and freedom of contract³³. This regulation means the use of the typological method to determine the basis of employment. In other words, the nature of employment is determined by whether it has predominant features of an employment relationship or a civil law relationship. In addition, a number of amendments have been made to the LC, which have extended some of the mechanisms of protection of employment relationships to civil law contracts. As mentioned above, contractors "*enjoy legal protection of their life and health*"³⁴. Therefore, they are subject to occupational health and safety regulations and - if they opt for voluntary health insurance - are also entitled to sickness and maternity benefits. Since 2019, they have been allowed to form and join trade unions³⁵. Although increasing the protection of non-employee workers is part of the state's social policy, it cannot be overlooked that at the same time these changes contribute to weakening the position of the employment contract in the Polish legal system. Moreover, the "normalisation" of civil law contracts leads to the blurring of the boundary between these two forms of employment³⁶.

There is also the issue of self-employment, which also counts as the form of non-employee employment. In many ways, it is similar to the provision of work under a civil law contract (but this is the context of the realities of platform work). The most important attribute of a self-employed person is the ability to compete with other people running a business³⁷. The self-employed person is formally an entrepreneur who, interestingly, can also enter into the above-mentioned mandate or service contracts. Thus, despite the use of different bases for the activity carried out (freedom of economic activity), from an economic point of view, each of the considered forms of professional activity makes it possible to achieve the same or similar economic results. It is also interesting to note that, within certain limits, it is legal in the Polish legal system to engage in unregistered business activities. You can carry out an

³² *Ibidem*, p. 54.

³³ T. Duraj, *Przyszłość cywilnoprawnych...*, p. 12.

³⁴ *Ibidem*, p. 10-11.

³⁵ *Ibidem*.

³⁶ K. Muszyński, *Polityka regulacji zatrudnienia...*, p. 279.

³⁷ A. M. Świątkowski, *Uznanie za pracownika osoby zatrudnionej na podstawie umowy cywilnoprawnej*, „Acta Universitatis Lodzensis Folia Iuridica” 2019, No 88, p.47.

unregistered activity if the monthly income from your activity does not exceed 50 per cent of the amount of the minimum wage applicable in a given year. Within these limits, a self-employed person remains essentially outside the radar of the national system.

3. Practical dilemmas – platform workers on the Polish labour market

The above considerations lead to the conclusion that, in principle, there are three possible ways of describing the relationship between the worker and the platform. According to the first option, we assume that the digital platform is an employer that employs workers on the basis of an employment contract, and therefore an employment relationship is created between the parties. Under the second option, it is assumed that the intention of the parties was to conclude a civil law contract and that the nature of the work provided is consistent with the subject of the mandate contract (contract for the provision of services). The last option applies to the situation where the platform worker is self-employed and cooperates with the platform on the basis of a B2B contract for the provision of services³⁸. Each of the options considered is suitable for platform work.

Based on our own observations of employment opportunities in the platform economy, we can say that the workers who work on platforms are overwhelmingly employed on a non-employee employment basis. The classic basis for employment particularly in the gig sector is a contract of mandate (or service provision) or a B2B contract with a self-employed person. This trend is not surprising. These employment bases allow the platforms to organise their activities in the most flexible way, while transferring many risks to the workers themselves, who are deprived of essential labour law protection as a result of entering into atypical contracts.

It is interesting to note that in the case of passenger transport sector, it was the legislator himself who took the decision to classify platform work as a self-employed activity. In this case, the relationship between a worker and a platform is based on a B2B contract in which the worker undertakes to provide certain services. The choice of this option is typical for companies operating in the transportation sector. The introduction of a licensing requirement has had a major impact on this situation. In the case of platforms such as Uber or Bolt, cooperation is only possible with a self-employed person or a member of the fleet.

However, it should be borne in mind that the above trends are nevertheless a simplification of a more complex reality, within which we can observe different and complex configurations of platform workers' employment formulas. These configurations usually have the effect of blurring the relationships within the employment relationship on digital platforms. For instance, in a scheme not uncommon in the Polish platform economy, a so-called fleet or logistics partner appears alongside the digital platform, transforming the

³⁸ M. Kozak, *Zatrudnienie w gig economy na przykładzie Ubera*, „Monitor Prawa Pracy” 2019/6, pp. 20-21.

classic two-way relationship into a three-party model of service³⁹. Such partners operate mainly in the food delivery and transportation sectors and can be perceived as specific intermediaries. The role of partners in such a configuration is to take on some of the burden of employing platform workers, as these partners become the formal employing entity. The analysis of the offers sent by intermediaries shows that they usually offer to employ workers on the basis of a mandate contract as well as a B2B contract (e.g. Natvioli, Udriver, Evelstar, AppJobs Work). Interestingly, it seems that being employed by a partner allows a worker to provide services on multiple platforms at the same time. Typically, an intermediary company offers its application that allows you to collect orders from multiple platforms. Some fleet partners also offer rental of equipment necessary to perform orders (e.g. bicycles, cars).

However, it is worth noting that the appearance of a third entity in the structure of platform work complicates the issues of identifying the employing entity, which should be identified by virtue of the rights, duties and competences exercised in relation to the platform worker himself/herself. In essence, there are two entities (the platform worker and the intermediary) that to some extent manage the platform worker's employment. A cursory analysis might lead to the conclusion that since one partner formally acts as the employing entity, a possible employment relationship could be established with this entity. However, couriers (suppliers) use the infrastructure of digital platforms (websites, applications) and identify themselves with digital companies (through stickers on cars or thermal bags with logos), which may raise reasonable doubts. Consequently, the complexity of the structure described may have a significant impact on the effectiveness of the proposed presumption of an employment relationship in the platform economy.

³⁹ G. Gospodarek Gabriela, *Status "niezależnego" usługodawcy a trójpodmiotowy model świadczenia usług w gig economy*, cz. 1, „Praca i Zabezpieczenie Społeczne” 2019/2, pp. 9-17.



**Theme III. Do platform workers in
Poland enjoy special legal protection?
An overview over the labour law
debate**

1. Working time and health & safety rules in the case of platform work in Poland

1.1. General remarks

Platform work is one of the emerging forms of work that is developing dynamically across Europe. The Fourth Industrial Revolution has brought major changes in the way work is provided, for example through the development of information and communication technologies and widespread access to tools that enable remote work⁴⁰. They offer the possibility of working anywhere at any time, which can lead to problems in the application of labour law and health and safety regulations, as well as to negative effects on the health and life of workers, for example, due to non-compliance with the right to be offline. In Poland, this form of employment is currently relatively new, and therefore there is a lack of comprehensive research on it⁴¹. However, it is reported that platform work is becoming more and more common and it is expected that it will be more voluntarily chosen in the future⁴².

