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Employment and Self-Employment in Platform Work

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1. THE ROLE OF DIGITAL WORK PLATFORMS: EXPLORING THE SIGNIFICANCE OF DIGITAL WORK PLATFORMS AND LEGAL DEBATES IN SPAIN

As it is known, there is ongoing legal debate in Spain, as in other parts of the world, around digital work platforms and the impact they have on the economy. These platforms are characterized by an increasing presence of digitalization and automation in the labor market, which is changing the nature of work for many individuals. This impact is especially notable in the gig economy, where workers perform freelance, short-term, or one-off jobs through online platforms.

In Europe, there are efforts to create a unified framework for online platforms to protect the rights of workers and consumers. To this end, the European Union is working on the Directive on improving working conditions in platform work, which aims to provide a single, uniform framework across the EU for online platforms. Additionally, individual countries like Spain have been grappling with the challenges posed by the gig economy and digital platforms. In Spain, for example, there has been ongoing debate over the treatment of platform workers and whether they should be classified as employees or self-employed contractors.

Regarding the economy, the digital work platforms have had a profound impact on the gig economy, representing a significant portion of this sector. These platforms are often

characterized by the presence as stakeholders of important manufacturing and financial companies.

Overall, the legal debates and economic implications of digital work platforms are complex and evolving (European Council, 2022; European Comision, 2022).

First of all, let's look at the working platforms.

a) On the one hand, we will break down their functions and the areas in which they work in order to then complete it with the importance in the economic, social and political spheres.

The work platforms are portals in which the organization, together with the services and computer systems assign tasks and keep track of the workers who perform them. They offer a series of services in which users request whatever they need. The fields in which they work usually range from food services to those related to fashion. We will give more importance to the first ones, because it is in the food and restauration services where they have more presence in Spain.

In economic terms, the use of networked computer applications as platforms for work between users of all kinds of services and the people who offer to provide them, has experienced rapid growth throughout the world, which has been favored by a policy of absolute permissiveness aimed at promoting technological innovation and the high-tech sector. This, together with the development of the so-called sharing economy, an expression which, according to the European Commission, refers to business models in which activities are facilitated through collaborative work platforms that create an open market for the temporary use of goods or services, often offered by private individuals.

The collaborative economy involves three categories of individuals: service providers who share assets, resources, time and/or skills, users of these services, and finally intermediaries who, through an online work platform, connect service providers with users and facilitate transactions between them. The novelty of this platform economy lies in the use for profit of the great decentralizing potential derived from the conjunction of the cyber-coordination of the labor market brought about by the algorithmic revolution and the spread of smartphones, which intensifies, accelerates and expands the possibility

of contracts or on-demand jobs, where the employment status of the person providing the service is not well defined and where, obviously, legal limits on working time have no operability.

With regard to the social sphere, workers who provide services within digital platforms are a very vulnerable and little respected group. This sector has experienced rapid and large growth in recent years, which has been accompanied by changes in legislation and problems with jurisprudence and has led to labor disputes such as determining whether these workers are self-employed or have an employment relationship with the organization.

In the political sphere this issue has also generated conflicts as we have related above. Article 1 of the Workers' Statute provides that "*This law shall apply to workers who voluntarily provide their paid services as employees and within the scope of organization and management of another person, natural or legal, called employer or entrepreneur*".

The defining characteristics of the employment relationship derive from this article: voluntariness, since it is something desired by the parties; onerousness, since it consists of an exchange of work for consideration or remuneration, which is the salary; dependence, which consists of the employee's work being organized by the company, which also has disciplinary control over him/her; adjacency, so that the worker is excluded from both the risks and the benefits. In these last two is the conflict we have been talking about, the dependence and the adjacency, since it is where the structures of the platforms, the work schedules, the retributions and the risks derived from these activities are found. As we said before, it also brings challenges for its workers: more precariousness and job volatility and less accumulation of skills. They focus on the regulation of this platforms and in the improvement of the regulation to have a good treatment between workers and employers who require the requested services.

b) On the other hand**,** as regards the most important work platforms in our country are the well-known Uber Eats, Deliveroo, Just Eat and Glovo. The legal nature that accompanies the activity of these platforms is approached in Spain through two ways that we will explain in detail later. The laws and judgments that we have been able to find on this very current issue are as follows:

- Judgement of the Supreme Court of September 25, 2020 (rec. 4746/2019).
- Law 12/2021, of September 28, which modifies the revised text of the Workers' Statute Law, approved by Royal Legislative Decree 2/2015, of October 23, to guarantee the labor rights of people dedicated to distribution in the field of digital platforms.
- Judgement of the Supreme Court of May 18, 2021 (rec. 3350/2020).

It is important to point that, in Spain, there are 15 High Courts of Justice, each of them with judgements about this topic. To simplify the number of judicial decisions, we will take into account the ones that the Supreme Court decided.

2. LEGAL CLASSIFICATION OF PLATFORM WORKERS: DEBATES AND COURT CASES IN THE DIGITAL PLATFORM WORK CONTEXT

The legal classification of platform workers has been a major issue in the discussion of digital platform work in many legal systems. In this regard, Spain's legal system distinguishes between salaried workers and self-employed workers known as Economically Dependent Self-Employed Workers (TRADE, in Spanish acronym), who carry out an economic or professional activity for profit and depend economically on a natural or legal person.

The problem lies in how to classify workers on digital platforms: are we talking about employees or self-employed workers?

The first thing we have to determine is what we consider to be employed work. Thus, we start from the premise of what is stipulated in Article 1.1 of Royal Legislative Decree 2/2015 of 23 October, which approves the Revised Text of the Workers' Statute, where it refers to its scope of application and specifically affects workers who voluntarily provide their paid services as employees and within the organisation and management of another person, natural or legal, called employer or entrepreneur.

For a worker to be considered under Spanish law as an employee, they must meet the aforementioned requirements, specifically the following will be necessary:

- Voluntariness, in the employment relationship, and this is so because the provision of services must be voluntary.
- The employment relationship is not a labour relationship, i.e., without assuming the risks derived from the work activity.
- The provision of services must be remunerated.
- Finally, the worker must provide services under the direction of the employer or entrepreneur.

The workers, in this case also called "dependent workers", or employees, establish such an employment relationship with the employer by means of an employment contract.

Thus, persons hired to carry out work on a digital platform, who meet the aforementioned characteristics, will be considered employees, and their contract with the employer will be by means of an employment contract, in the modality, if any, that their situation may give rise to.

The modalities of contract in Spain may be:

- Permanent contract: where no time limit is set on the employment relationship. It may be concluded on a full-time or part-time basis.
- Temporary contracts: Article 15 of the Workers' Statute states that temporary employment contracts may now only be entered into if they are justified and of an exceptional nature, i.e., those arising from circumstances of production or due to the replacement of a worker.
- Contract for training and apprenticeship, in addition to the internship contract. They are also a special type of temporary contracts.

However, these employment relationships are not always clear, as there are situations where the relationship of dependence and subordination necessary to classify a worker as a dependent is doubtful, *i.e*. there are employment situations, especially in employment relationships on digital platforms, where they are not considered subordinate, but present certain characteristics of dependence, and would therefore be excluded from the

aforementioned classification. This form of work refers to the Economically Dependent Self-Employed Worker, hereafter referred to as TRADE (in Spanish acronym).

