LEGAL AND ADMINISTRATIVE STUDIES, www.jlas.upit.ro.
e-ISSN: 2344-6900, ISSN-L: 1583-0772
Supplement 2025, pp. 388-399

THEORETICAL AND JURISPRUDENTIAL EXAMINATION OF THE PROFESSIONAL STATUS OF WORKERS ON DIGITAL WORK PLATFORMS

Livia-Florentina PASCU
ORCID [ID]: https://orcid.org/0009-0008-0780-4702
E-mail: livia.pascu@ymail.com
Afiliation: Doctoral School of Law, Bucharest Academy of Economic Studies

Abstract: *Theoretical and jurisprudential examination of the professional status of workers on digital work platforms*

Digitalization is changing the world of work, the use of digital technologies in the field of work has led to the emergence of new forms of work provision, has led to the emergence and development of digital work platforms. Work on platforms is carried out by people through the digital infrastructure of digital work platforms, that provide a service to their clients.

The question arises whether the service provider through the digital platform is an independent worker or a worker to whom labor law legislation applies, whether the activity performed by the worker on the digital platform can be defined as an employment relationship or is it only a service provision activity subject to civil law rules.

Courts are tasked with disputes in which they must determine the professional status of the service provider through digital work platforms.

Keywords*: professional; worker; employee; self-employee; digital platform work.*

Introduction

Digitalization is changing the world of work, the use of digital technologies in the field of work has led to the emergence of new forms of work provision, and has led to the emergence and development of digital work platforms.

Work on digital platforms can be carried out exclusively through online electronic tools, or it can be carried out in a hybrid manner, by combining online communication with the performance of a physical activity.

Working through digital platforms facilitates access to the labor market, creates new employment opportunities for those who would normally be excluded from the labor market (due to age, illness, disability, gender), ensures additional income by performing a secondary activity, offers flexibility in organizing working time, but at the same time raises questions regarding the professional status of those who perform work through digital platforms, whether existing social systems offer them protection, whether there are guarantees regarding compliance with working time, minimum income, and the right to private life.

Professional status of workers on digital work platforms

The European Agency for Safety and Health at Work (EU-OSHA, 2022) defines digital platform work as: paid work provided or brokered through an online platform. The main characteristics of digital platform work are the following: paid work is organised/coordinated through a digital work platform; specific tasks are performed or specific problems are solved; algorithmic management based on digital technologies is used to allocate, monitor and evaluate the work performed, the behaviour and performance of platform workers, including based on customer assessment mechanisms; three parties are involved, namely a digital work platform, a customer and a worker; there is a prevalence of non-standardised working arrangements, digital work platforms tend to classify workers on digital platforms as self-employed.[1]

According to Eurofound, platform work is a form of employment in which organizations or individuals use an online platform to access

[1] Digital platform work and occupational safety and health: overview of regulation, policies, practices and research, osha.europa.eu/ro/publications, accessed on 24.03.2025

other organizations or individuals to solve certain problems or provide certain services in exchange for a price.[1]

The employment relationship necessarily presupposed the existence of an employer and an employee. This means that the system of employment relations of this type is a binary one: employer - employee. The status of employee is dependent on the way in which the employer, in this capacity, relates to the employee. This argument has often been used by digital platforms to claim that, in reality, service providers registered on these platforms do not meet the conditions to be qualified as employees and, therefore, are not entitled to benefit from the rights regulated by labor legislation in their favor (Vlăsceanu, & Athanasiu, 2021).

Digital work platforms tend to position themselves as beneficiaries of services rather than as employers, with those who perform work through work platforms being considered independent workers and not workers within the meaning of labor law.

To the extent that people working through work platforms are considered to be self-employed, they do not have access to the minimum labour and social protection rights that apply to workers in all Member States, being exposed to inadequate working conditions (the right to a minimum wage, working time regulations, occupational health and safety, social security rights).

Work through digital platforms is characterized by precariousness, the provider faces job insecurity, there is no guarantee of a minimum income, there is no minimum standard of social protection.

Given that three parties are involved in the work performed on a digital platform, that the work performed is often temporary in nature, that the worker enjoys autonomy regarding the place and time of work, the standard concept of work - the binary employer-employee relationship seems to be inapplicable.

---

[1] Platform work, www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary/platform-work acccessed on 16.03.2025

Digital work platforms through algorithmic management establish task allocation, set prices for individual tasks, determine work schedules, provide instructions, evaluate work performed, offer incentives or apply unfavorable treatments, behave like an employer.

Why would a worker performing work on a digital platform conclude a collaboration or service contract and not an employment contract?

