

Norbert RICHTER-SITKO*

Status of Workers on Digital Platforms – Remarks From a Polish Labour Law Perspective

ABSTRACT: *Digital solutions have changed the way workers perform their work. We can now see more flexible forms of employment, moving towards a series of individual tasks or gig-work projects. A decisive influence on the changes in employment is the development of digital platforms, which has intensified with the COVID-19 pandemic. Employment through digital platforms is not a classical form of performing work; nevertheless, there is no doubt that it requires a specific legal regime for the protection of workers' rights. The current study explores the following themes: first, it examines the complexity of digital platforms and platform work. Second, it focuses on provisions related to obtaining a correct employment status by platform workers in the directive on improving working conditions in platform work (2024/2831) and how this status affects their rights. Lastly, it presents de lege ferenda postulates from the perspective of the Polish labour market.*

KEYWORDS: *Welfare Platform Work, Labour Law, Digital Labour Platforms, Legal Presumption, Employment Relationship*

1.

Introduction

The rise of digital technologies has profoundly impacted the nature of employment, giving rise to a new form of work characterised by flexibility and fragmentation. The impact of these digital solutions has been particularly pronounced during the pandemic COVID-19, which has accelerated the use of and reliance on digital platforms. The growth of digital platforms and their incorporation into the labour market have given rise to a new dynamic in employment relationships but simultaneously raised considerable concerns regarding job security, fair remuneration, and adequate

* PhD Student, Ferenc Deák School of Law, University of Miskolc; Junior Researcher, Central European Academy of the University of Miskolc, Hungary, <https://orcid.org/0000-0001-8674-3267>.



social protection.¹ Consequently, this model requires a review of traditional employment classifications and worker rights, as existing legal frameworks often fail to address the complexities of platform work. The traditional employment framework, designed for more stable and long-term employment relationships, is inadequate for capturing the unique characteristics of platform work. This legal gap exposes platform workers to significant vulnerability, underscoring the urgent need for the establishment of specific legal regimes to ensure the protection of their rights and address the peculiarities of their employment conditions.²

This study involves a comprehensive analysis of the phenomenon of platform work. First, the complexity of platform work and digital platforms is characterised, considering their operation and the various roles they play in contemporary labour markets. Second, the study focuses on the European Union's (EU) Directive on improving working conditions in platform work, concentrating particularly on provisions related to obtaining correct employment status and ensuring fair working conditions. Third, it involves a critical examination of the status of individuals engaged in work through digital platforms in Poland. The analysis considers how their vague status affects their workers' rights to safe and healthy working conditions, collective rights, and labour law protection. Lastly, it presents *de lege ferenda* postulates from the perspective of the Polish labour market with a view to integrating and protecting platform workers within the national and European legal framework.

2.

Platform Work and Digital Labour Platforms

Platform work can be described as a form of employment that uses an online platform to enable organisations or individuals to access other organisations or individuals to solve problems or provide services in exchange for payment. Additionally, several characteristics can be identified that distinguish platform work from traditional work: paid work organised by a digital platform; involvement of three parties – platform – client – worker; focus on solving specific problems or managing specific tasks; work carried out in a form of outsourcing; work broken down into smaller tasks (so-called gigs); and on-demand services.³

1 Prassl and Risak, 2016, pp. 618 et seq.; Bednarowicz, 2018, pp. 13 et seq.; Dobrzyńska, 2020, pp. 16 et seq.

2 Bednarowicz, 2019, pp. 604 et seq.; Świątkowski, Andrzej Marian, 2019, pp. 95 et seq.; Unterschütz, 2020, pp. 319 et seq. <http://doi.org/10.62733/2025.2.5-15>

3 Cf. European Foundation for the Improvement of Living and Working Conditions, 2018, pp. 9–10; Świątkowski, Andrzej Marian, 2019, pp. 95 et seq.; Mirosławski, 2023, pp. 1 et seq.

Researchers often highlight two types of work through digital platforms. The first relates to “on-demand work via apps”, which is characterised by the performance of common activities such as transport, cleaning, and care work via platforms and is mostly performed locally. Platform companies set minimum standards for the services offered, but also intervene in the selection and management of the workforce.⁴ The second type, “crowdwork”, is based on the execution of a series of tasks through digital platforms. These platforms connect an unlimited number of organisations and individuals with workers on a global basis. The micro-tasks performed on crowdwork platforms are in many cases menial and monotonous, but still require human judgement and perceptiveness (e.g. tagging photos, completing surveys), although digital platforms offer their space also for freelancers with specific skills, more technical or creative (e.g. programmers, architects, creative sector professionals).⁵

In the new technological and economic reality, the gig economy is becoming a fact. For millions of people, the technological solution offered by platforms seems to be an alternative option. In theory, the flexibility of on-demand work on platforms can be a significant opportunity for people who cannot work full-time; people with disabilities; or people who combine employment with other responsibilities, such as care work. The platforms offer work flexibility: whenever, wherever, and whatever task the platform workers accept.⁶ According to the European Commission, digital work platforms may promote innovative services and new business models and create many opportunities for consumers and businesses. For workers, platforms mostly offer additional income, especially for people who face barriers in accessing the labour market; meanwhile, platforms improve access to products and services for consumers.⁷