The TRADE is regulated by Law 20/2007, on the Statute of the Self-Employed Worker, where in its chapter III, it makes a distinction of these, to which it refers in its article 11, to "those who carry out an economic or professional activity for profit and in a habitual, personal, direct and predominant manner for a natural or legal person, called client, on whom they are economically dependent because they receive at least 75% of their income from work and from economic or professional activities from them".

In this type of work, there is a position of dependence, in this case to a client, not to a businessman or employer, where the principle of autonomy of will prevails in the relationship between the latter and his client.

Article 11.2 of the Self-Employed Workers' Statute establishes two essential requirements for this type of professional relationship:

1. Self-employed people must have their own productive and material infrastructure to carry out their activity.

2. Activities to be carried out with the organisational criteria of the self-employed.

On the other hand, Judgement1618/2020 of 18 May 2021, of the Supreme Court, dismissed the appeal for the unification of doctrine filed by Roodfoods Spain SL, stating that there was no legal interest in the case, as it was filed against a decision that coincided with the Chamber.

The subject of the cassation appeal for the unification of doctrine referred to the Judgment of the High Court of Justice of Madrid of 17 January 2020, which dismissed the appeal of the company Roofoods Spain SL declaring the existence of an employment relationship between Roofoods Spain SL and their workers.

Regarding this 2020 Judgment, it states that the appeal Court examined whether the relationship of the riders who provided services via digital platforms in the company dedicated to the home delivery of food is an employment relationship or not. It is declared that there is regularity, and, although the delivery drivers are not strictly obliged to always

be available at the time slot, in the event of rejecting orders, the minimum orders will not be guaranteed, and their services may even be dispensed with, therefore, there is regularity, since the absence of this regularity would penalise them.

On the other hand, there is also dependence in the working relationship, as they are located by GPS. The company carries out control through the platform, where it knows the start and end time of the service, as well as the delivery times.

The company assumes the economic risk of the operation and also is liable to the customers, and therefore, these elements serve to proof the existence of an employment relationship between the delivery drivers and the company that hires them.

It should also be pointed out, in this same Judgement where Art. 3.1 Civil Code is mentioned, that the existence of a new reality of productivity obliges the adoption of the notes of dependence and alienation to the social reality of the time in which the rules must be applied.

It is therefore vitally important to bear in mind this Judgement, in view of the type of employment relationship that both the legislator and the Courts intend to give to workers who carry out their activity by means of work platforms, and that is that it is considered to be an external and dependent employment relationship and, therefore, a professional relationship cannot be established by means of a contract as an economically dependent self-employed worker.

Therefore, the problem lies in how to classify workers on digital platforms, since, according to the aforementioned characteristics, they can be classified as salaried, or self-employed (TRADE). In Spain, the platforms mostly require workers who are registered as self-employed, and they use their own means of work, and the price of the service is related to the activity they conduct. These freelancers decide the amount and type of tasks they are going to perform, as well as the duration of the service provision.

However, in the case of work on platforms, it will be the platform itself that will periodically pay the TRADE the remuneration in the form of an economic amount, depending on the number of services performed.

On the other hand, it is necessary to highlight the importance of Royal Decree Law 9/2021 of 11 May, to guarantee the labour rights of people dedicated to delivery on digital platforms, subsequently validated in Congress and its subsequent transposition as a draft law, becoming Law 12/2021 of 28 September, where the Workers' Statute was amended by introducing letter d) to article 64.4, as well as adding a 23rd Additional Provision.

Article 64.4.d of Workers' Statute gives the works council the right to be informed by the company of the parameters, rules and instructions on which algorithms or artificial intelligence systems are based that affect decision-making that may have an impact on working conditions, access to and maintenance of employment, including profiling.

With regard to the 23rd Additional Provision of Workers´ Statute, it refers to the presumption of employment in the field of digital delivery platforms, where the activity of persons who provide paid services consisting of the delivery or distribution of any consumer product or merchandise, by employers who exercise business powers of organisation, management and control directly, indirectly or implicitly, by means of algorithmic management of the service or working conditions, through a digital platform, is presumed to be included within the scope of the Workers' Statute, as employees.

This Provision highlights the need to incorporate into Spanish regulatory law the adaptation of the requirements of dependency and outside employment referred to in Article 1 of the Workers' Statute itself, to the context of the new realities in the field of employment relations.

In conclusion, jurisprudential transpositions, such as Judgement 263/1986 or appeal 587/2014, in this case, to the 23rd Additional Provision of the Workers' Statute, show the relevance of adapting more and more the peculiarities of this type of employment relationships on digital platforms, with regard to the characteristics of dependence and external nature on which the classification of these workers as salaried workers, as employees, and not as self-employed workers, depends.

To illustrate some of the controversial cases that exist around this duality of workers on digital platforms, we can talk about two companies that use platforms and hire using Economically Dependent Self-Employed Workers are Glovo and Uber.

In order to understand your contractual relationship, it is important to look at the following criteria:

On the one hand, Royal Legislative Decree 9/2021, subsequently replaced by Law 12/2021 of 28 September, which amends the Workers' Statute, is of great relevance, as this Royal Decree was used to establish the content of the Supreme Court Judgement 805/2020, Appeal 4746/2019, where the jurisprudential doctrine of the High Courts of Justice of the Autonomous Communities was unified, to declare the employment relationship between a delivery driver and the company Glovo.

As we said, the 2021 Law includes a single Article and an Additional Provision, which modifies the Workers' Statute, where the right to information for the works council regarding "algorithms or artificial intelligence systems that affect decision-making that may affect working conditions" is set out in its article and the presumption of employment in the field of digital delivery platforms, in its Additional Provision; and it is this last presumption where the protection of back-up workers who work through digital platforms is established.

Besides, following the incorporation of the Additional Provision that Law 12/2021 incorporates, the intention was to incorporate the unification of the doctrine that debated the issue of the employment and dependence in the employment relationships of people who conduct their activity with digital platforms.

With regard to the importance of the Supreme Court Judgement 805/2020, of 25 September, for this essay, and as it is based on the same, and highlighted in the preamble of Law 12/2021, the evolution of the requirement of dependence and subordination is described, and that as defined in the Supreme Court Judgement of 11 May 1979, dependence does not imply total absolute subordination, but "insertion in the governing, organisational and disciplinary circle of the company". It is therefore clear that there is a need to respond to the new realities of the technological means present in labour relations.

The aforementioned Judgement confirmed the employment contract of a Globo worker, following the guidelines of article 1 of the Workers' Statute. This ruling was made unanimously and determined that the existing relationship was an employment relationship.

However, and in accordance with the above, what these two companies have done is to introduce changes in their working conditions, so that the relationship between the worker and the company does not comply with the characteristics of a salaried employment relationship, and therefore, the contracts that are being carried out are those of an Economically Dependent Worker.

3. THE LANDSCAPE OF WORKERS ON DIGITAL PLATFORMS IN SPANISH LABOUR LAW: WORKING TIME, HEALTH AND SAFETY AND THE USE OF ALGORITHMS.

3.1. Working time and OHS on digital platforms

As of July 11, 2021, the Remote Work Law 10/2021 came into force in Spain, which meant the replacement of Royal Decree-Law 28/2020, of September 22, enacted given the exponential growth in remote work in Spain due to the pandemic situation. First, we must know what the law in Spain says, and specifically the aforementioned Remote Work Law (hereinafter, RWL) which is the main regulation on this matter and is applicable to those workers who provide voluntary and paid services as employees and within the scope of organization and management of another person, that is, the employer or entrepreneur, services that are performed at a distance and on a regular basis -that provided in a minimum of 30% of the working day or duration of the employment contract, in a reference period of three months-.