As has been shown in the specialized literature, sometimes the parties do not give the contract concluded by them the name corresponding to its legal nature out of ignorance, sincerely believing that what they conclude is a "collaboration contract" or a "services contract". Often, however, the parties deliberately hide the true nature of the contract concluded by them, for fiscal reasons: the contributions paid on the income obtained under a civil contract are usually lower than those mandatory in the case of salaries. But there are also causes related to the desire to avoid the projective norms of labor law, the employer being thus "freed" from the restrictions imposed by labor legislation, and the employee - deprived of the minimum rights from which, in labor law, there is no derogation. Another frequent reason is an attempt to avoid bureaucratic provisions, such as the registration of employment contracts in the General Register of Employees (Dimitriu, 2021).

Initially, the concept of worker was defined by the CJEU, which developed in its case law criteria for qualifying a person performing an activity as a worker.

In the Lawrie-Blum case[1], the CJEU identified the fundamental criteria for defining the concept of worker. According to the Court, the concept of worker should be defined by reference to objective criteria that differentiate the employment relationship, namely the rights and obligations of the person concerned. The essential characteristic of the employment relationship is that a person carries out work of economic value, under the authority and control of another person, in return for

[1] Case 66/85, European Court Reports 1986 -02121, EUR-Lex - 61985CJ0066 - RO - EUR-Lex

remuneration. The field in which the benefits are provided and the nature of the legal relationship between the worker and the employer are irrelevant.

The CJEU jurisprudence has outlined the definitive and cumulative elements that characterize the notion of worker: the activity performed must be remunerated, the remunerated activity must be carried out within the framework of an employment relationship, characterized mainly by subordination to the beneficiary of the benefit, the worker must perform real and genuine work, the worker must perform an economic activity (Moarcăș, 2022, in Ștefănescu, p. 176).

In its case law, the Court has analysed the hypothesis of the formally self-employed worker but economically dependent, ruling that a person may be qualified as a "worker" within the meaning of Union law if his independence is only fictitious, thus disguising a genuine employment relationship.[1]

In this context, Directive 2024/2831[2] was adopted. It defines a digital work platform as a natural or legal person providing a service that meets all of the following requirements: it is provided, at least in part, remotely, by electronic means, such as through a website or a mobile application; it is provided at the request of a recipient of the service; it involves, as a necessary and essential component, the organisation of work carried out by persons in return for remuneration, regardless of whether that work is carried out online or in a specific location; it involves the use of automated monitoring systems or automated decision-making systems.

The Directive operates with two concepts, "person performing work on platforms" and "platform worker".

---

[1] Judgment in Allonby, EU:C:2004:18, paragraph 72, https://curia.europa.eu/juris/document/document.jsf?docid=160305&doclang=EN

[2] Directive 2024/2831 of the European Parliament and of the Council of 23 October 2024 on the improvement of working conditions in platform work

A person who provides work on platforms is a person who provides work on platforms, regardless of the nature of the contractual relationship or the qualification of that relationship by the parties involved.

Platform worker is any person performing work on platforms who has or is considered to have an employment contract or employment relationship as defined in national law, collective agreements or practices in force in the Member States, taking into account the case law of the Court of Justice.

According to the Directive, the professional status of a platform worker is determined in accordance with the legislation, collective labour agreements or practices in force in the Member States, taking into account the case law of the Court of Justice, including by applying the legal presumption of an employment relationship.

The Directive enshrines the principle of the preponderance of the facts, which means that the finding of the existence of an employment relationship should be based primarily on the facts relating to the actual performance of the work, including remuneration for the work, and not on the description of the relationship by the parties, in accordance with ILO Recommendation No. 198 (2006) on Employment Relations.

The European legislator also establishes a relative legal presumption in the sense that the contractual relationship between a digital work platform and a person who provides work on platforms through that platform is an employment relationship in situations where facts are found indicating management and control, in accordance with national law, collective labour agreements or practices in force in the Member States and taking into account the case law of the Court of Justice.

The determining element for the presumption to operate is the existence of facts indicating management and control of the activity performed.

The digital work platform may overturn the legal presumption established by proving that the contractual relationship in question is not an employment relationship, as defined by national law, collective

agreements or practices in force in the Member States, taking into account the case law of the Court of Justice.

In some cases, platform workers do not have a direct contractual relationship with the digital work platform, but are in a relationship with an intermediary through whom they provide platform work. In this case, platform workers are also subject to the same risks related to the misdetermination of their professional status.