However, platform work in its flexible form of “providing services” approaches the precariousness and instability of employment by forming a class of precariat. The phenomenon of precariousness of employment, following Guy Standing’s research, can be identified as deficits in job security, among which we can mention employment security; job security through the guarantee of safe and hygienic working conditions; income security in the form of stable and adequate wages; or security of representation related to the right of coalition and collective labour relations.⁸ Work through digital platforms often bears the characteristics of precariousness in the form of uncertainty about the frequency of opportunities for “gig jobs”, and the amount of wages received for these jobs. Non-transparent conditions for the performance of services using algorithmic management lead to asymmetry

4 De Stefano, 2015, p. 1.

5 Prassl and Risak, 2016, pp. 624-627; Bakalarz, 2019, pp. 11-12.

6 Risak, 2017, p. 4.

7 European Commission, COM (2021), 762 final.

8 Cf. Standing, 2011, pp. 49-50.

of information on the part of employees and make it difficult to claim their rights in disputes with platforms. Digital platforms, owing to their structure, make it difficult for workers to effectively realise their right to labour representation.⁹

The number of people working through digital platforms in 2022 was estimated at 28.3 million, for whom work is more frequent than sporadic, and by 2025, the number was projected to reach 43 million people. However, 5.51 million of them, according to the analysis, are at risk of misclassification of employment status.¹⁰ The majority of digital platforms, nine to 10 times, classified these people as self-employed.¹¹ In Poland, the number of workers who use digital platforms often more than once per month is estimated to be 11%, which is the average level in the EU; however, the percentage of these people is gradually growing every year.¹²

Some Member States have recognised the importance of the issue of platform work and have started to adopt regulations to protect platform workers. Further, national courts – for example in Spain, Belgium, and France – have ruled against digital platforms; with on-demand work platforms losing the majority of such cases.¹³ Here, it is worth pointing out two decisions of the Court of Justice of the European Union (CJEU). In judgment C-434/15,¹⁴ the CJEU held that the intermediary service provided by Uber should be considered an integral part of a complex service, the main element of which is the transportation service. The intermediary service provided by the Uber company consists of selecting vehicle owners who are not professional drivers, to whom the company provides an application, without which, first, these drivers would not provide transportation services, and second, people wishing to travel a city route would not have access to the services of these drivers. Furthermore, Uber exerts a decisive influence on the conditions under which these drivers provide services. Uber determines – with the use of the app – at least the maximum price of a given transport.

Moreover, Uber collects this price from the customer and then transfers part of it to the owner of the vehicle who is not a professional driver; Uber exercises a certain amount of control over the quality of the vehicles and their drivers, as well as over their behaviour, and such control can, if appropriate, result in the suspension of the driver in question from providing transport services. Uber's activity cannot be reduced to mere intermediation in the search for a customer by a person expressing

9 Cf. Lehdonvirta, 2016, pp. 53 et seq.; Potocka-Sionek, 2022, pp. 112–113.

10 European Commission, Directorate General for Employment, Social Affairs and Inclusion and PPMI., 2021.

11 European Commission. Directorate General for Employment, Social Affairs and Inclusion. and CEPS., 2021.

12 Pańków, Owczarek and Koziarek, 2018; ILO, 2021, p. 49.

13 See more C. Hieśl, 2022.

14 Judgment of 20 December 2017 of Court of Justice (C-434/15, Asociación Profesional Elite Taxi v Uber Systems Spain SL).

a desire for an *ad hoc* transport service. Instead, it provides a transport service through drivers who are in constant cooperation with it, under its management. Uber's directorial and control powers are expressed in such features identified by the CJEU as: selecting drivers and their vehicles; deciding on the route of the ride through the application; controlling the standards of the service provided; and sanctioning undesirable behaviour through exclusion from the platform altogether.¹⁵

In judgment C-413/13,¹⁶ the CJEU ruled, as in previous judgments, that the concept of an employee within the meaning of Union law must be defined on the basis of objective criteria that characterise the employment relationship, taking into account the rights and obligations of the person in question. From this perspective, qualification as a self-employed service provider under national law does not preclude a person from qualifying as an employee within the meaning of Union law if his independence is purely fictitious and thus serves to conceal a genuine employment relationship. It follows that the status of an employee under Union law cannot be affected by the fact that a person has been hired as a self-employed service provider under national law, provided that such a person acts under the direction of his employer as regards, in particular, his freedom to choose the hours and place of work and the tasks performed in the course of his work, provided that he does not bear the commercial risk of that employer, and provided that he is integrated into the enterprise of the said employer during the course of the employment relationship, forming an economic unit with that enterprise.¹⁷ The judgment emphasises the stronger link of organisational integration of the worker than the traditional elements of subordination taken into account by national courts. As is further explained, EU legislation in relation to platform workers on digital platforms highlights the importance of CJEU case law in matters of identifying a worker's subjectivity.