In the Polish literature on platform work, the most frequently highlighted problem related to the issue of OSH are health and legal risks associated with this form of employment. Despite the numerous advantages of platform work, such as the possibility of obtaining an additional source of income, increasing individual productivity, greater worker's autonomy in organizing working time, eliminating the staffing gap, or facilitating the entry of inexperienced workers into the labour market, it can – like remote work – be associated with numerous risks, both for the health and safety of workers⁴³.

Platform work can also result in non-compliance with labour law standards, for example the right to rest and health protection (Articles 14 and 15 LC) or the right to leave (Article 152 LC). Among the undesirable aspects of platform work, the most important are job insecurity and lack of support from colleagues and managers due to the dominance of self-performed micro-tasks. In addition, the issue of remuneration is linked to factors such as longer working hours and the constant availability of online work, which exacerbates the phenomenon of *the always-on culture*. This can have a negative impact on the fundamental labour rights and on the development of work-life balance⁴⁴. Attention is also drawn to the lack of control over the health and safety of working conditions⁴⁵. Platform work is also a result of increasing digitalisation around the world, which, despite many benefits, involves certain risks. For instance, the long-term use of digital tools, which are an integral part of working on

⁴⁰ K. Naumowicz, *The Right of remote workers to be offline – some comparative legal remarks*, „Annals of the Administration and Law” 2021, p. 536.

⁴¹ M. Dobrzyńska, *Crowd employment. Challenges to occupational health and safety in Poland*, „Labour and Social Security Journal” No. 6/20, 2020, p. 18.

⁴² D. Owczarek (ed.), *Nowe formy pracy w Polsce*, Warszawa 2018, p. 50.

⁴³ Eurofound, *Platform work: Maximising the potential while safeguarding Standards?*, Luxembourg 2018.

⁴⁴ K. Moraś-Olaś, *The right to be offline as a basic right of the employee..* „Studies on Labour Law and Social Policy 2021” , 28, No. 4, Kraków 2021, p. 306.

⁴⁵ M. Dobrzyńska, *Crowd employment...*, p. 19.

platforms, has been shown to have a negative impact on physical and mental health. Health risks include sleep disorders, emotional exhaustion, burnout and musculoskeletal disorders⁴⁶.

The reliance of platform work in Poland on civil law contracts and self-employment leaves platform workers largely outside the scope of labour law regulation. This may lead to – among other things – a the lack of insurance or the lack of adequate OSH training⁴⁷.

1.2. Working time and platform work

It is worth recalling that, from a formal point of view, platform workers in Poland mostly work on the basis of civil law contracts (mainly contract of mandate) or as self-employed individuals running one-person businesses. These are forms of professional activity that are not covered by the protective provisions of the national labour law system. As a result, both self-employed and civil-law contractors are not bound by any working time standards arising under the Labour Code or other labour legislation. From a formal point of view, there is no statutory norm that would prohibit them from working, for example, for more than a dozen hours a day. Working time standards only apply to employees as defined by the Labour Code. Currently, the issue in question is not at the centre of the debate in Poland.

From a broader point of view, it is possible that such a legal state of affairs remains contrary to the Constitution of the Republic of Poland⁴⁸. Indeed, the provision of Article 67(2) of the Constitution confirms the right of all workers to rest, which should be realised on the basis of statutorily guaranteed days off, annual paid holidays and maximum working time standards. Importantly, from a constitutional perspective, the guarantees in question should not be reserved only for employees within the meaning of the Labour Code, but for all working persons falling within the broad concept of worker within the meaning of the Constitution itself.

1.3. Health & Safety Rules and platform work

There are no health and safety regulations in the Polish legal system directly and explicitly designed for platform work. Only if a platform worker is considered an employee under the Labour Code will he or she be covered by full legal protection in terms of health and safety. However, it is worth noting that there are certain general norms and standards that can be applied to platform workers who provide work on the basis of civil law contracts or as self-employed individuals.

Firstly, the right of platform workers to safe and healthy working conditions can be derived from the Constitution itself. According to Article 66 § 1 of the Constitution, *everyone shall have the right to safe and hygienic conditions of work*. This provision should be read in

⁴⁶ K. Moraś-Olaś, *The right to be offline...*, p. 310.

⁴⁷ A. Skład, *Platform economy and OSH*, "Bezpieczeństwo pracy: nauka i praktyka" No. 3/2021, pp. 12-13.

⁴⁸ The Constitution of The Republic of Poland of 2nd April, 1997 as published in OJ No. 78, item 483 (hereinafter: the Constitution).

conjunction with both the general principle of labour protection (Article 24); the universal right to protection of health (Article 68)⁴⁹ and the fundamental duty of the State to protect life of every human being (Article 38). It should be recognized that these provisions should undoubtedly also be applied to platform work. The constitutional concept of *safe and healthy working conditions* is broad and - undoubtedly - includes the latest achievements of modern science and technology, i.e. those used in platform work⁵⁰. It should also be pointed out that Article 66 § 1 of the Constitution - in conjunction with Article 24 - obliges the State to set up an appropriate system for monitoring and sanctioning infringements found in the workplace in each sector of the economy and each workplace, and thus also in the case of platform employment⁵¹.

Secondly, in the case of the Polish legal system, the statutory obligation to ensure safe and hygienic working conditions has not been limited only to employers, understood as parties to a classic employment relationship with a narrowly defined employee. This is because, According to Article 304(1) LC, the employer is also *obliged to ensure safe and hygienic working conditions for natural persons who carry out work on a basis other than an employment relationship in the employing establishment or a place specified by the employer, as well as to persons carrying on economic activity on their own account in the employing establishment or a place specified by the employer*. Furthermore, a similar obligation is also imposed on other entities that do not formally act as employers but they organise work carried out by natural persons on a basis other than an employment relationship or as self-employed individuals (Article 304 (3) LC). This framing of the provisions in question makes them potentially applicable to platform work as well.

Importantly, when combined with the provision contained in Article 207(2) LC, the obligation concerned takes on a precise form. In this context, employers and work organizers should in particular:

- 1) organise work in such a way as to ensure safe and hygienic working conditions
- 2) ensure compliance with the rules and regulations on safety and hygiene at work in the workplace, issue instructions to remedy any breaches of these rules and regulations and supervise the implementation of these instructions;
- 3) respond to the needs in the field of ensuring safety and hygiene at work and adjust the measures taken in order to improve the existing level of protection of health

⁴⁹ L. Garlicki, S. Jarosz-Żukowska [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz. Tom II, wyd. II*, ed. M. Zubik, Warsaw 2016, art. 66.