The legislator foresees that the subjects of application of the law will also be subject to the regulations relating to occupational health and safety protection, regulated by Law 31/1995 on Occupational Risk Prevention (hereinafter, LPRL in Spanish acronym), although it does not modify the latter to expressly include remote workers.

Regarding working time, two specific regulations are established in the RWL, such as:

- The right to flexible working hours under the terms agreed in the telecommuting agreement, which is that formalized in a written agreement between the worker and the employer in which the terms governing telecommuting are set forth.

- And the right to an adequate time record; in relation to this, the Workers' Statute already includes this regulation since May 2019 in Spain, but in the case of remote workers a special emphasis is made in the legislation as the sensitivity to which this type of employment relationship is subjected in terms of working time is greater than it could be in a common employment relationship. Therefore, the RWL establishes that the time record must "*faithfully*" reflect the time that the telecommuter dedicates to the work activity, including when the workday begins and ends, as well as the right to digital disconnection, in which definition provided by the law includes respect for the maximum duration of the workday.

The debate is not only about whether or not the legislation on working time is complied with, because whether it is the employment relationship of a remote worker or any other, we have an important risk of violations in the application of the legal limit of the working day, especially in a country like Spain where the service sector stands out. However, and due to the easy access to platform work, 35% of these workers are in a situation of multiple employment, compared to 10.1% of other standard jobs (Martin, 2023), which is a clear indicator of the social situation of these workers: they need a second job because they do not get enough income from one job. And this is where, in our opinion, one of the debates regarding platform work and the gig-economy should lie.

However, can we say that the maximum working day is respected? Since the companies that own digital platforms are multinationals, they are generally subject to greater control by the Spanish Labor Inspectorate, and the legislation establishes penalties for infringement of the rules relating to the recording of working hours. In Spain, the information of the time registration must be carried out (in the case of digital tools) guaranteeing the traceability and the reliable and invariable tracking of the daily workday once registered, as indicated by the Guide on Workday Registration[1] prepared by the Ministry of Labour.

The European Agency concludes that platform work poses new physical and psychosocial risks. The main source of psychosocial risks is the organization of work based on algorithmic management, since working on platforms requires constant use of ICT, which

[1] https://www.mites.gob.es/ficheros/ministerio/GuiaRegistroJornada.pdf

in turn is related to burnout and physical risks related to the use of data display screens (such as visual fatigue). Despite this, the main contingencies that can be observed in remote workers are musculoskeletal disorders and occupational accidents, in which aspects such as lack of common or appropriate workplaces, inappropriate equipment, insufficient training in occupational risk prevention or lack of personal protective equipment are the main influencers (Martín, 2023: 88-89).

Finally, regarding the occupational safety and health management system, the integration of data recorded in digital platforms and technological tools allow the identification of hazards, the establishment of workforce training or the measurement of indicators, facilitating the management of information and enabling the reduction of risks arising from organizational processes (Albújar-Verona *et al*., 2022).

3.2. Legal liability of the platform

Given that most digital platforms provide services in which there is no great impact, such as delivery or transportation services, in case the worker makes a mistake, the legal liability of the company responsibility is not too extensive, but is usually summarized to the refund of the price of the service paid or some kind of discount, which is provided for in the customer service section of most of these apps and digital platforms.

However, it is true that, as in any other company, the employer has the power to apply the penalty regime to the worker by virtue of a labour breach, being applicable the provisions of the Workers' Statute and, in second place, what is established in applicable Collective Agreement.

3.3. The presumption of wage-employment

Of course, the greatest controversy has been induced by Law 12/2021 through the establishment of the presumption of employment in the field of digital delivery platforms. Basically, it means that all persons who provide paid services consisting of the delivery of any product by means of algorithmic management of the service or working conditions through a digital platform will be considered employees.

From this situation, new controversies arise, such as the use of subcontracting, delivery cooperatives created for this purpose and temporary employment agencies, in order to

manage the human resources of digital platform companies. However, prior to the entry into force of the Law 12/2021, the companies intended to keep out the application of the regulations relating to the employment of traditional workers covered by Labour Law, proposing the creation of the figure of the "economically dependent digital worker", a category halfway between the common employee and self-employed. Similarly, the creation of a new category of worker was proposed, through the insertion of a new special employment relationship, or with a specific employment contract (Moreno, 2022). It is clear that the acceptance of any of these proposals would have undoubtedly been detrimental to the situation of workers and therefore the legislator introduced the presumption of employment for the cases of workers on digital platforms, despite the fact that the way in which it has been legislated, it is possible for the company to prove in a judicial procedure that a worker is a self-employed worker.

We conclude that the fact that this evidence to the contrary is possible implies a flexibility mechanism for companies that in no way benefits workers on digital platforms, and even more so given the different tricks used to ignore or avoid the application of the corresponding regulations.

3.4. Algorithms and workers' rights in digital platforms

Algorithms in digital platforms have three specific aims (Mercader, 2022).

- First, the assignment of tasks to workers based on the services demanded by physical proximity. Since these platforms include the geolocation of the worker, the algorithm tracks the proportion of services provided by the worker and averages the score given by the users who demanded the service.
- The second of the aims is to set service prices based on demand and assign service rates. These instruments influence the moment in which the digital platform workers will provide their services, since when there are peaks in demand and prices are higher, the interest in providing the service will also be higher, reaching a market equilibrium.
- And as regards the third specific aim, it is said that performance is also subject to evaluation, since the algorithm classifies and evaluates the worker according to the degree of acceptance of the service provided.

Regarding rights relating to equal treatment and non-discrimination, the pillars of these basic and essential principles are to be found in the Treaty on European Union and the Charter of Fundamental Rights of the European Union, although in Spain the recent Law 15/2022 attempts to guarantee this right by introducing the Article 23. It establishes that the algorithms involved in decision-making by public administrations must consider the minimization of bias or prejudices, transparency and accountability, the promotion of a seal of quality of algorithms, and the ethical use of artificial intelligence reliable and respectful of fundamental rights[2].

Likewise, Law 12/2021 amends and adds letter d) in Article 64.4 of the Workers' Statute, whereby works councils have the right to be informed by the company of the operating system on which algorithms or artificial intelligence systems are based "*that affect decision-making that may impact on working conditions, access to and maintenance of employment, including profiling*". Therefore, in Spain it is a right that workers, through their representative bodies, are informed of the algorithmic operating methodology of the companies that use them. Algorithmic bias is a problem that is difficult to avoid, since the dependence of the observed data on the machine learning model can generate this prejudice, which can give rise to certain artificial processes that are detrimental to certain workers. The machine learning model, although modifiable, can undergo a cyclical process in which a certain bias is generated again and again (Santos, 2021). On the other hand, in our national Law it is set the individual right to information on fully automated decisions, established by Article 22 of the General Data Protection Regulation (hereinafter, GDPR).