3.

EU Directive on Improving Working Conditions in Platform Work

Platform work and their working conditions have been identified by the EU as a new problematic issue and challenge.¹⁸ Legislative action was taken when the European

15 Cf. Bakalarz, 2019, p. 11; Bagińska, Majkowska-Szulc, 2018, pp. 30–36.

16 Judgment of 4 December 2014 of Court of Justice C-413/13 FNV Kunsten Informatie en Media v Staat der Nederlanden.

17 Judgment of CJEU C-413/13, C. Hießl, 2022, pp. 72–73.

18 See more European Foundation for the Improvement of Living and Working Conditions, 2017, 2018; European Commission. Joint Research Centre, 2018; European Commission. Directorate General for Employment, Social Affairs and Inclusion, 2021.

Commission presented a proposal for a directive on improving working conditions in platform work in December 2021.¹⁹ The Directive is one of the group of measures introduced in the European Pillar of Social Rights Action Plan, which, *inter alia*, aims to establish a standard for platform work, to protect European workers from being misclassified as bogus self-employed workers, and to provide workers with social protection and mitigate health and safety risks.²⁰ In 2024, the Directive on improving working conditions in platform work was adopted²¹ and Member States are now required to adopt the laws, regulations, and administrative provisions necessary to comply with this Directive by 2 December 2026.

The main emphasis of the Directive focusses on improving working conditions and the protection of personal data in platform work by introducing measures to facilitate the determination of the correct employment status of persons performing platform work; promoting transparency, fairness, human oversight, safety, and accountability in algorithmic management in platform work; and improving transparency with regard to platform work, including in cross-border situations (art. 1 (1) of the platform work directive).

The directive set up a definition of digital labour platforms, which includes any natural or legal person providing a service that meets all of the following requirements:

- I it is provided, at least in part, at a distance by electronic means, such as by means of a website or a mobile application;
- II it is provided at the request of a recipient of the service;
- III it involves, as a necessary and essential component, the organisation of work performed by individuals in return for payment, irrespective of whether that work is performed online or in a certain location
- IV it involves the use of automated monitoring systems or automated decision-making systems

The definition of digital labour platforms, virtually kept without changes from the proposal for the directive (except point iv)), seems too strict and unprovable for new forms of digital platforms. Developing a cumulative definition would exclude some of the existing platforms,²² but more crucially, it may permit circumventing the definition by digital labour platforms when new platforms appear in the future.²³

19 European Commission, COM (2021), 762 final.

20 The Council, The European Economic and Social Committee and The Committee of the Regions, COM(2021) 102 final.

21 Directive (EU) 2024/2831.

22 For example platforms within companies that are addressed to employees, see: M. Schlachter, 2022, p. 386.

23 De Stefano, 2022, p. 4.

The European Trade Union Confederation noted that the references to “organisation of work” and “as a necessary and essential component” are too narrow and do not capture the manner in which work is performed. Further, the reference to a service “at a distance” adds weakness to the definition and could allow digital labour platforms to circumvent the definition.²⁴ Bearing in mind the differences between even on-demand work, which, in many cases, can be subsumed to traditional criteria of control by employers, “crowdwork” platforms could escape from known features into more “independent” control of working performance.²⁵

The Directive presents two definitions of persons who work through digital labour platforms. The first are “persons performing platform work”, that is, any individual performing platform work, irrespective of the nature of the contractual relationship or the designation of that relationship by the parties involved. The definition covers a broader range of independent contractors and self-employed persons.

The second, ‘platform worker’, describes any person performing platform work who has an employment contract or employment relationship as defined by the law, or collective agreements or practice in force in the Member States with consideration to the case law of the CJEU. It is worth noting that reference to “consideration to the case-law of the Court of Justice” was made to other EU directives²⁶ that have a more hybrid concept of the employment contract. The risk of omitting the legal presumption arises when digital labour platforms base their argumentation on strict and traditional national criteria of employment status. Adopting the reference to case law of the CJEU may ease traditional criteria, which, in most cases, does not recognise the complexity of platform work, by providing more open and wide interpretation of the employment relationship.²⁷ Moreover, in its judgment C-216/15²⁸ and in the context of other directives (on temporary work agencies), the CJEU pointed to similar doubts. The CJEU affirmed the necessity of using an autonomous definition of an employee, as an overly narrow understanding of the concept of employee found under national law undermines the effectiveness of the directive. Furthermore, such a narrow understanding would permit the Member States or temporary work agencies to exclude at their discretion certain categories of persons from the benefit of the protection intended by that directive, even though the employment relationship between those persons and the temporary work agency is not substantially different to the

24 European Trade Union Confederation, 2022, p. 2.

25 Ratti, 2022, p. 57.

26 That notion can be found in other directives e.g. Directive (EU) 2019/1152, art. 1 para. 2 or Directive (EU) 2019/1158, art. 2.