And with regard to this category, the Directive provides for measures to ensure that persons who provide work on platforms and who have a contractual relationship with an intermediary benefit from the same level of protection granted under this Directive as those who have a direct contractual relationship with a digital work platform.

The deadline for transposition of the Directive is December 2, 2026.

In national law, art. 1 point 5 of the Social Dialogue Law no. 367/2022 defines the employee-worker as a natural person, party to an individual employment contract or an employment relationship, as well as one who performs work for and under the authority of an employer and benefits from the rights provided by law, as well as from the provisions of applicable collective labor contracts or agreements.

The term worker is also used by Law No. 319/2006 on occupational safety and health. This is the person employed by an employer, as well as students, pupils during internships, apprentices and other participants in the work process.

According to art. 1 paragraph 4 of the Labor Code, the legal employment relationship is the relationship regulated by law under which a natural person, called a worker, undertakes to perform an activity for and under the authority of another natural or legal person in exchange for remuneration.

If in the past the concept of worker was specific to EU law, the emergence of atypical forms of work led to the introduction of the concept of worker in domestic law.

In tax law we also find the criteria under which the activity performed can be qualified as an independent activity (art. 7, point 3, Tax Code).[1]

Currently, there are disputes pending in national courts in which the courts must qualify the nature of the legal relationship under which service providers carry out activity on ride sharing platforms, such as Uber, Free Now, Bolt.

The factual situation that generated this type of litigation is the following: The Territorial Labor Inspectorates carried out checks on commercial companies engaged in alternative passenger transport, finding that the transport service providers had not concluded an employment contract, although the activity report extracted from the electronic platform of the collaborator Bolt, Uber, Free Now, as the case may be, showed that they had performed the activity.

In general [2], the defense of the sanctioned companies was that the labor inspectors wrongly qualified the commercial relationships existing between these companies, intermediaries between labor providers and electronic platforms, as commercial relationships and not labor relationships. It is claimed that the activity was provided under civil service contracts, through which the sanctioned company benefited from the services of service personnel/drivers for the cars made available for their exploitation in a ridesharing regime through online platforms such as Uber, Bolt or similar, the personnel made available to the company, despite the fact that they carry out their activity for its benefit and under the direct coordination of the petitioner, had relationships of predominance with the economic agents with which the petitioner as beneficiary had concluded the service contracts.

---

[1] Fiscal Code, Law 227/2015, published in the Official Gazette 688 of 10.09.2015

[2] Civil Judgment no. 6433/04.03.2024, Timişoara Court, Civil Section I, file no. 17834/325/2023; Civil Judgment no. 2578 /07.06.2024, Târgovişte Court, file no. 1529/315/2024; Civil Judgment no. 898/07.11.2024, Timiş Court, Administrative and Fiscal Litigation Section, file no. 4322/30/2023, rejust.ro

In defense, the Territorial Labor Inspectorate essentially showed that the persons who provided the passenger transport activity are parties to an employment relationship and not a commercial relationship, the notions of working time or work schedule (specific elements of an individual employment contract) being expressly mentioned in the service contract, moreover, the conditions under which the driver can carry out the alternative transport activity are imposed by the beneficiary, a fact that denotes a relationship of subordination of the provider to the beneficiary, the activity is carried out constantly (repetitively) and not occasionally (accidentally), with the beneficiary's means.

In the aforementioned cases, the courts essentially held that there were undeclared employment relationships between the parties, concealed by service contracts concluded with various economic agents, whose administrators were the drivers themselves who provided the transport activity. The fact that the work was performed personally by the respective drivers, according to a certain schedule (12 hours/day), having a continuous nature, the services being paid periodically, compared to the fact that the work was carried out in accordance with the instructions and under the control of the plaintiff and for its main benefit, leads to the conviction that the legal relationship between the parties is an employment relationship.

There were also contrary solutions, in the sense that the court considered that between the plaintiff sanctioned for a contravention, as a beneficiary, and the alternative passenger transport service provider, there is no subordination relationship specific to an individual employment contract. [1]

The court held that the plaintiff was not obliged to conclude individual employment contracts with its collaborators, as they had the status of legal entities, and the administrators of the collaborating

[1] Civil Judgment no. 243/27.01.2025, Oradea Court, file no. 19339/271/2024, rejust.ro; in the same sense Civil Decision no. 900/A/06.11.2024, Timiș Court, Administrative and Fiscal Litigation Section, file 31526/325/2023;

companies who were the drivers performing the trips did not have to have concluded individual employment contracts with the plaintiff, as long as a civil service agreement existed between the two companies.