[2] Article 23. Artificial Intelligence and automated decision-making mechanisms.
1. Within the framework of the National Artificial Intelligence Strategy, the Charter of Digital Rights and European initiatives on Artificial Intelligence, public administrations shall encourage the implementation of mechanisms so that the algorithms involved in decision-making used in public administrations take into account criteria of minimisation of bias, transparency and accountability, whenever technically feasible. These mechanisms will include their design and training data and address their potential discriminatory impact. To this end, impact assessments will be promoted to identify potential discriminatory bias.
2. Public administrations, within the framework of their competences in the field of algorithms involved in decision-making processes, shall prioritise transparency in the design and implementation and the interpretability of the decisions taken by them.
3. Public administrations and companies shall promote the use of Artificial Intelligence that is ethical, reliable and respectful of fundamental rights, especially following the recommendations of the European Union in this regard.
4. A seal of quality for algorithms shall be promoted.

This right of information to workers on platforms includes the use of the algorithm and artificial intelligence systems employed, the type of technology used by the algorithm as well as the particular software or product and the degree of qualified human intervention in the decisions taken by algorithmic use; information regarding the operation of the algorithm, including the variables and parameters used, in a clear and simple manner; and, finally, information on the consequences that may arise on the decision taken by the use of algorithms.

One of the debates that we can observe is about the need to negotiate or not the algorithm with the legal representation of workers. Currently, there is no general obligation to negotiate the use of algorithms. Nevertheless, there are certain issues in which it is mandatory to negotiate, such as those relating to substantial modification of working conditions, temporary layoffs or collective dismissals when this is determined by the algorithm. Likewise, it is not mandatory to carry out an algorithmic audit, but companies are obliged to carry out an algorithmic impact assessment prior to the processing of the employee's personal data *ex* article 35.3 GDPR.

A) Rights related to the use of digital media

Chapter Third of Law 10/2021 includes a 5th section dedicated to the rights related to the use of digital media and is divided into two parts such as, on the one hand, the right to privacy and data protection, and on the other, the right to digital disconnection (articles 17 and 18, respectively).

Regarding the first of these, the law refers to the Organic Law 3/2018, of December 5th, on Personal Data Protection and Guarantee of Digital Rights, regulating the guarantee to privacy and data protection in accordance with the principles of suitability, necessity and proportionality of the means used. It prohibits the installation of programs or applications in devices whose property belongs to the worker; as well as it indicates that companies must establish criteria for the use of digital devices respecting in any case the minimum standards of protection of their privacy. Collective bargaining is provided for in order to specify the personal use of the computer equipment made available by the company for the development of remote work.

The other of the rights refers to digital disconnection. This is defined as the "limitation of the use of the technological means of business communication and work during rest periods, as well as respect for the maximum duration of the working day and any limits and precautions regarding the working day provided for in the applicable legal or conventional regulations". As in the previous case, collective bargaining is competent for the establishment of the means and measures used for the effective compliance with the right to digital disconnection.

b) The role of the Labour Inspectorate

Ultimately, and as a guarantee of compliance with the rights mentioned in the previous section, is the Labour and Social Security Inspectorate (in Spanish acronym ITSS).

Firstly, and as a result of Royal Decree-Law 2/2021, an adaptation of the administrative sanctioning procedure to the possibilities that new technologies allow is planned, using a mechanism for the extension of automated reports, i.e., sanctioning procedures that do not require the direct and personal intervention of an official of the ITSS corps, although these procedures will only be related to state competences - those of Social Security and Employment -, leaving out of this adaptation the infractions in labor or occupational risk prevention matters, but without having a precise and detailed legal development adequate to the situation (Mercader, 2022: 134).

Of great interest is the predictive approach that could be adopted by the ITSS in the future, which, mixed with the extension of automated reports, would generate greater control over work in general and platform work. We refer to the so-called predictive policing, based on the use of available data to predict where the intervention of the Labour and Social Security Inspectorate will be necessary, although for its implementation great challenges must be faced, as indicated by EU-OSHA in *The future role of big data and machine learning in health and safety inspection efficiency*[3].

[3] https://osha.europa.eu/es/publications/future-role-big-data-and-machine-learning-health-and-safety-inspection-efficiency

3.5. Jurisprudential Review

Thus, this issue has come to the forefront in the Courts:

a) Judgment of the Court of Justice of the European Union of December 20, 2017.

The European justice forces Uber to operate with a license. It is a transport service and not a collaborative digital platform. The CJEU obliges Uber to operate with a license as it is a transport service and not a digital platform of intermediation between travelers, so it will be obliged to work with a license -like the vehicles for hire with driver with which it currently works in Spain- and may not be operated by private drivers. It points out that an intermediation service whose purpose is to connect, by means of an application for smartphones, in exchange for remuneration, non-professional drivers who use their own vehicle with people who wish to make an urban journey, is inextricably linked to a transport service and, therefore, must be classified as a "service in the field of transport", for the purposes of art. 58.1 TFEU (Legal foundations 33-49 of this Judgement).

b) Judgment of the Supreme Court of September 25, 2020. Requirements of the employment relationship.

The Plenary of the Social Chamber of the Supreme Court declared the existence of an employment relationship between a rider and Glovo since this technological company is not a mere intermediary in the contracting of services between businesses and delivery drivers, limiting itself to putting consumers (the customers) and genuine self-employed workers (the delivery driver) in contact, but rather coordinates and organizes the productive service. It provides courier services by setting the price and payment conditions of the service, the essential conditions for the provision of the same, it is the owner of the essential assets for the performance of the activity, for which it uses delivery persons who do not have their own autonomous business organization, who provide their service within the work organization of the employer, subject to the management and organization of the intermediation platform (Legal foundations 15-21 of this Judgement).

c) Judgment of the Supreme Court of July 2020. Collective dismissal of self-employed delivery workers.

The Plenary of the Supreme Court recognized that the most representative trade unions have standing to challenge the collective dismissal of self-employed delivery workers, who work through digital delivery platforms, carried out *de facto*, i.e., without following the legally established procedure. The workers individually considered are excluded from the collective action, so denying legal standing to the most representative national trade unions and which, in turn, in a case such as the present one of absence of legal or union representation, would prevent the challenge of the collective dismissal of the company's actions, which would mean emptying of content the right to effective judicial protection that the workers may have from the collective perspective, since the decision of the company would become irrevocable, pending only the possible individual actions of the affected workers, which have a different purpose and serve to protect interests not comparable to those that the collective process seeks to satisfy (Legal foundations 2 and 3 of this Judgement).

4. THE INFLUENCE OF REGULATION AND COLLECTIVE BARGAINING IN THE PLATFORM WORK SECTOR

4.1. The impact of Law on collective action for digital platform workers

As we explained, Spain is a pioneer in the regulation of work on platforms through social dialogue. Continuing the analysis of the Judgment of the Supreme Court of September 25, 2020, as we told, in which the foundations were laid to establish that the riders were employed by companies, these being:

- Worker´s subjection to instructions or orders provided by the platform to which they are connected.
- Workers are not owners of the means of production, that is, of the platform, which is the main means of production. Bicycle or delivery vehicle and mobile phone are only accessory elements.

- Worker´s submission to schedules by means of an "after the fact" control, that is, sanctions for disconnection or in relation to the number of connected hours when assigning orders.

This Judgment led to the approval of Law 12/2021, which is the result of social dialogue between the most representative trade union and employers' organizations.

The two most important aspects of the Judgement are, on the one hand, the presumption of employment *iuris tantum*, which, as we will see below, is fully incorporated into the labor law, and on the other, the flexibility in the application of the requirement of legal features of labour relationship (specially, about the independence or autonomy between employee and employer), which, as we have noted in the previous section, constitutes a tradition and a workhorse of the jurisprudence of the Labor Chamber of the Supreme Court.