27 Cf. Schlachter, 2022, p. 387; Bednarowicz, 2019, pp. 613–614; De Stefano, 2022, p. 5.

28 Judgment of 17 November 2016 of Court of Justice (C-216/15, *Betriebsrat der Ruhrlandklinik GmbH v Ruhrlandklinik GmbH*)

employment relationship between employees having the status of workers under national law and their employer.²⁹

To achieve a compatible employment status for persons performing work through platforms, Art. 4 of the draft directive primary sets out a framework of specific measures. The draft directive proposed a presumption of employment that would apply if at least two of the five indicators are met. Fulfilling these five criteria would determine whether a given legal relationship should be recognised as an employment relationship between an employee and an employer. However, this proposed rebuttable presumption has been met with considerable criticism from many authors.³⁰ Furthermore, the elements of legal presumption seem to be created at most to on-demand work that has particular differentials to “crowdwork”.³¹ The final version of the directive establishes a legal presumption of an employment relationship for platform workers based on two indicators that have not previously been included.³² The presumption, enshrined in art. 5 of the directive, applies where facts indicating “direction” and “control” are found, as determined by national law, collective agreements, the practices of Member States, and case law of the CJEU. Moreover, the existence of an employment relationship shall be guided primarily by the facts relating to the actual performance of work, regardless of how the working arrangement is classified in the contract. These facts should include the use of automated monitoring systems or automated decision-making systems in the organisation of platform work. However, the legal presumption may be rebutted, in particular, if the digital labour platform seeks to rebut the legal presumption, and argues against the employment relationship.

The introduction of the rebuttable presumption surely can benefit people working on platforms by providing legal certainty through the correct classification of the employment relationship. Uncertainty of classification on digital platforms is the main issue that affects working conditions and deprives workers of labour rights and social security. Presumption can cause reversal of the burden of proof to digital labour platform stakeholders arguing that the relationship between persons performing work on platforms and themselves are contractual and not employment relationships.³³ Moreover, legal presumption may develop enforcement and monitoring of labour law as law stipulates that these persons who fulfil criteria of legal

29 Cf. C-216/15, paras. 35-37.

30 Cf. De Stefano, 2022 p. 4; Gould IV and Biasi, 2022, p. 93; Schlachter, 2022, p. 389.

31 For instance, Ratti, 2022, p. 58.

32 Nevertheless, it is worth noting that some Member States have adopted into their legal systems a presumption in the same or similar shape to that introduced in the proposal for the directive, cf. European Foundation for the Improvement of Living and Working Conditions, 2025, pp. 5–9.

33 Kullmann, 2022, p. 70.

presumption are in employment relationships.³⁴ Finally, clarifying the employment status of platform workers would in particular support trade unions to represent these workers in collective bargaining. Thus, the negotiation of collective agreements would cover platform workers through the personal scope of these agreements.³⁵

4.

Polish Regulation (Or Lack Thereof) of Platform Work

Polish scholars distinguish few bases of performance of work;³⁶ however, for the purposes of this study, three of them are relevant. The first is the employment relationship between the employee and employer. According to Art. 2 of the Labour Code,³⁷ an employee is an individual employed on the basis of a contract of employment, appointment, election, nomination, or co-operative contract of employment. Art. 3 of the Labour Code states that an employer is an organisational unit with or without legal personality, as well as an individual, employing one or more employees. The second is civil law agreements, which characterise the “non-employment relationship” between independent parties where one provides a service and one requests the service. The third is self-employment, although there is a lack of unification in both doctrine and legislation, both in terms of nomenclature and in defining the concept itself. It can be said that the self-employed are natural persons who carry out business activities and provide services to multiple entities (independent self-employed) or over a longer period of time even for one entity, in relation to which they remain in economic dependence (dependent self-employed).³⁸

Despite the fact that the phenomenon of platform work and related problems are discussed in the labour law doctrine,³⁹ at the moment, Poland does not have comprehensive regulation that would cover platform work and protect platform workers.⁴⁰ The most connected regulation with platform workers was the amendment to the

34 Ibid., p. 71.

35 Ibid.; Ratti, 2022, p. 51; Unterschütz, 2021, pp. 61 et seq.

36 For a more in-depth examination, see: Baran, 2015.

37 Act of 26 June 1974 Labour Code (consol. Journal of Laws of 2025, item 277, as amended).

38 About the self-employment in Poland see more: Barański, 2023; Duraj, 2022; Musiała, 2014; Tomanek, 2017.

39 Only to mention: Bednarowicz, 2018; Dobrzyńska, 2020; Unterschütz, 2021, 2025; Mirosławski, 2023; Mitrus, 2024; Duraj, 2025.

40 At this moment, the Ministry of Family, Labour, and Social Policy has announced that it will endeavour to ensure that the draft law implementing the directive is presented in the fourth quarter of 2025, but there is no clear legislative schedule at the Government Legislation Centre at this time, Jolanta Ojczyk (2025), *Kurierzy na etatach? Oto plany rządu* [Online].