⁵⁰ Cf. B. Banaszak, *Konstytucja Rzeczypospolitej Polskiej. Komentarz.*, Warszawa 2009, p. 342; P. Kuchma, *Prawa pracownicze*, [in:] *Realizacja i ochrona konstytucyjnych wolności i praw jednostki w polskim porządku prawnym*, ed. M. Jabłoński, Wrocław 2014, p. 569 and W. Sanetra, *Prawa (wolności) pracownicze w Konstytucji*, „Praca i Zabezpieczenie Społeczne” 1997, No. 11, p. 2.

⁵¹ T. Lewandowski, *Prawo człowieka do bezpiecznych i higienicznych warunków pracy*, „Wiedza Prawnicza” 2009, No. 3, p. 19.

and life of employees, taking into account the changing conditions of work performance;

- 4) ensure the development of a coherent policy for the prevention of occupational accidents and diseases, taking into account technology, work organisation, working conditions, social relations and the influence of factors related to the working environment;
- 5) take into account the protection of the health of young, pregnant, breastfeeding and handicapped workers within the framework of the preventive measures taken;
- 6) ensure compliance with the orders, instructions, decisions and regulations issued by the authorities supervising working conditions
- 7) ensure compliance with the recommendations of a public labour inspector.

It is also interesting to note that certain health and safety obligations also apply to non-employee workers. According to Article 304¹ LC, both workers employed on a basis other than an employment relationship and self-employed individuals working in a place specified by the employer or other work-organizing entity are obliged to fulfil certain OHS duties defined in Article 211 LC⁵².

Due to the specificity of platform work it is difficult to establish definitively and unequivocally who is ultimately responsible for the safe and hygienic working conditions of platform workers. Consequently, the enforcement of discussed obligations may raise difficulties in practice⁵³. Furthermore, it can be concluded that "*the control mechanisms for platform work are insufficient and should be significantly developed to ensure that platform work is substantively covered by existing OSH regulations*"⁵⁴.

In this context, it should be borne in mind that platform work presents many challenges for compliance with OHS regulations, which should be adapted to the specifics of this atypical work. For example, particular attention should be paid to the aspect of occupational health

⁵² These include duties to:

- 1) familiarise with the OSH rules and regulations at work, to attend training and instruction in this field and to take the necessary tests;
- 2) carry out work in a manner compatible with the OHS provisions and rules and comply with the orders and instructions of their superiors in this respect;
- 3) ensure that machinery, plant, tools, equipment and the workplace are in good working order;
- 4) use the means of collective protection and the means of personal protection, clothing and footwear provided in accordance with their intended use;
- 5) submit to initial and periodic examinations and other required medical examinations and follow medical instructions;
- 6) immediately notify a supervisor of any accident or danger to human life or health discovered in the workplace and warn other persons in the danger zone of the existing danger;
- 7) co-operate with the employer and superiors in the performance of of duties relating to safety and health at work.

⁵³ M. Dobrzyńska, *Crowd employment...*, p. 20.

⁵⁴ Eurofound, *Platform work: Maximising the potential while safeguarding Standards?*, Luxembourg 2018d.

and safety training, as platform workers often have limited access to relevant knowledge and courses focusing on safe and hygienic working conditions.⁵⁵ In addition, platform workers do not have access to professional advice in this field⁵⁶. Furthermore, there are no customized norms and legal regulations that would directly define the specific scope of OHS duties of the digital work platforms⁵⁷. Another specific feature of platform work is also working in the field with the risk of death and the use of equipment such as bicycles, smartphones or protective clothing. In Poland, there is no uniform practice of platforms in the field of ensuring OSH, and some workers use their own equipment for work, which prevents effective implementation of all relevant standards included in the LC⁵⁸. Therefore, it would be useful to adopt more tailored legislation that would correspond to the specific of platform.

2. The problem of limited legal liability of digital work platforms for workers' actions

Given that in practice platform work in Poland - regardless of its configuration - is mostly carried out on the basis of civil law contracts and self-employment, the risks associated with this form of employment are largely transferred to the workers themselves. For instance, in the case of a contract of mandate (the most popular form of platform-work-employment), the source of liability of the contractor (i.e. the platform worker) will be Article 471 CC that provides that the debtor (i.e. the platform worker) is obliged to redress the damage resulting from non-performance or improper performance of an obligation, unless the non-performance or improper performance is a consequence of circumstances for which the debtor is not liable. Importantly, in such a configuration, platform worker-contractor could potentially be liable for the full amount of the resulting damage. The same applies to the liability of self-employed persons who, in the course of their business, conclude contracts with platforms which are similar in terms of the distribution of liability.

It is also worth noting that it is a common policy of digital work platforms operating on the Polish market (especially in the delivery sector) is to include clauses in the General Terms and Conditions of Use of the Platform, which stipulate that the platform - acting solely as an intermediary - is not responsible for the services of platform workers using it and that the workers themselves are fully responsible in relation to clients who commission certain tasks.

3. Platform work vs statutory labour law in Poland. Are there general labour law regulations that apply to platform work?

As mentioned in the Theme II of the report, Polish labour law does not specifically address the issue of platform work, with the exception of individual special provisions (as in

⁵⁵ Eurofound, *Working paper: On-location client-determined moderately skilled platform work: Employment and working conditions*. Luxembourg 2018.

⁵⁶ A. Skład, *Gospodarka platform internetowych a bhp*, "Bezpieczeństwo pracy: nauka i praktyka" No. 3/2021, p. 13.

⁵⁷ *Ibidem*, p. 11.

⁵⁸ M. Dobrzyńska, *Crowd employment...*, pp. 20-21.

the case of occupational health and safety), where the broad scope of application makes it possible to refer the considered norms also to platform workers. The difficulty in applying statutory labour law to platform work also stems from the fact that platform work is based on diverse forms of employment that are superficially different from the traditional employment relationship. An extreme variant in this context is the tripartite relationship often used in the food delivery sector, involving a worker, a platform and a domestic intermediary⁵⁹.

In this context, the only chance for platform workers in Poland to obtain full legal protection is to resort to an action to establish the existence of an employment relationship. As we have already pointed out, due to the heterogenous nature of platform work and the rigid concept of the employment relationship within the meaning of LC, platform workers currently have little chance of benefiting from basic labour law provisions without a far-reaching reform of the national labour law system. This is regardless of whether their work is based on civil law contracts or self-employment. A similar problem could be seen in the process of transposition of the Directive (EU) 2019/1152 on Transparent and Predictable Working Conditions into the Polish legal system. This document supposed to be implemented in accordance with the broad EU definition of a worker, while the Polish legislator in the implementation act has decided to grant relevant rights only to employees narrowly defined under the LC.