That is, that in response to the actual obligatory content framed in a coordination and organization of the service production by the defendant company, as well as a fixing of the remuneration and payment conditions, owner of the essential elements of the provision of services, specifically the platform and the algorithm, as well as a constant control by geolocation and monitoring of riders with the possibility of imposing sanctions, supposes a manifestation of the labor nature of the contractual relationship and a reasonable managerial power of the employer. Despite what we have commented, the concept of worker continues to be the same as before the reform, without material effects can be appreciated on the institutes contained in the labor standard. However, what is given here are legal tools to make the presumption of employment fall on the side of work for others.

Thus, the new 23rd Additional Provision of the Workers' Statute states that:

"*By application in accordance with the provisions of article 8.1, it is presumed that the activity of persons who provide paid services consisting of the delivery or distribution of any consumer product or merchandise, by employers who exercise the business faculties of organization, management and control directly, indirectly or implicitly, through the*

algorithmic management of the service or working conditions, through a digital platform".

In addition, it is necessary to remark again the new section d) of article 64.4 of the same norm establishes that the worker has the right to:

"*Be informed by the company of the parameters, rules and instructions on which the algorithms or artificial intelligence systems are based that affect decision-making that may impact on working conditions, access to and maintenance of employment, including profiling*". Therefore, it serves, as we will see immediately, as a reminder of a procedural nature. What we see affected here, as we mentioned above, is not the concept of worker, which remains unchanged, but only the burden of evidence, that´s it, that it is the employer who has to probe that the contract is a commercial contract and not an employment contract, following the subject scope of the Workers' Statute determined by Article 1. It draws the attention of the commentator of the norm that in the new Additional Provision 23 of the Workers´ Statute the exclusion of the scope of the reversal of the burden of evidence of the workers is expressly recalled with administrative authorization included in section 3 of Article 1, since, as is well known, the presumptions in Law cannot in any case modify the substantive law. This means that, essentially, the changes provided by the new regulation only could establish processual obligations to the parts in a trial.

Thus, the determination of the existence of employment will not be affected by the reform, but only on who supports the proof of it, something that was already established in article 8.1 of the Workers' Statute. What differentiates the Additional Provision 23rd and this Article 8.1 is the specific issue to which this presumption operates if the provision of services is carried out by workers framed in digital platforms managed by an algorithm.

Although, *a priori*, this legal regulation might seem superfluous due to the existence of previous regulation, in practice it is intended to greatly simplify the judicial panorama in relation to the disparity of criteria between Judges and Courts for similar cases, which has been the usual trend up to now in which the companies owners of digital platforms have been jumping from appealing Judgements to Higher Courts until the Social Chamber of the Supreme Court has been allowed to begin to unify doctrine on the issue.

It should be noted that the presumption of employment of Additional Provision 23rd supposes the assumption by the legal operator of a series of requirements greater than those necessary to activate the presumption of Article 8.1 of the Workers` Statute. The latter establishes in a generic way a reversal of the burden of proof whenever there is a contract for the provision of remunerated services. In practice, the non-existence of a contract in the case of self-employed workers means that the burden of proof will unequivocally correspond to the worker, who will have to prove the existence of employment for others to subsequently be the employer who distorts this nature of the contractual relationship. This changes with the wording of Additional Provision 23rd, as we have advanced, which establishes as requirements for its application that the activities be delivery or distribution, that the management powers be carried out directly or through a platform and that an algorithm be used. to manage the services provided or determine the working conditions.

The complexity of this wording and the introduction of these requirements it was a major obstacle to reach an agreement with the social agents since this reform tried to solve the conflicting of interests. On the one hand, the employers' association, which understand that the reform should be based on a strong procedural character, without affecting the substantive law, and on the other, the unions, which demanded the express inclusion of the term of platform workers in the Workers' Statute.

As we explained previously, in Spain, initially the solutions regarding the legal nature of the riders ‘relationship was carried out by the Courts that, at the moment of translating all this jurisprudential debate into the Law, they pass the baton to the union and business organizations.

From there, we must take into account two currents within the union action. Some riders were framing under the umbrella of the traditional unions, others, and created their own platforms, the most important was “Riders X Derechos”, which had very little activity (or none at all) since the approval of the Rider Law. On the other hand, there is “Repartidores Unidos”, which brings together workers who want to remain self-employed and who has been very critical of the Rider Law 12/2021. It is important to remember that the

traditional or general unions that have signed, in December 2021, the first collective agreement, in this sector, which is that of the well-known Just Eat platform.

In Spain, competition laws do not play an important role in the debate on platform work because traditionally these standards they have not been part of the debate on labor or industrial relations.

However, the Law 12/2021 has influenced in "platform companies" market competition in a different way. After its approval, several companies, such as Deliveroo and Gorillas, chose to leave the country, considering that they could not compete in the market with the new regulation. Others, however, chose to comply with the new regulations, such as Just Eat and Uber Eats.

There was a third way, in the case of Glovo, which had openly decided to break the regulations, assuming that even with the cost of any sanctions it will yield a positive result with respect to business benefits. This has provoked complaints from the other two important companies in the delivery sector, which led, in a short time, to the imposition of sanctions on Glovo by the Labour Inspectorate.

Faced with this situation, companies such as Uber Eats studied and implemented another model to reduce labor costs and that consists of subcontracting personnel to locally established companies as a franchise. This entails a fragmentation of the productive units that makes it more complicated to trace responsibilities and monitor non-compliance, with the aim of reducing, as much as possible, labour costs.

As we have anticipated, the importance of collective rights comes from now on, in that, after normative regulation, social dialogue must necessarily come in a decentralized model of labor relations such as the Spanish one.

This has already been clearly seen in the collective agreement of the Just Eat company in which the UGT and CCOO, the main trade unions in our country, have had representation, which are the most representative general unions (we note here that there have been no specific associations of riders).

More timidly, in the so-called collective agreements of traditional sectors, such as the hotel industry, delivery person or rider have begun to be included as a specific category, as, i.e., the case of the Hospitality State Labour Collective Agreement.

It is evident that, in addition to the three variables described above, a whole profusion of economic, political, historical, and ideological determining factors intervenes in this spiritual function that Labor Law has of integrating the existing conflict between capital and work. They endow the debate around the employment of platform workers with extraordinary importance since, as we will see later, this process constitutes a real war to keep the new forms of service provision within the sphere of Labour Law, born with the application of new technologies, and which have called into question the social idea of Europe and the traditional model of labour guarantees, to unsuspected extremes.

In the regulation of platform work, there is a debate about the path that the Social State will take from now on, serving as a precedent for the new forms of provision of services that are surely to come. In recent years, the importance that, from all points of view, is acquiring what is known as work on platforms, as well as the effects derived from the introduction of new technologies, mainly artificial intelligence, in the management of human resources. This reality has attracted the interest of legislators and scientific doctrine, and formidable efforts[4] are being made, both by one and the other, to maintain the provision of services derived from work on platforms within the boundaries of our Labour Law.

To conclude, there are three phenomena to understand the timidity with which, in a country where collective bargaining plays a key role in labour relations:

1. That the fragmentation of the platform workers themselves with respect to their nature and the low level of unionization and organization of the sector has forced the burden of the fight to maintain this type of service provision under the umbrella of Labour Law to have been borne by the courts.