Drive Law Act⁴¹ that changed the status of drivers who can be self-employed and also independent contractors. Platform work must be obligatory registered and drivers operating under this framework are subject to taxation obligations applicable to all. Platforms as intermediary companies should be registered and may employ only licensed drivers.⁴² The amendment, on the one hand, regulated and improve conditions of performing transport services by required platform workers to hold a taxi license and pay taxes as every regular taxi driver. On the other hand, the regulation strengthened the status of workers as self-employed or contractors, which may deepen the issue of correct employment status.

Platform workers, especially those who perform work via apps such as of transportation services or food delivery, are at risk of health and safety issues as well. In Art. 66 (1), the Polish Constitution⁴³ states that 'everyone shall have the right to safe and hygienic conditions of work'. In the Labour Code, Art. 304 §1 indicates that an employer shall ensure the healthy and safe conditions of work referred to in Article 207 §2 for individuals who perform work on any basis other than an employment relationship, at the employer's establishment or at another location designated by the employer, as well as for self-employed persons who conduct economic activity on their own account at the employer's establishment or at another location designated by the employer. Paragraph 2 states that an employer shall ensure healthy and safe conditions of training organised in the establishment for students who are not his employees. Crucially, §3 stipulates that the obligations referred to in Article 207 §2 shall apply accordingly to any entrepreneurs who are not employers and who organise work performed by individuals on the basis other than an employment relationship or who conduct economic activity as self-employed persons. The indicated provision was aimed to protect working conditions of non-employed workers by obligating entrepreneurs, whenever they are or are not employers, to ensure proper occupational health and safety protection. However, Art. 304 §3 in its content indicates the adequate use of Art. 207 §2. Lack of clear and proper regulation of entrepreneurs' obligation of occupational health and safety rules implicate unsure situations for every party in the employment relationship, but mostly the issue would affect the compliance of law by labour law authorities.⁴⁴ Such interpretation problems have already led to ineffective inspection of Uber drivers by labour inspectors who could only investigate the compliance with occupational and safety regulation of

41 Act of 16 May 2019 amending the Road Transport Act and some other Acts (Journal of Laws 2019, item 1180).

42 Rogalewski, 2020, p. 29.

43 Constitution of Republic of Poland (Journal of Laws of 1997, no. 78, item 483).

44 Raczkowski, 2019, pp. 69–70.

company's office employees, which of course was completely without purpose and ineffective.⁴⁵

The situation of trade unions and collective bargaining on digital platforms in Poland also is hampered by the shape of the legislation on trade union functioning in workplaces. First, establishing a trade union organisation is a complex process that requires having organisational status and establishing a board; additionally, a trade union can be established in the employer's company or can create "multicompany" organisations in more same branch companies.⁴⁶ Moreover, in 2018, there was an amendment that extended the subjective scope of the right of coalition to persons with civil law agreements and self-employed persons.⁴⁷ Before the amendment, these workers could only join existing trade unions. Now, they have obtained the right to form a trade union after working for at least six months for an employer covered by the organisation. This solution is a compromise step between ensuring the right of coalition workers and the condition of a reliable bond of the worker to the employer. The first trade union of platform workers was established in two companies that provide services for the platform Pyszne.pl (food delivery platform).⁴⁸

When discussing the legal presumption of an employment relationship in Poland, a few remarks should be made. Article 22 of the Labour Code stipulates that by establishing an employment relationship, an employee assumes the obligation to perform specific work for the employer and under the employer's direction at a place and time specified by the employer, and the employer assumes an obligation to employ the employee against payment of remuneration. Employment on the terms referred above is taken to be based on an employment relationship, regardless of the name of the contract concluded by and between the parties. Moreover, a contract of employment cannot be replaced with a civil law contract based on the conditions of work. The employment relationship can be characterised as a voluntary relationship between the employee and employer, in which the employee personally performs work and is subordinate to the employer, and the employer is obligated to pay remuneration and organise work at his own risk.⁴⁹ Thus, the essential sense of the regulation contained in § 1(1) and § 1(2) of the Labour Code is to shift the burden of examining the nature of the legal relationship under which work is provided from determining and interpreting the content of the contract concluded by the parties to determining the

45 Rogalewski, 2020, p. 29; Mirosławski, 2023, pp. 8–10.

46 In Poland, the core regulations governing the establishment of trade unions, their activities and collective bargaining can be found in Act of 23 May 1991 on trade unions (consol. Journal of Laws of 2025, item 440), and Labour Code.