The above does not mean that platform workers are deprived of any legal protection in the Polish labour market. In fact, platform workers - regardless of the basis of their employment - are legally protected against discrimination in employment. This protection derives from the Act of 3 December 2010 on the implementation of certain provisions of the European Union on equal treatment⁶⁰. This Act can be successfully applied to platform workers (Article 4[2] in conjunction with Article 2[1]) and prohibits their discrimination, *inter alia*, in the field of employment (Article 8[1][2]).

Significantly, the rights of platform workers - as subjects who undoubtedly fall within the broad concept of the worker within the meaning of the Constitution - can also be derived from the Constitution itself. These include the freedom to choose and pursue an occupation and a place of work (Article 65), the right to safe and hygienic working conditions, rest and standard working hours (Article 66) or the right to social security (Article 67). However, for a number of reasons, constitutional interpretation of labour rights is not a universally used method. Also, the general nature of the constitutional provisions does not facilitate its application.

⁵⁹ K. Dreła, *Nietypowe formy pracy w Polsce*, "Zeszyty Naukowe – Firma i Rynek" 2012/2(43), p. 27.

⁶⁰ Oj 2020.2156 consolidated text.

4. Are there any workers' rights related to the algorithmic management?

In Poland, there are no workers' rights directly related to algorithms. However, work is in progress on an amendment to the Trade Unions Act⁶¹ proposed by the Left Party (Polish: Lewica). The justification for the changes is the high number of OHS violations, and the aim of the draft is to: adapt the Polish legal system to new technological changes; *"give trade unions the opportunity to check the real labour standards in force at the workplace"*, without creating additional costs for employers⁶². The new regulations would oblige employers to provide trade unions organizations with information on *"the parameters, rules and instructions underlying algorithms or artificial intelligence systems that influence decision making and that may affect working and pay conditions, access to and retention in employment, including profiling"* of workers⁶³. The proposed provision will expand the scope of information provided to trade unions under Article 28 TUA⁶⁴, according to which - at the request of the workplace union organisation - the employer is obliged to provide the information necessary for the union to carry out its activities⁶⁵.

However, the draft has received a mixed reception. The Independent and Self-Governing Trade Union "Solidarność" was in favour of the changes, stating that implementing suggested solutions would contribute to strengthening the protection of workers⁶⁶. On the other hand, the Chief Labour Inspector issued ambiguous opinion, stating that a broader debate is needed to introduce changes and that the proposed changes are selective⁶⁷. The government has not yet taken a position on the project, as it is waiting for the EU Council to complete its work on the proposed directive on improving working conditions in platform work⁶⁸. In the public debate, however, there are employers who oppose this project, arguing that it may be difficult to determine the scope of regulations that could pose a threat to, for example, trade secrets, as the draft does not propose measures to protect their interests.

⁶¹ Hereinafter: TUA.

⁶² <https://praca.gazetaprawna.pl/artykuly/8385214,zmiany-w-kodeksie-pracy-pip-algorytmy-lewica.html> [Accessed: 12.04.2023]

⁶³ <https://orka.sejm.gov.pl/Druki9ka.nsf/0/612454B631742DF2C12588CB00319C92/%24File/2642.pdf> [Accessed: 12.04.2023]

⁶⁴ M. Szypniewski, *Obowiązki informacyjne pracodawcy wobec zakładowej organizacji związkowej*, LEX/el. 2019.

⁶⁵ This concerns in particular information on: the terms and conditions of employment and remuneration; the employer's activities and economic situation in relation to employment and expected changes in this respect; the level, structure and expected changes in employment and measures to maintain the level of employment and activities which may lead to significant changes in the organisation of work or the basis of employment.

⁶⁶ <https://orka.sejm.gov.pl/Druki9ka.nsf/0/BD45C37BE242F749C12588E20032E230/%24File/2642-002.pdf> [Accessed: 12.04.2023]

⁶⁷ <https://orka.sejm.gov.pl/Druki9ka.nsf/0/0C4CD2789BF70EA8C12588E20032B481/%24File/2642-001.pdf> [Accessed: 12.04.2023]

⁶⁸ <https://www.prawo.pl/kadry/co-dalej-z-komisijnym-projektem-o-algorytmach,518626.html> [Accessed: 12.04.2023]

5. The problem of the lack of relevant national case law addressing the legal status of platform workers in Poland

So far, the legal status or rights of platform workers have not been the subject of cases in the Polish courts. At the same time, there is a relatively rich body of case law in Polish court practice on actions to establish the existence of an employment relationship, which makes it possible to reproduce the structural features of an employment relationship. However, due to the heterogenous nature of platform work, it escapes the established interpretative schemes, making the existing line of jurisprudence partially unsuitable for the analysed phenomenon.

There are several reasons for the lack of relevant case law. Firstly, platform work (particularly in the transport and delivery sectors) is largely carried out by foreigners with unregulated residence status. Secondly, platform workers are often not supported by the trade unions, which would undoubtedly facilitate their access to justice. Only recently have we seen a process of new trade unions being formed by platform workers themselves. Thirdly, court cases in Poland are lengthy, often taking years to produce final verdict, which in the context of the gig economy discourages people from pursuing their rights. All these factors have the effect that, in many cases, platform workers simply give up defending their rights and, in a way, accept their current situation.



Theme IV. The influence of collective labour law for the platform sector

1. General remarks

Poland underwent a radical regime change in the late 1980s and early 1990s. However, since these events, Poland has not yet developed a system of multi-employer collective agreements. In fact, they are almost non-existent today, as the multi-employer collective agreements still in force only cover about 200,000 employees. Company level collective agreements, on the other hand, cover around one and a half million of employees (that is about 12,5% of the potential beneficiaries of company bargaining). Although in 2019 Polish law recognised the full trade union-related rights of workers (both employees and non-employee workers) who meet certain criteria, in practice working population is not covered by collective bargaining. As a result, the interests of a growing group of gig workers are not covered by either collective agreements or statutory standards⁶⁹.