2. That only one company, Just Eat, has promoted the establishment of a company agreement because it has distanced itself from the two majority currents: the first fleeing

[4] OIT (2021), *The role of digital labour platforms in transforming the world of work*, Geneva.

labor regulation (Deliveroo case), the second subcontracting and atomization of units productive (Uber case), which entails the inclusion of these workers under traditional categories.

3. That State regulatory intervention has brought a dead stop to the development of platform work companies, a sector that is still undergoing full restructuring and that has yet to decide whether to take the path of collective bargaining or that of " uberization".

Behind the profusion of academic papers and judicial decisions that we have witnessed in recent years around the platform economy and its further jump to positive legislation is the result of an enormous intellectual effort on the part of lawyers to adapt Labour Law to the new forms of provision of services and, of an ideological struggle between the eternal capital/work dichotomy. It seems to obey what Professor Díez Picazo described as the challenge for jurists consisting of finding out how social and legal changes are interrelated, the so-called theory of legal change.

The legal system does not change automatically with social reality but can only do so through the mechanisms that it establishes to transform it, so it will always be one step behind social reality.

This does not imply, in our opinion, in any way, a distrust in the power of the legal norm. On the contrary, it supposes an exaltation of this awareness of its limitations. As Ihering recalls in his famous work, the law supposes an antithesis, the inseparable unity in the duality of peace and struggle, peace being the objective of the law and the fight the objective to achieve it.

The direction set by the Supreme Court in Spain and the proposal for a Directive allow us to glimpse an optimistic future for Labour Law in Europe and the European Social project, because it can be seen how the institutions of the employment relationship adapt to the new realities emerging from the prolific rays of the new technologies applied to business activity.

With the final approval of the Directive, platform workers will be guaranteed the possibility of obtaining a correct employment situation with respect to their actual relationship with the platform, with access to labour and social rights.

They will also have guaranteed access to information on algorithmic management. This regulation will establish a comprehensive framework for the erroneous classification (in the words of the Directive) of platform work, by establishing procedures for framing workers within the employment relationship for others, mandatory for administrative authorities and Courts of Justice.

With the final approval of the Directive, community legal operators will have a formidable tool with which to interpret the contractual relationships of platform workers and, what is more important, the foundations will have been laid for the reform and adaptation of the Labour Law to the new forms of provision of services, being the definitive knock on a discipline that, for more than a hundred years, has meant the embodiment of an authentic "Fight for Law".

5. AN OVERVIEW OF THE DIRECTIVE'S PRECEPTS

On December 9, 2021, the European Commission presented a proposal for a "Directive of the European Parliament and of the Council on the improvement of working conditions in platform work". This text for the first time estasblishes the criteria to determine whether or not the platform in question has the status of employer. To do so, it establishes a *iuris tantum* presumption of its status as employer.

With this, the European Union wants to improve the working conditions and social rights of these workers, even though it is aware of its regulatory difficulties. This means that this new regulation tends to balance the interests of companies that own platforms and workers, in compliance with the provisions of Article 3 of the Treaty on European Union, that is, to promote the well-being of peoples through an economy competitive and full employment. All this, in congruence with the fifth European Pillar of Social Rights, which establishes that, regardless of the job and its duration, every worker has the right to fair and equitable treatment in terms of working conditions and access to social protection.

It is palpable that, as the Directive proposal itself says, the digital transition, which has been accelerated by the pandemic caused by COVID-19, has given a great boost to the work of platforms. For this reason, the European Union intends with this Directive not to

restrict, but to accompany and supervise that the growth and opportunity that new technologies represent. That is accompanied by a guarantee of the labour and social rights of workers.

The Directive uses the term "misclassification" to distinguish those truly self-employed workers who make use of the platforms as a way of expanding their business, from those others who are truly employed by others and indicates them as susceptible to suffering poor working conditions and inadequate access to social protection.

From its Article 1, the Directive proposal emphasizes what is the key to the vault of future European regulation, that is, the algorithm, through a system of equity, transparency, and accountability of these systems. In section 2 of this first Article, minimum rights are established for people who work in this type of company, assimilating compliance with these minimums to the existence of an employment relationship.

As in all Directives, it is tremendously interesting to pay attention to the definitions. Thus, a "digital labor platform" will be the natural or legal person that provides a commercial service that is offered remotely, by electronic means, at the request of the final consumer and whose necessary component to carry it out is a form of organization of the work carried out by the providers. "Platform work" will be any work organized through a digital work platform carried out within the borders of the European Union. "Person performing platform work" means any individual and personal execution of a commission. "Platform worker" shall be any person who has an employment relationship with the owner company in accordance with the current legislation of the Member State in question.

Article 3 imposes an inspection and control obligation on the part of the competent authorities of the Member States to determine the relationship that joins individual workers and platform companies, determining in each case the existence of that employment relationship based on the facts related to the actual performance of the work, and the way to use the algorithms if they serve to organize production, all of this regardless of the relationship that the parties have formally established.

Perhaps Article 4 of this text in the process of being approved is the most interesting of the entire regulation, since it is the precept in which the legal presumption of employment will be regulated, in terms like those set forth in the Spanish regulations that already exist,

and we have referenced. This presumption will be activated as long as two of a list of elements detailed in the Article are met and which we will refer to, such as that the company that owns the platform establishes the maximum limits of the remuneration received by the worker; that there are binding rules for the worker on appearance, conduct or performance of the service; that there is a supervision of the work or a verification of the quality of the results, which can be done by electronic means; establish restrictions on the freedom of organization of the work, such as choosing the schedule, accepting tasks proposed by the platform or the possibility of subcontracting the activity or being replaced, restricting the possibilities of working for third parties.

The extension of the precept is striking, in whose profusion of elements the multitude of disparate judicial criteria that has been taking place at the European level on the employment of platform workers seems to be refined, so that all workers are protected by this new Directive. It will be necessary to wait for Article 5 to verify that the true nature of this presumption is none other than *iuris tantum*, since the possibility of refuting the legal presumption of employment is established by proof valid in Law by the company or owner of the digital platform. This evidence may be the digital platform itself, functioning as an *ultima ratio* with which the sued companies will be able to defend themselves.

From Article 6 we enter Chapter III, extremely interesting in our opinion, whose title is *"Transparency and use of automated systems of monitoring and decision making*". In essence, this Article obliges digital platforms to provide Member States with the necessary information about the computer systems they must oversee and monitor the activity of workers, especially those that influence decisions adopted that affect working conditions, salary, safety and health, working time, internal promotion, etc.

These monitoring systems must be known by the competent authorities of the Member States, whether they are already in use or in the process of being implemented, regarding what monitoring actions, including the assessment of the end customer, are carried out, the main parameters considered for automated decision-making, and the motivation for decisions to restrict the worker's account, suspensions, and terminations. This information must also be provided to the legal representatives of the workers.

Article 7 focuses on occupational health and safety, requiring the company to use algorithms that evaluate the impact of the use of these technological instruments, with special emphasis on decisions that may affect risks of occupational accidents, psychosocial risks, and ergonomics. This rule establishes safeguards and later evaluate them to ensure that they are adequate and adapted to the specific work environment of the company that owns the platform and its sector of activity. It must also establish effective preventive measures to prevent pressure and stress in platform workers.