47 Baran, 2018, pp. 2 and seq.

48 Nowy Obywatel (2022), *Powstał związek zawodowy w Pyszne.pl* [Online].

49 See: Judgment of the Supreme Court of 6.10.2004 r., I PK 488/03, OSNP 2005, no. 10, item 145; Judgment of the Supreme Court of 23.10.2006 r., I PK 113/06, Pr.Pracy 2007, no. 1, item 35.

actual conditions of its performance. If, in the legal relationship linking the parties, the characteristics of the employment relationship set out in Article 22 §1 of the Labour Code prevail, then we are dealing with employment on the basis of an employment relationship, regardless of the name of the contract concluded by the parties. Conversely, if the characteristics of an employment relationship do not predominate in the content of the legal relationship, then it cannot be assumed that such a legal relationship is between the parties.⁵⁰

Polish labour law does not provide for any legal presumption of employment relationship;⁵¹ although, it is not permissible to replace the employment contract with the civil law agreement while maintaining the conditions of an employment relationship. Some researchers argue that the legislator introduced a “soft legal presumption” to the Labour Code to prevent replacement of the employment relationship to a civil law relationship.⁵² However, the majority view of doctrine and jurisprudence point out that Article 22 does not create neither a legal presumption nor a legal fiction of an employment contract.⁵³ The choice of the type of legal basis of employment is decided by the will of parties (Article 353(1) of the Civil Code in conjunction with Article 300 of the Labour Code), and work may also be performed under civil law agreements.⁵⁴ The Supreme Court, in its judgments, has accepted that the essence of contractually subordinated work is the possibility to concretise the employee’s duties on a daily basis and, in particular, to determine the activities within the agreed type of work and the way in which they are to be performed (Article 100 §1). The employee has no autonomy in determining the day-to-day tasks. Employee subordination cannot be equated with permanent supervision by a superior over the manner or proper pace of the activities performed, as it is sufficient to indicate the task and set a deadline for its performance, followed by control of the quality and timeliness of the work performed.⁵⁵

50 Judgment of the Supreme Court of 10.05.2018 r., I PK 60/17, LEX no. 2486218.

51 Currently, the Labour Code does not provide for any legal presumptions or legal fictions. The closest in terms of this is the regulation of Article 18(3b) of the Labour Code, according to which an employer’s differentiation of the situation of an employee for one or more of the reasons set out in the Labour Code, with the effects specified in the provision, is considered to be a violation of the principle of equal treatment in employment. Cf. Tomanek, 2017, p. 1444; Sitko, 2025, pp. 12–13.

52 Orłowski, 2007, pp. 134–135; Dral, 2009, p. 395; Unterschütz, 2013, p. 133.

53 Among others: Gersdorf and Raczkowski, 2024; Jaśkowski, 2024; Tomaszewska, 2025; Judgment of the Supreme Court of 11.09.2013 r., II PK 372/12, OSNP 2014, no. 6, issue 80; Judgment of the Supreme Court of 23.09.1998 r., II UKN 229/98, OSNP 1999, no. 19, issue 627.

54 Tomaszewska, 2025; Judgment of the Supreme Court of 26.03.2008 r., I UK 282/07, LEX no. 411051.

55 Jaśkowski, 2024; Judgment of the Supreme Court of 10.05.2018 r., I PK 60/17, LEX no. 2486218.

The implementation of the legal presumption proposed by the European Commission would profoundly change the labour market in Poland.⁵⁶ To prevent uncertainty and dichotomy of traditional work and platform work, the legislator should adopt a general presumption on the employment relationship. Introducing a rebuttable legal presumption of an employment relationship only for digital platforms would create an unequal situation in the market and make it even more difficult to identify companies as digital platforms. In mid-2025, there were circa 3.1 million self-employed people in Poland; however, most of them do not employ employees or contractors.⁵⁷ Such a solution will consequently lead to profound changes in the identification and distinction of civil law contracts from the employment relationship.

The current regulation of the employment relationship and protective regulations can address the problem, if handled consistently. The basic criterion distinguishing civil law relations from the employment relationship is the subordination of the employee. The Supreme Court, in its judgment II PK 372/12,⁵⁸ stated that not the contract's title or the will of the parties, but work in a certain dependence specific to the employment relationship should be decisive, since even in a civil law contract, there may be the features of management and subordination, although not the exact same. Employee subordination is a relationship of dependence between the employee and the employer, involving carrying out orders issued by the employer. It manifests itself in the employer's own supervision of the management of the work process by assigning specific tasks that the employee is obliged to complete. On-demand work platforms are not just intermediaries in the relationship between independent service contractors and customers, but directly involved service providers. Companies provide tools in the form of platforms or apps that allow specific services to be performed and direct how the work is performed through rules and regulations issued, instructions, and algorithmic management having control over the performance of the work.⁵⁹ Thus, in the case of many people working through platforms, the condition of labour subordination would apply and we could speak of an employment relationship.

It is worth noting that the labour law provides for administrative penalties for employment on the basis of civil law contracts in conditions where there should be an employment contract, enforced by the labour inspectors (art. 281 of Labour Code). Moreover, Article 63(1) of the Code of Civil Procedure stipulates that labour inspectors may bring actions on behalf of citizens in cases to establish the existence of an employment relationship, and may enter, with the consent of the claimant, into proceedings in such cases at any stage of the process. However, despite regulations in the Labour