It is also worth noting that trade unions in Poland have fewer and fewer members. Furthermore, Polish trade unions are also quite conservative. There is no tradition of regional or local initiatives. It is also very difficult to initiate negotiations at company level for specific companies or establishments. Unions do not have enough actual power to force strong companies to bargain for atypical workers. The situation is even more complex when it comes to platform workers. Their working conditions make it more difficult for them to organise because they are alienated and do not have regular contact with each other, which would enable them to form a working community.⁷⁰

2. Theoretical aspects of the trade union rights of the platform workers

Freedom of association is a cornerstone of collective labour law. Within freedom of association, we recognise the right of coalition, which means the right to form trade unions and employers' organisations and the right to join them⁷¹. Trade unions also have the right to bargain and conclude collective agreements. Finally, they have the right to industrial action, including its resolution by both conciliatory and more decisive methods. The question now is whether platform workers - who do not work under a contract of employment - can associate in a trade union and, as a result, whether they can exercise all basic trade union rights related to bargaining and industrial disputes.

The Polish Constitutional Tribunal has ruled on this issue in 2015. In its judgment of 2 June 2015 (K 1/13), the Tribunal criticised the wording of the TUA at the time and stated that personal scope of statutory right to establish and join trade union should not be limited only to narrow category of workers distinguished by the fact that they are employed on the basis of a contractual employment relationship, which basically amounts to a narrow group of

⁶⁹ M. Kozak-Maśnicka, Ł. Pisarczyk, *Extending the Personal Scope of Collective Bargaining as a Chance for Gig Workers? The Polish Case*, Great Britain 2022, p. 215.

⁷⁰ *Ibidem*, pp. 223-224.

⁷¹ K. W. Baran (ed.), *Zbiorowe prawo zatrudnienia*, [in:] *Prawo pracy i ubezpieczeń społecznych*, Warszawa 2019, p. 593.

employees within the meaning of the provision of Article 2 LC⁷². The Tribunal recognised that there are also other groups of workers (i.e. civil law contractors or the self-employed) who should enjoy the same union rights. As a result, the Tribunal adopted an autonomous interpretation of the personal scope of freedom of association, which should be free from narrowing statutory perspective⁷³. The Tribunal set out three premises which define the legal framework of the constitutional understanding of the concept of worker referred to in article 59(1) of the Constitution. This concept covers all persons who, firstly, perform a specific gainful activity, secondly, are in a legal relationship with the entity for which they perform that activity, and thirdly, have professional interests related to the performance of that activity which can be collectively protected⁷⁴.

The Tribunal's decision led to a significant reform of the Trade Union Act, which came into force on 1 January 2019. From this point on, the full right of the coalition took on a very broad subjective scope, since according to the new wording of Article 2(1) TUA, the right to form and join trade unions should be granted to all persons engaged in gainful activity who are defined in Article 1(1) TUA as employees (within the meaning of Article 2 LC) or as other persons performing paid work on a basis other than an employment relationship. In this configuration, other persons performing paid work on a basis other than an employment relationship are defined by TUA as individuals performing paid work on a basis other than the employment relationship, that do not employ other people for the same kind of work (and regardless of the basis of such employment) and have such rights and interest related to carried out activity as may be represented and defended by a trade union⁷⁵. With such a broad subjective perspective, there should be no doubt that platform workers - as other persons performing paid work - have the right to form and join trade unions in Poland.

The recognition that platform workers fall within the subjective scope of the full right of coalition also has implications for bargaining and industrial disputes for this working category, as in the Polish legal system, both the right to conclude collective agreements⁷⁶ and the right to take collective action (including strikes)⁷⁷ are reserved exclusively for trade unions, which have a monopoly on representation in these areas. Therefore, workers who are able to form their own union or join an existing one will also have a real opportunity to exercise the above rights. However, it should be remembered that both the right to collective

⁷² The judgment of the Constitutional Tribunal of 2 June 2015, K 1/13, Legalis 1271433.

⁷³ Cf. Workers representation in undertakings, Polish report for Students International Seminar on Comparative Labour Law, Poznań 2020, p. 52-53.

⁷⁴ The judgment of the Constitutional Tribunal of 2 June 2015, K 1/13, Legalis 1271433.

⁷⁵ Cf. J. Gołaś, *Granice wolności związkowych w polskim systemie prawnym*, Poznań 2020, p. 225-231.

⁷⁶ Cf. Articles 241¹⁴ and 241²⁴ LC in conjunction with Article 21(3) TUA.

⁷⁷ Cf. Article 2(1) in conjunction with Article 6 of Act of 23 May 1991 on the Resolution of Collective Disputes (OJ 2020.123 consolidated text).

bargaining and the right to industrial action are primarily exercised in relation to the formal employer or employing entity. From the perspective of platform workers in Poland, this can often be a significant obstacle to the effective exercise of the rights in question.

3. Practical aspects of the trade unions rights of platform workers

3.1. General remarks

As M. Kozak-Maśnicka and Ł. Pisarczyk have pointed out, although the legislator has recognised the collective rights of a large group of non-employees (wage-earners) by amending TUA and other relevant acts, there has been no significant revival of the practice of collective relations to date⁷⁸. However, this does not mean total stagnation. Recently, we have seen in Poland the first collective initiatives of platform workers forming their own unions and taking their first collective actions, as will be indicated below.

However, we should first highlight a very important point. If we are going to talk about collective rights of platform workers, we should consider who these rights are being exercised against. To this end, we need to answer the question of who is the employer of platform workers. As Adam Rogalewski, points out, in the debate on whether platforms are employers or mere intermediaries, Gerber and Krzywdziński (2019) take the position that platforms are more than intermediaries and largely act as employers. As they point out, platforms, among other things, transform customer orders into work processes; define the scope of a task; coordinate tasks, organise quality control; define communication channels; and determine payment methods⁷⁹. However, it is important to stress that this is not self-evident. Some researchers point out that the platform intermediary acts as an employer⁸⁰.

3.2. First platform workers' unions in Poland

As we have signalled, the first trade unions for platform workers have recently been formed in Poland. The main organisations are: "wBREw" and "OPZZ Konfederacja Pracy", which focus their activities on the food delivery sector and operate within the Pyszne.pl platform⁸¹.

First of all, let us characterize the trade union "wBREw". According to the information available in the National Court Register, this trade union is called the Ogólnopolski Związek Zawodowy Samozatrudnionych "wBREw" (the All-Poland Trade Union of the Self-Employed "wBREw"⁸²) and is registered in the Register of Associations under number 0000920863. The main objectives of its activities are the social, economic and personal development of its

⁷⁸ M. Kozak-Maśnicka, Ł. Pisarczyk *Rozszerzanie zakresu podmiotowego rokowań zbiorowych jako szansa dla pracowników platformowych? Relacje zbiorowe w gospodarce platformowej z polskiej perspektywy*, [in:] *Rokowania zbiorowe a rynek platform cyfrowych. Tradycyjne narzędzia platform cyfrowych*, Warszawa 2022, p. 272.