A novel fact is the introduction of the figure of the person in charge of monitoring the algorithm, a kind of "algorithmic delegate", whose function will be to invalidate unfair algorithmic decisions and who will enjoy protection like that of representatives workers, against dismissal, sanctions, and other guarantees inherent to their function.

Finally, Article 8 leads us directly to the concept of algorithmic transparency and to the human review of automated decisions, since workers of the platforms will have the right to have the decision-making process of any measure that affects them taken through an automated procedure explained to them, which, in addition, must be accompanied by a written motivation that will be delivered to the worker.

6. ASSESSING THE EU COMMISSION'S PROPOSAL ON IMPROVING WORKING CONDITIONS IN PLATFORM WORK: HOW WOULD IT AFFECT THE REGULATION OF THE SUBJECT IN SPAIN? (Some conclusions of this report)

The proposed Directive aims to ensure that people who work through digital platforms are recognized as having the employment status that corresponds to their actual type of work. It provides a list of check criteria to determine if the platform is an "employer". If the platform meets at least two of those criteria, it is presumed, from a legal point of view, to be an employer. Therefore, the people who work through the platform in question would enjoy the labour and social rights that the condition of "worker" entails. Legislation and protection should also be provided in favour of these workers, as they are a very vulnerable group.

In its proposal, the European Commission defines the following objectives:

- Firstly, it aims to specify the employment situation of workers on these digital platforms, so that they obtain the labour rights necessary for their services, such as a minimum wage, collective bargaining, regulation of working hours and health protection.
- Secondly, it aims to ensure that workers themselves understand the service they provide in terms of algorithmic management on digital platforms, so that they can challenge the working conditions that affect them.
- Thirdly, a proper execution and traceability of the work on the platforms.
- Finally, to promote collective bargaining and social dialogue, with regard to decisions affecting workers.

The controversy about the legal nature that can be attributed to the distribution activity carried out through digital platforms is addressed in Spain through two ways: jurisprudential solutions —Supreme Court Judgement of September 25, 2020— and legal —Law 12/2021, of September 28. Always bearing in mind that Royal Legislative Decree 2/2015, of 23 October, which approves the Revised Text of the Workers' Statute Law, establishes minimum rights that must be respected.

In order to connect this topic again, the Supreme Court, in its extremely important ruling handed down in plenary session on 25 September 2020 (rec. no. 4746/2019), proceeded to resolve the issue raised, concluding in relation to the Glovo digital platform that in the case in question the defining characteristics of the employment contract between the delivery driver and the defendant company provided for in art. 1.1 Workers´ Statute are present and, consequently, the relationship existing between the two must be classified as an employment relationship. It is true that initially the Supreme Court's decision was limited to this digital delivery platform, but subsequently, the same criterion has been adopted with respect to other digital delivery platforms, as has been the case with the Deliveroo platform, by means of the Supreme Court's Judgment of 18 May 2021 (rec.. 3350/2020).

As we explained previously, despite of this Judgment of Supreme Court of 25th September, 2020, it seemed that the controversy might have been resolved, but nothing

could be further from the truth, since most of the digital delivery platforms, in clear defiance of the Supreme Court's ruling, announced that they would continue and in fact continued with their business model.

Finally, we also noted after a long and more than complex negotiation process, among Government, employers' association and trade unions, it was adopted a legal text, to guarantee the employment rights of persons engaged in delivery services in the field of digital platforms (Royal Decree-Law 9/2021), , whereby a "presumption of employment in the field of digital delivery platforms" was introduced, by virtue of which "the activity of persons who provide paid services consisting of the delivery or distribution of any consumer product or merchandise by employers who exercise business powers of organisation, management and control directly, indirectly or implicitly, by means of algorithmic management of the service or working conditions, through a digital platform (...) is presumed to be included within the scope of this law (...)".

This Royal Decree-Law was subsequently processed as a Law, giving rise to Law 12/2021, of 28 September which amends Workers' Statute Law, which, as far as the object of this study is concerned, contains identical regulations to Royal Decree-Law 9/2021.

However, in the face of this regulatory intervention, the different digital platforms have adopted different strategies which, apart from the minority of cases in which delivery persons have been hired by the digital platforms, are causing new controversies, such as the use of subcontracting to other carriers or delivery companies, were delivery driver cooperatives, were created for this purpose to carry out deliveries managed through the digital platform, as well as the use of temporary employment agencies.

This Law 12/2021 does not proceed to create a separate or specific figure for this group of delivery workers, either through some type of self-employed or parasubordinate work, a special employment relationship, or even through a particular contractual modality, but rather, as has already been anticipated, it limits itself to providing that "it is presumed to be included" within the scope of the Workers´Statute that the activity of persons who provide paid services consisting of the delivery or distribution of any consumer product or merchandise, by employers who exercise the business powers of organisation, management and control directly, indirectly or implicitly, by means of algorithmic

management of the service or working conditions, through a digital platform, (23rd Additional Provision included in Workers´Statute).

There is no longer an attempt to regulate all digital platforms, but only those of a certain sector of activity - the delivery sector - probably because this is the most conflictive and mediatic sector and whose "labourisation" was already endorsed by the Supreme Court.

But then "*What does this rule really contribute, if what it says is that it will be persons in an employment relationship who provide services in the field of algorithmic management and control? Isn't it redundant, more of a tautology*?" (Molina Navarrete, C., 2021) Is it a true presumption of employment?

Labour law, in our branch of the legal system, is immense and changing. We should start from the premise that it is a tuitive law, and this is so because it is born with the aim of protecting workers with respect to labour relations; and this is what our labour law does, it creates norms in a changing Social State, which requires continuous normative legislation in this field.

Thus, about this new proposal for a Directive, some of the aspects that should be adopted or taken up more specifically in our legislation are as follows:

- In view of the above, a more exhaustive specification of the scope of the provisions of the Statute is necessary, as it is true that we are currently in changing times, in a digital era that will continue to grow, and that this should lead to more appropriate legislation that does not forget to protect the worker from these new realities.
- In other matters, it will also be necessary to make a clear and concise differentiation of the status of the worker on digital platforms, as their protection depends on it; currently, there is only the presumption of employment previously provided for by the 2021 Law, but in most cases, it is up to the Courts to clarify the worker's status.
- We think, it is necessary a definition of the employment relationship. The law should clearly define the employment relationship between workers and digital platforms, so that workers obtain the labour rights necessary for the provision of

services. It should be borne in mind that these workers are not self-employed. On the contrary, they are in a subordinate employment relationship with the platform.

- Other thing it is important is to define accurately Workers' rights. Working on digital platforms brings with it new forms of work, which also requires the updating of other rights. The law should establish the labour rights of digital platform workers, such as the right to a minimum wage, collective bargaining, working time regulation and health protection. In particular, it is worth noting the right to digital disconnection. In Spain, this is regulated in article 20 bis of the Workers' Statute, in articles 87 and 88 of the Law on Data Protection and Guarantee of Digital Rights, and in the new Law 10/2021, on Remote Work. These matters should specify in a more exhaustive manner the right to digital disconnection of workers on digital platforms.
- In addition, other labour rights, such as protection against discrimination, the right to training, the right to Social Security and the right to freedom of association, should be reinforced for these types of workers.
- The law should establish mechanisms for transparency in the algorithmic management of digital platforms, so that workers are aware of the service they provide in terms of algorithmic management and can challenge the working conditions that affect them.
- Also, as far as we are concerned, the law should establish mechanisms for enforcement and traceability of work on digital platforms, so as to ensure that workers perform the work assigned to them and that this work is properly remunerated.
- Finally, the regulation has to promote collective bargaining and social dialogue. In Spanish labour matters, it is very necessary to mention collective agreements, which are still few in number, that agree on rights regarding digital disconnection, and regarding work on platforms. The law should promote collective bargaining and social dialogue so that workers have a say in decisions affecting their working conditions. Mechanisms for social dialogue and collective bargaining should be established to resolve conflicts and improve the working conditions of employees. The working conditions of these persons, in terms of working hours, pay, rest

breaks, digital disconnection, work-life balance and all other issues related to the provision of work, should be set out in more detail and collective bargaining is a necessary tool for develop these issues.