56 Mitrus, 2024, pp. 147 et seq.; Duraj, 2025, pp. 6 et seq.

57 Statistics Poland, 2025.

58 Judgement of the Supreme Court of 11.09.2013 r., II PK 372/12, OSNP 2014, no. 6, issue 80.

59 Skowron, 2020, pp. 163–164.

Code on the employment relationship or the competence of inspection responsible for compliance with labour law, counteracting the replacement of employment contracts with civil law contracts continues to take place. This is particularly influenced by the liberal approach to atypical forms of employment by both the judiciary and state authorities. It is also influenced by the very will of employees who are not interested in employee employment, declaring, above all, their unwillingness to pay additional social security contributions, as well as pointing to the greater flexibility of civil law contract than is the case under the employment relationship.⁶⁰

Interesting observations on the presumption of an employment relationship in Polish doctrine are presented by A. Sobczyk. He assumes that labour rights as social human rights are subject to special protection provided by the State. From the social nature of labour rights, a transformation of the man–society employment relationship is taking place instead of the typical private law man–other man relationship. Current regulations are supposed to favour the protection of the employment relationship, and even establish an unexpressed presumption of an employment relationship. The main difficulty to overcome is the overly contractual and private relationship-oriented interpretation of labour courts. Despite previous arguments, A. Sobczyk recognises the need for an explicitly expressed presumption of an employment relationship to realise the protection of employees and the workers' rights.⁶¹

5. Conclusions

The rise in popularity of digital platforms and the performance of work through them coincided with the economic crisis of 2007–2008 and the subsequent COVID-19 pandemic. Platform work allows people with either low skills or specialised skills to perform a series of short tasks (gigs) allowing them to combine work with other activities such as housework, but also the possibility to earn additional income to their regular salary. Platform work, globally as well as in Poland, is usually carried out on the basis of civil law contracts, which allow for higher flexibility and lower contributions for the employers and the workers, but is also characterised by lower protection standards and a lack of security of labour rights for platform workers. This is particularly noticeable with on-demand work via apps, which has been repeatedly recognised by courts in various European countries – specifically, that the services provided by platform workers via digital platforms demonstrated the characteristics of an employment relationship and contested the contracts concluded by digital

60 Państwowa Inspekcja Pracy, 2025, pp. 95–97.

61 Sobczyk, 2018, pp. 199–208.

platforms with workers. However, crowdwork and its more nuanced structure than on-demand work, which often resembles traditional employment relationships and employee subordination, makes it difficult to clearly classify the type of work performed and intensify supervision and management as a typical employment relationship.

The Directive on improving working conditions in platform work may be a step in the right direction, as it has the potential to harmonise the legislation of the Member States at the European level. This would solve the issue of classifying digital platforms as employers and strengthen the protection of workers and their efforts to determine the correct basis of employment. It would also cover the issues of algorithmic management and the information rights of workers and their representatives, which were not addressed in the article.

Some of the solutions in the Directive raise some concerns. The definition of digital labour platforms mentioned in the article, by closing the definition and limiting the characteristics of the platforms to three, may already at this point lead to the exclusion of existing digital labour platforms from its scope – for instance, in the context of algorithmic management and access to information.⁶² An enumerative catalogue of listed definitions of digital labour platforms may in consequence not recognise platforms created in new forms or already existing ones, which under the influence of the prepared directive, will change in such a way that they will not be included in its scope. Such a definition makes it difficult to properly identify digital labour platforms and consequently hinders the application of the directive.⁶³ In my opinion, opening up the catalogue contained in the definition will allow for better implementation of the directive by the Member States (especially bearing in mind the superficial implementation of directives, often based on copying the text of the directive into the national legal order); above all, it will make it more difficult for digital labour platforms to avoid classification under the definition indicated.

Currently, Poland appears to be making slow progress in establishing clear and proper regulations to improve the situation of platform workers. Furthermore, it is challenging to identify court judgments related to platform work and employment status. Generally, there are social partners, the vast majority of them being trade unions that stand up for worker rights and promote discussion in public spaces. It is also worth noting that in Poland, a presumption of an employment relationship has never been introduced in the Labour Code with only regulations aimed at preventing the circumvention of employment contracts by civil law relationships.

Polish regulations in their shape present an active attitude in preventing violations of the law through hiring based on civil law contracts. Both the provisions of

62 Cf. Schlachter, 2022.

63 Duraj, 2025, pp. 11–12.

the Constitution, which indicates that work is under the protection of the Republic of Poland, as well as the quoted provisions of the Labour Code and the procedural regulations are intended to support the protection of employees in their pursuit of lawful employment status. However, the tendency to interpret the provisions on setting up an employment relationship liberally, coupled with the labour inspectorate's often lack of concrete powers, leads to the problem deepening continuously and atypical forms of employment increasing. The introduction of the presumption of an employment relationship into the Polish legal system, in the form currently presented in the platform work directive, without adequate preparation and provision of legal tools to the authorities and courts, may lead to further complication of the processes for establishing the employment relationship. The desire to raise the standard of protection must also go along with the predictability of the law and the possibility of challenging the presumption of an employment relationship by both the employer and employee. The presumption of an employment relationship should be an instrument that facilitates the process of applying the law for public authorities, but also transparent for those who would like to use it. A well-implemented presumption would facilitate the path to establishing the correct basis of employment, and would probably curb the growth of bogus self-employment and the large-scale occurrence of civil law contracts instead of employment contracts. For the moment, however, the Polish legislator should first and foremost improve the application of the current provisions on the powers of labour inspectors to establish the employment relationship and strengthen the criteria distinguishing an employment relationship from civil law relationships.