⁷⁹ A. Rogalewski, *Cyfryzacja i praca platformowa*, Warszawa 2019, p. 23 cited for C. Gerber, M. Krzywdziński, *Brave New Digital Work? New Forms of Performance Control in Crowdwork*, Warszawa 2019.

⁸⁰ *Ibidem*.

⁸¹ It is the Polish equivalent of Just Eat Takeaway.com.

⁸² Own translation.

members and all citizens of the Republic of Poland, the representation and defence of the rights and interests of workers and other union members and their families, the formation of social activism, professional ethics and the protection of the dignity of working people. It is worth mentioning that the "wBREw" is the first trade union of the self-employed in Poland. The "wBREw" officially represents its members, fights for fair and equal market conditions for all, demands that the voice of the self-employed be heard, lobbies on their behalf and also takes legal action⁸³.

Another trade union is the Ogólnopolski Pracowniczy Związek Zawodowy "Konfederacja Pracy" (the 'All-Poland Workers' Trade Union "Confederation of Labour" ⁸⁴) that also operates within the "Pyszne.pl" platform. It is probably the first platform in Poland where a trade union was established. It was registered on 14 October 2022 under number 0000136669 in the Register of Associations. The objectives of this organisation can be divided into two parts. Firstly, the union is waiting for the changes that are being prepared at the EU level. Secondly, they are addressing the labour demands of the couriers, such as pay and the problem of different weather conditions that make the work extremely hard at times, and not financially rewarded in any way. The union therefore plans to focus on solving the day-to-day problems of platform workers, while lobbying for changes that are currently underway in the European Parliament⁸⁵.

3.3. Latest examples of collective action by platform workers in Poland

As A. Rogalewski points out, the main trade union demands related to platform work are:

1. the need to know more about the impact of platforms on the labour market;
2. the need for regulation of platforms at European level;
3. the need for financial support for digitally affected workers as part of an equitable transition (retraining and training);
4. the need to unionise, i.e. to organise workers on a collective basis⁸⁶.

However, despite the actions of the above-mentioned unions, the situation of platform workers in the Polish market is not easy. Because of difficult working conditions, job instability and insecurity, platform workers choose to organize informal protests.

⁸³ Ogólnopolski Związek Zawodowy Samozatrudnionych „wBREw” , available at: <https://wbrew.org> (Accessed: 15 April 2023).

⁸⁴ Own translation.

⁸⁵ *Pyszne.pl ze związkiem zawodowym jako pierwsza firma w sektorze. Dostawcy jedzenia walczą o swoje prawa*, available at: <https://www.bankier.pl/wiadomosc/Zwiazek-zawodowy-w-Pyszne-pl-8443679.html> (Accessed: 15 April 2023); *W Pyszne.pl utworzono związek zawodowy. To pierwsza taka organizacja w sektorze delivery, co to oznacza dla branży?*, <https://www.wiadomoscihandlowe.pl/artykul/w-pyszne-pl-utworzono-zwiazek-zawodowy-to-pierwsza-taka-organizacja-w-sektorze-delivery> (Accessed: 15 April 2023).

⁸⁶ A. Rogalewski, *Cyfrizacja...*, p. 31.

For example, on 12 December 2016, Uber drivers launched a protest against the UBER app operator. On that day, from 6am to midnight, protesters did not log into the system. The Uber drivers demanded a reduction in commissions by at least 10% and a return to the previous price list for services provided. They also demanded that the waiting time for a passenger in the city centre should be reduced to 2 minutes. They also wanted a fair allocation of orders, meaning that the platform should work in such a way that the customer calls up the driver who is the closest. However, Uber refused to meet its drivers' demands⁸⁷.

Secondly, we could also observe an informal protest undertaken by the Glovo couriers. According to the new rules of the Glovo platform in Rzeszów, Elbląg and Białymstok, the couriers in those cities were no longer paid for the distance travelled from the place where the order was accepted to the pick-up point (restaurants, shops). They were only paid for the distance from the pickup point to the customer. In addition, the app's algorithm no longer took into account how far they were from the pickup point, so they notoriously ended up with orders where they had to drive 10 km for free to pick up an order they were supposed to deliver 2 km away. As a result, their wages shrank by up to 40%. The couriers from Białystok did not agree to such a reduction and decided to protest⁸⁸. The protest had two dimensions. Some couriers cancelled their working hours and simply did not work. Others were active in the system, taking orders but not carrying them out⁸⁹. This, however, was suppressed with a single click coming from the Glovo. The platform simply blocked the protesters⁹⁰.

Thirdly, this year also witnessed a dispute between platform workers and the Pyszne.pl platform, in which the Confederation of Labour was actively involved. The couriers were demanding the following changes: the reinstatement of the seniority allowance; the introduction of a 2 PLN per hour allowance for weekends and public holidays; the reinstatement of the hourly allowance for captains, together with the retention of the allowance for assistance in training couriers; and the introduction of an allowance for working in adverse weather conditions⁹¹. In the face of the platform's passivity, a significant part of the workforce declared that they would not declare availability in the application for 3

⁸⁷ *Kierowcy Ubera protestują. Możesz mieć problem z zamówieniem pojazdu*, <https://noizz.pl/spoleczenstwo/protest-uber-kierowcy-ubera-beda-protestowac-w-poniedzialek/6yb9qv4> (Accessed 15 April 2023).

⁸⁸ *Sztuczki Glovo w Polsce nie działają. Sprawa strajkujących kurierów trafiła do Sejmu*, <https://spidersweb.pl/bizblog/strajk-kurierow-glovo/> (Accessed: 16 April 2023).

⁸⁹ *Strajk kurierów Glovo stłumiony jednym kliknięciem. Ale w Gdańsku się nie poddają*, available at: <https://trojmiasto.wyborcza.pl/trojmiasto/7,35612,27099105,strajk-kurierow-stlumiony-przez-glovo-jednym-kliknieciem-ale.html> (Accessed: 16 of April of 2023).

⁹⁰ *Glovo jednym kliknięciem stłumiło strajk kurierów w Polsce. Praca jak z Black Mirror*, available at: <https://spidersweb.pl/plus/2021/05/kurierzy-glovo-strajk-protest-aplikacja-black-mirror> (Accessed: 16 April 2023).

⁹¹ *Strajk kurierów Pyszne.pl. Domagają się większych pieniędzy*, available at: <https://businessinsider.com.pl/twoje-pieniadze/praca/strajk-kurierow-pysznepl-oto-pelna-lista-postulatow/10xcd5p> (Accessed: 22 April 2023).

February 2023. In December 2019, a similar informal strike was organised in selected Polish cities⁹².