We can see that there is currently little legislation in Spain that affects workers on digital platforms, and although the Workers' Statute has been modified with the aim of protecting this type of worker, as far as the type of employment relationship is concerned. In this moment, Courts are in charge of providing a response, mainly classifying them as an employment relationship. But some companies try to avoid Workers´Statute regulations through the hiring of independent workers or other companies.

In conclusion, the *lege ferenda* proposal to regulate labour relations in digital platforms such as Glovo or Uber Eats in Spain should address workers' labour rights, transparency in algorithmic management, enforcement and traceability of work, and the promotion of collective bargaining and social dialogue. This law will ensure that workers on these digital platforms have the same labour rights as any other worker in Spain.

7. BIBLIOGRAPHY:

Albújar-Verona, C.E., Celis-Castillo, D.J., Rojas-Sánchez, E.A. and Medina-Cardozo, I.I. (2022). *Plataformas digitales y los indicadores en el sistema de gestión de seguridad y salud en el trabajo: una revisión sistemática*. Pp. 165-172.

Aragüez Valenzuela, L. (2021). *Los algoritmos digitales en el trabajo. Brechas y sesgos.* https://ejcls.adapt.it/index.php/rlde_adapt/article/view/1080

Casado, N. (2023, febrero 12). *WhatsApp "se cuela" en la negociación colectiva para proteger la desconexión*. La Información. https://www.lainformacion.com/economia-negocios-y-finanzas/whatsapp-se-cuela-negociacion-colectiva-proteger-desconexion/2881201/

Desafíos de la digitalización para la seguridad y salud en el trabajo: la emergencia de riesgos psicosociales y el trabajo de plataformas digitales. Instituto Nacional de Seguridad y Salud en el Trabajo (INSST), O.A., M.P. Elaborado por Jorge Martín González. https://www.insst.es/el-instituto-al-dia/desafios-de-la-digitalizacion-para-la-seguridad-y-salud-en-el-trabajo-la-emergencia-de-riesgos-psicosociales-y-el-trabajo-de-plataformas-digitales-ano-2023

European Comision (2022). Questions and Answers: Digital Services Act. https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_2348

European Council (2022). *EU rules on platform work*. https://www.consilium.europa.eu/en/policies/platform-work-eu/

Garben, S. (2019). *Taking social disruption in the online platform economy.* https://feps-europe.eu/wp-content/uploads/downloads/publications/feps%20paper%20-%20garben%20-%20clean%20final.pdf

Gines I Fabrellas, A. (2020). *El tiempo de trabajo en plataformas: ausencia de jornada mínima, gamificación e inseguridad algorítmica.* https://e-revistas.uc3m.es/index.php/LABOS/article/view/6045

Grisolia, J. (s/f). *EL TRABAJADOR DE PLATAFORMAS DIGITALES Y SU VINCULACIÓN CON EL TRABAJADOR AUTÓNOMO ECONÓMICAMENTE DEPENDIENTE*. Revista-ideides.com. http://revista-ideides.com/el-trabajador-de-plataformas-digitales-y-su-vinculacion-con-el-trabajador-autonomo-economicamente-dependiente-2/

https://observa-tas.org/conflicto/tribunal-supremo-auto-deliveroo/

La regulación del trabajo en las plataformas digitales. (2022, enero 31). Funcas; Funcas - Fundación de las Cajas de Ahorros. https://www.funcas.es/articulos/la-regulacion-del-trabajo-en-las-plataformas-digitales/

López Cumbre, L. (2022). *El trabajador autónomo en las plataformas digitales*. https://www.ga-p.com/publicaciones/el-trabajo-autonomo-en-las-plataformas-digitales/ Accesed 8 April 2023

Lozano Lares, F. (2019). El nuevo escenario en materia de tiempo de trabajo.: XXXVIII Jornadas Universitarias Andaluzas de Derecho del Trabajo y Relaciones Laborales. https://www.juntadeandalucia.es/empleoformacionytrabajoautonomo/portalcarl/carlportal-portlets/documentos?nombre=942a6257-9c56-4ba2-aa31-19cb60dafac1.pdfb

Lozano Lares, F. (2021). Los efectos sinérgicos de la prestación de servicios en plataformas on line, el trabajo de cuidados y el trabajo no declarado como retos de trabajo decente en la nueva sociedad digital. https://institucional.us.es/revistas/Prot_Social/6_2_2021/Art_11.pdf

Marina G.G y Laura H. (1/2022). EL RETO DE LA MEDICIÓN DEL TRABAJO EN PLATAFORMAS DIGITALES. Banco de España. Eurosistema. https://repositorio.bde.es/bitstream/123456789/20459/1/be2201-art03.pdf

Mercader Uguina, J. R. (2021). *Algoritmos e inteligencia artificial en el derecho digital del trabajo.*

Molina Navarrete, C. (2021). *La "Ley" de personas repartidoras en plataformas online ("riders"): pequeño paso legal, gran paso para humanizar el precariado digital?* En el Blog Transforma Work. Blog Información. https://www.transformaw.com/blog/ la-ley-

de-personas-repartidoras-en-plataformas-online-riders-pequeno-paso-legal-gran-paso-para-humanizar-el-precariado-digital/

Moreno Gené, J. (2021). *Presunción legal de laboralidad del trabajo en plataformas digitales de reparto: ¿Y ahora qué? https://revistas.uma.es/index.php/REJLSS/article/view/13825/14834*

Moreno Gené, J. (2022). Presunción legal de laboralidad del trabajo en plataformas digitales de reparto: ¿Y ahora qué?. *Estudios doctrinales,* núm. 4, págs. 159-207. Recuperado de: https://revistas.uma.es/index.php/REJLSS/article/view/13825/14834

OIT (2021), *The role of digital labour platforms in transforming the world of work*, Geneva.

Pérez Capitán, L. (2019). *La controvertida delimitación del trabajo autónomo y asalariado. El trade y el trabajo en las plataformas digitales.* Thomson Reuters/Aranzadi, Cizur Menor. Pp 210.

Santos Álvarez, C. (2021). *Los algoritmos y el Derecho.* https://buleria.unileon.es/bitstream/handle/10612/13508/SANTOS%20%C3%81LVAREZ%2C%20CLARA.pdf?sequence=1&isAllowed=y

Serrano, I. Y. (2022, abril 19). *Trabajadores de plataformas digitales*. Instituto Europeo de Asesoría Fiscal. https://www.ineaf.es/tribuna/trabajadores-de-plataformas-digitales/

Tipos de contratos. (s/f). Juntadeandalucia.es. https://www.juntadeandalucia.es/temas/empresas/personal/contratos.html