Another type of litigation that imposed the qualification of the professional status of persons providing transport activity through digital platforms started from situations in which tax inspectors, following the checks carried out, qualified the activity of drivers providing transport through the Uber, Bolt, Free Now platforms as a salaried activity and issued administrative acts by which they established additional amounts consisting of social security contributions, social health insurance contributions, payroll tax, additional labor contribution as the responsibility of the companies. In fact, the companies were authorized to carry out alternative transport of people, but during the period in which they provided the services, the companies did not own the means of transport, so they concluded leasing contracts, for a fixed period, with various individuals who owned the cars used in the alternative transport activity, for which they bore all the expenses regarding their maintenance and use. The drivers who carried out the trips were various individuals, some of them administrators of the company, but their only activity was that of drivers (chauffeurs). The companies' defense was that the activity performed by the drivers was an independent activity.

The court held that the individuals who had the capacity of administrators/drivers do not have the freedom to choose the place and the way of carrying out the activity, nor the freedom to carry out the activity for several clients and do not assume the risks inherent in the activity, since the orders regarding the transport services are transmitted through the Uber, Bolt, Free Now IT applications, of which the company is the authorized partner, as a result of the conclusion of service provision and affiliation contracts to the digital platform with the aforementioned external partners. Also, the criterion according to which the activity is carried out by using the assets of the individual who carries it out is not met, since the company is the holder of the right to use the cars used in the alternative transport activity, as a result of the conclusion of loan

agreements with individuals, and the company has settled the expenses for fuel, parts and car repairs.[1]

Conclusions

Therefore, a judicial practice has emerged in national jurisprudence, which, by applying the criteria that define the concept of employee, or rather worker - namely the person who carries out a remunerated activity under the authority and control of another person - qualifies the status of the person who performs remunerated activity through digital platforms as a worker and not an independent worker.

However, there are also cases in which the court considered that the worker performing work through digital platforms is an independent worker.

As noted in the literature, law plays a critical role in anticipating and guiding, naming and shaping technological change (Aloisi & De Stefano, 2022, p. 19).

Therefore, legislating work on digital platforms is a necessity today that will put an end to discussions regarding the professional status of those who perform work through digital platforms.

References

Aloisi, A., & De Stefano, V. (2022). *Your boss is an algoritm. Artificial Intelligence.* Platform Work and labour, Hart Publishing.

Civil Sentence no. 6433/04.03.2024, Timişoara Court, Civil Section I, file no. 17834/325/2023; Civil Sentence no. 2578 /07.06.2024, Târgovişte Court, file no. 1529/315/2024; Civil Sentence no. 898/07.11.2024, Timiş Court, Administrative and Fiscal Litigation Section, file no. 4322/30/2023; Civil Sentence no. 243/27.01.2025,

[1] Civil sentence no. 1081/07.05.2024, Braşov Court, Second Civil Section, Administrative and Fiscal Litigation, file no. 1081/62/2023, rejust.ro.

Oradea Court, file no. 19339/271/2024; in the same sense Civil Decision no. 900/A/06.11.2024, Timiș Court, Administrative and Fiscal Litigation Section, file 31526/325/2023 rejust.ro.

Deborah Lawrie-Blum/Land Baden-Württemberg, C-66/85 (3 iulie 1986). ECLI:EU:C:1986:284

Dimitriu, R. (2021). The Worker, Beyond the Employment Contract. In *Legal Studies and Research*, sintact.ro.

Digital platform work and occupational safety and health: overview of regulation, policies, practices and research, osha.europa.eu/ro/publications/ .

Directive 2024/2831 of the European Parliament and of the Council of 23 October 2024 on the improvement of working conditions in platform work, https://eur-lex.europa.eu/ .

Fiscal Code - Law 227/2015, published in the Official Gazette 688 of 10.09.2015.

Labor Code of 2003 (Law no. 53 of January 24, 2003), published in the Official Gazette 345 of 2011.05.18.

Law 367/2022 on social dialogue, published in the Official Gazette 1238 of 20.12.2022.

Law 319/2006 on occupational health and safety, published in the Official Gazette 646 of 2006.07.26.

Moarcăș, C. A. (2022), The extension of the concept of "worker" from the "Lawrie-Blum formula" to the transnational dimension. In *In memoriam Ion Traian Ștefănescu*. Universul Juridic.

Platform work. www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary/platform-work accesat la 16.03.2025.

Vlăsceanu, Ana-Maria, & Athanasiu Alexandru. (2021). Labor protection in the digital age. On the need to reevaluate the concepts of 'worker'. *Universul Juridic Premium 4* . sintact.ro.