4. Competition law and collective actions of self-employed workers and plat-form workers

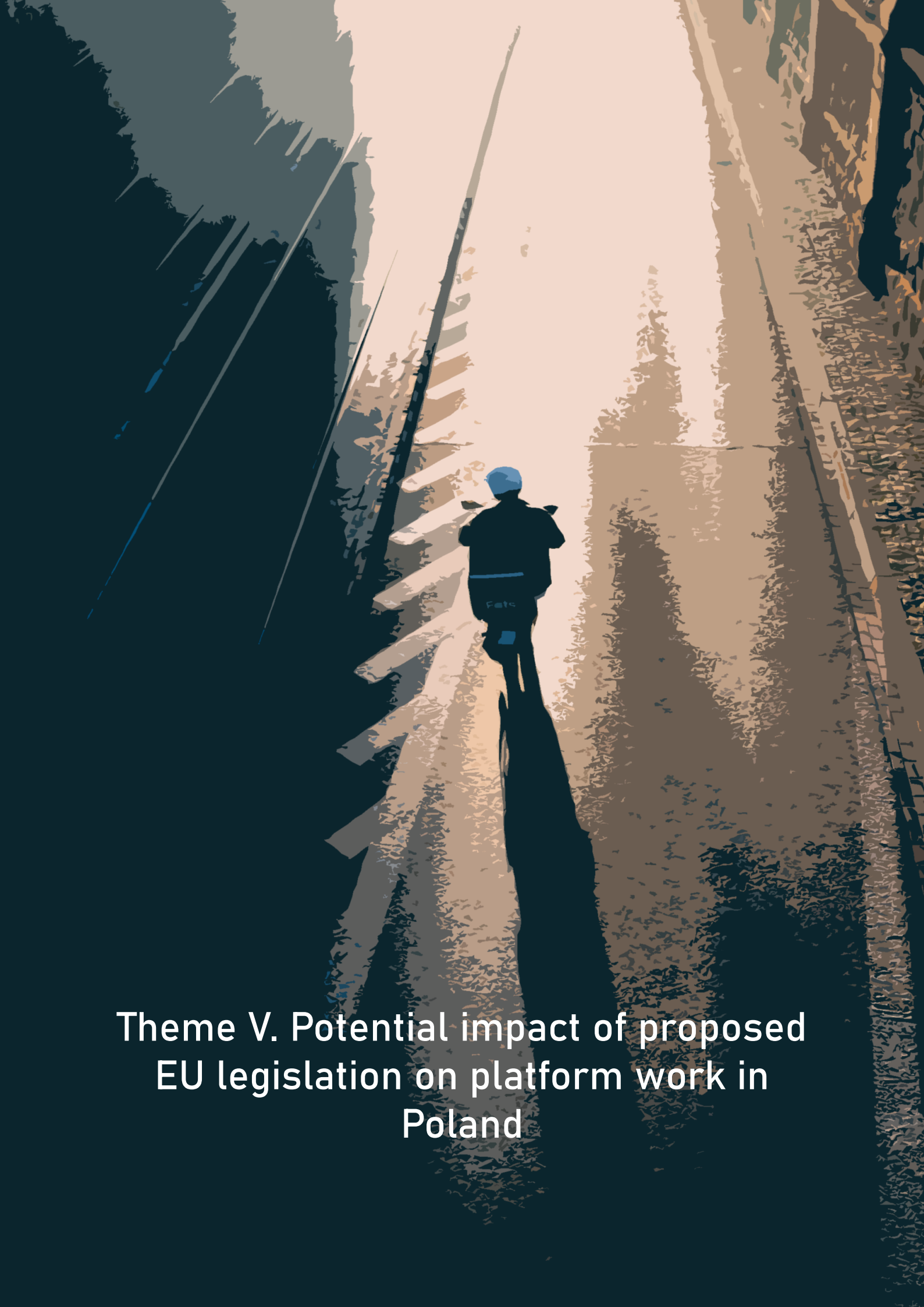
As we have already indicated, a broad subjective scope of the right to collective bargaining and collective action has been constructed in the Polish legal system, which also covers persons performing paid work who are not employees within the meaning of the LC⁹³. Such a broad perspective makes it possible to include in the rights under discussion both self-employed and platform workers employed under civil law contracts. All of the above categories of working people can also form their own trade unions and join existing organizations.

The Polish legislator's decision to formally extend the above-mentioned collective rights to self-employed and workers employed under civil law contracts directly confirms that the potential conflict between competition law and the collective activity of the above-mentioned categories of workers was is not perceived at the legislative level as real and serious risk. The pursuit by self-employed (or other non-employee workers) to conclude a collective agreement or to conduct an industrial dispute is therefore a perfectly legal and permissible activity, provided that the competent entities act within the limits of the competences and powers granted by the relevant law. These limits are mostly of a general nature and focus on standards such as good faith or reasonable demands, which are not particularly strict from a substantive legal point of view. It is impossible to find direct references to competition law in the relevant laws on collective labour rights. Perhaps this is one of the reasons why the assessment of workers' collective rights from the perspective of competition law has so far been little discussed in Poland⁹⁴.

⁹² *Strajk kurierów pracujących dla Pyszne.pl*, available at: <https://www.wirtualnemedi.pl/artykul/pyszne-pl-brak-dostawy-strajk-kurier-lista-miast-warunki-placowe> (Accessed: 22 April 2023)

⁹³ ⁹³ B. Mądrzycki, Ł. Pisarczyk, *Ekspertyza na temat aktualnej sytuacji oraz perspektyw rozwoju układów zbiorowych pracy w Polsce*, p. 11-12.

⁹⁴ *Ibidem*.



Theme V. Potential impact of proposed EU legislation on platform work in Poland

1. Addressing the existing gaps in protection of platform workers in Poland

It is worth recalling that, with the exception of the passenger transport sector, the phenomenon of platform work in Poland is not regulated at all in the Polish legal system. Therefore, it is difficult to talk about potential gaps in the system that would be filled by the Directive, as there is basically one big void in the national system regarding the legal protection of platform workers. In this context, both the presumption of the existence of an employment relationship and the right to transparency with regard to algorithmic management or the right of platform workers to information would in fact be the first clear legal standards that would directly and explicitly apply to platform workers in Poland.

In particular, it is worth noting that the current legal understanding of an "employment relationship" differs between Member States and - with a degree of caution - it can be assumed that there is no national legal system which uses exactly the same elements for the national definition of an "employment relationship" as the Commission uses for the proposed presumption of existence of the platform employment relationship. It is unlikely that Member States will be in a position to simply transpose the presumption into their national legal systems, while maintaining currently existing concepts of an 'employment relationship'. It seems that all Member States will become obliged to adapt national concepts of 'employment relationship' to the elements of the proposed presumption. This would effectively mean standardising labour law in the Member States as regards the meaning of 'employment relationship'. However, such an outcome entails certain risk. The construction of a universal legal concept of the employment relationship undoubtedly allows for the standardisation of labour law in all Member States with regard to the meaning of the 'employment relationship', which, although intended to protect workers, would lead to a reduction in competitiveness between them and would in fact give the EU a new power to determine labour law in the Member States.

In general, it should be noted that in assessing the proposed solutions, one can only speak of the potential of the proposed Directive. However, the effectiveness of these solutions will ultimately depend on the quality of national legislation and the efficiency and competence of national supervisory and judicial bodies. The example of the control initiated by the Ombudsman clearly shows that national authorities have far-reaching problems in controlling work on platforms. Therefore, in this context, it should be evident that the substantive legal protection guarantees for platform workers themselves should also be followed by an adequate institutional and procedural framework, which will be an important safeguard for the effectiveness of the rights granted to platform workers.

Despite all the comments made, it has to be admitted that the implementation of the proposed Directive would give most platform workers the same labour protection as in the case of employees within the meaning of LC (at least unless the presumption is challenged).

After all, the employment relationship offers workers the widest and strongest catalogue of rights.

2. (How) would the Polish legal system be affected by the current proposal for a Directive on improving working conditions in platform work?

There is no doubt that the changes proposed by the Directive are revolutionary from the point of view of the Polish legal system and that its effective implementation would require far-reaching amendments to the Polish Labour Code and other relevant documents⁹⁵. Given the *de facto* lack of regulation to protect platform workers, we are essentially talking about building a national legal framework from scratch.

First of all, the presumption of the existence of an 'employment relationship' for platform workers would need to be introduced. In addition, it also seems that it would be necessary to transpose from the Directive the legal definition of 'digital work platform', 'platform work' and 'platform controlling the performance of work'. It is important to note that there is currently no presumption of employment in the Polish legal system, nor are there any definitions of the above terms. The construction of the presumption of employment fits perfectly with the long-standing debate on the effectiveness of existing legal solutions to combat the growing practice of circumventing labour law through the use of civil law contracts and employment in the informal economy⁹⁶.

Moreover, in order to make the effects of these presumptions permanent for certain workers, the national definition of 'employment relationship' itself would have to be changed, at least in relation to platform work. The current Article 22 LC sets out the constitutive elements of the employment relationship. According to this provision, the employee undertakes to perform work of a certain type for and under the direction of the employer, at a place and time determined by the employer, and the employer undertakes to employ the employee in return for remuneration. While it can be argued that 'platform' workers perform the work for the platform and that their work is paid for, the inherent nature of this type of work is that the platform does not directly set the time of the work. Therefore, under the current wording of relevant labour law provision, platform work cannot be considered as an employment relationship between the employee and the employer within the meaning of the Labour Code, which is the primary source of legal protection for employees in the Polish legal system. As a result, in the case of the Polish legal system, in order to effectively implement the standards of the analysed Directive, the introduction of a legal presumption

⁹⁵ A. M. Świątkowski, *Projekt Dyrektywy Parlamentu Europejskiego i Rady w sprawie poprawy warunków pracy za pośrednictwem platform internetowych*, „Praca i Zabezpieczenie Społeczne” 10/2022, pp. 33-41.

⁹⁶ Cf. K. Stanioch, *Czy jest potrzeba wprowadzenia domniemania istnienia stosunku pracy do polskiego systemu prawnego?* „Studenckie Prace Prawnicze, Administratywistyczne i Ekonomiczne” 35, 2021 and the literature referenced therein.

should be followed by a significant reconstruction of the legal construction of the employment relationship within the meaning of the Labour Code.

Apart from the issues related to the existence of an employment relationship, the proposed Directive also contains other provisions, in particular those relating to the 'algorithmic management' of platform work. Proposed provisions aim to increase transparency in the use of algorithms, ensure human supervision of working conditions and give the right to challenge automated decisions. Also in this regard, the Polish legal system does not provide any - even minimum – relevant standards of legal protection. The admissibility of algorithmic management or the standards of such a form of management are currently not subject to any delimiting legal standards. The presence of algorithms in the national labour market is entirely shaped by practice, which is undoubtedly shaped by the online platforms themselves. As a result, new rules would have to be drawn up virtually from scratch in this area as well.

The revolutionary nature of the proposed changes is also confirmed by the symptomatic resistance and criticism of the employers' organisations⁹⁷. The position of the employers' representatives is clearly critical and expresses their reluctance to the proposed changes, which for domestic employers are likely to pose a serious threat to existing practices. In their assessment of the Directive, the relevant organisations focus in particular on the legal presumption, which is seen as a far-reaching intrusion into contractual freedom and which is said to threaten the flexibility of employment bases⁹⁸.

⁹⁷ Cf. *Komentarz ZPP do projektu dyrektywy w sprawie poprawy warunków pracy za pośrednictwem platform internetowych*, <https://zpp.net.pl/komentarz-zpp-do-projektu-dyrektywy-w-sprawie-poprawy-warunkow-pracy-za-posrednictwem-platform-internetowych/> (Accessed 26.04.2023).

⁹⁸ Cf. *Proponowane Zmiany Do Projektu Stanowiska Rp Projekt Dyrektywy W Sprawie Poprawy Warunków Pracy Za Pośrednictwem Platform Internetowych*, <https://lewiatan.org/wp-content/uploads/2022/01/Propozycje-zmian-do-stanowiska-RP-ws.-projektu-dyrektywy-dotyczacej-poprawy-warunkow-pracy-za-posrednictwem-platform-internetowych.pdf> (Accessed: 26.04.2023).

Cover photo:

Photo by Wynand van Poortvliet on Unsplash/ Free for commercial use/ Edited in Word

Questionnaire photo:

Photo by Ruchindra Gunasekaraon on Unsplash/ Free for commercial use/ Edited in Word

Theme I photo:

Photo by Gabriel Alenius on Unsplash/ Free for commercial use/ Edited in Word

Theme II photo:

Photo by Michal Mendel on Unsplash/ Free for commercial use/ Edited in Word

Theme III photo:

Photo by Ryan Ancill on Unsplash/ Free for commercial use/ Edited in Word

Theme IV photo:

Photo by Florian Olivo on Unsplash/ Free for commercial use/ Edited in Word

Theme V photo:

Photo by Szymon Fischer on Unsplash/ Free for commercial use/ Edited in Word