Bibliography

- Bagińska, E. and Majkowska-Szulc, S. (2018) 'Legal limits of 'uberisation' – commentary on Court of Justice judgment of 20 December 2017, C-434/15, *Asociación Profesional Elite Taxi v Uber Systems Spain SL*, *Europejski Przegląd Sądowy*, 2018(5), pp. 30–36.
- Bakalarz, T. (2019) 'Zatrudnienie za pośrednictwem platformy internetowej jako przejaw „uberyzacji” pracy', *Przegląd Prawa i Administracji*, 2019(117), pp. 9–20. <https://doi.org/10.19195/0137-1134.117.1>
- Baran, K.W. (ed.) (2015) *Zatrudnienie niepracownicze*. Warsaw : Wolters Kluwer (System prawa pracy, vol. 7).
- Baran, K.W. (2018) 'O zakresie prawa koalicji w związkach zawodowych po nowelizacji prawa związkowego z 5 lipca 2018 r.', *Praca i Zabezpieczenie Społeczne*, 2018(9), pp. 2–5.
- Barański, M. (2023) 'Employment Flexibility in Times of Crisis', *Studia Iuridica*, 2023(95), pp. 9–29. <https://doi.org/10.31338/2644-3135.si.2022-95.1>
- Bednarowicz, B. (2018) '„Uberyzacja zatrudnienia” — praca w gospodarce współdziałania w świetle prawa UE', *Monitor Prawa Pracy*, 2018(2), pp. 13–19.
- Bednarowicz, B. (2019) 'Delivering on the European Pillar of Social Rights: The New Directive on Transparent and Predictable Working Conditions in the European Union', *Industrial Law Journal*, 48(4), pp. 604–623.
- De Stefano, V. (2015) 'The Rise of the 'Just-in-Time Workforce': On-Demand Work, Crowd Work and Labour Protection in the 'Gig-Economy'', *Conditions of Work and Employment*, 2015(71). <https://doi.org/10.2139/ssrn.2682602>
- De Stefano, V. (2022) 'The EU Commission's proposal for a Directive on Platform Work: an overview', *Italian Labour Law e-Journal*, pp. 1–11.
- Dobrzyńska, M. (2020) 'Praca platformowa. Wyzwania dla bezpieczeństwa i higieny pracy w Polsce', *Praca i Zabezpieczenie Społeczne*, 2020(6), pp. 16–22. <https://doi.org/10.33226/0032-6186.2020.6.3>
- Dral, A. (2009) *Powszechna ochrona trwałości stosunku pracy. Tendencje zmian*. Warsaw : Wolters Kluwer.
- Duraj, T. (2025) 'Implementation of Platform Directive 2024/2831 into the Polish legal order – areas relevant to the entire labour law', *Z Problematyki Prawa Pracy i Polityki Socjalnej*, pp. 1–19. <https://doi.org/10.31261/zpppips.2025.23.08>
- Duraj, T. (2022) 'Self-employment and the legal model of protection in Poland', *Studia z Zakresu Prawa Pracy i Polityki Społecznej*, 29(3), pp. 257–268.
- European Commission. Directorate General for Employment, Social Affairs and Inclusion (2021) *The European Pillar of Social Rights Action Plan*. Place of publishing: Publications Office [online]. Available at: <https://data.europa.eu/doi/10.2767/89> (Accessed: 8 December 2025).

- European Commission. Directorate General for Employment, Social Affairs and Inclusion and CEPS (2021) *Digital labour platforms in the EU: mapping and business models: final report*. [online]. Available at: <https://data.europa.eu/doi/10.2767/224624> (Accessed: 8 December 2025).
- European Commission. Directorate General for Employment, Social Affairs and Inclusion and PPMI (2021) *Study to support the impact assessment of an EU initiative to improve the working conditions in platform work: final report*. [online]. Available at: <https://data.europa.eu/doi/10.2767/527749> (Accessed: 8 December 2025).
- European Commission. Joint Research Centre (2018) *European legal framework for “digital labour platforms”*. [online]. Available at: <https://data.europa.eu/doi/10.2760/78590> (Accessed: 8 December 2025).
- European Foundation for the Improvement of Living and Working Conditions (2017) *New forms of employment*. [online]. Available at: <https://data.europa.eu/doi/10.2806/937385> (Accessed: 8 December 2025).
- European Foundation for the Improvement of Living and Working Conditions (2018) *Employment and working conditions of selected types of platform work*. [online]. Available at: <https://data.europa.eu/doi/10.2806/929950> (Accessed: 8 December 2025).
- European Foundation for the Improvement of Living and Working Conditions (2025) ‘Working conditions of online platform workers: the complex legal landscape’.
- Gersdorf, M. and Raczkowski, M. (2024) ‘Komentarz art. 22’ in Ostaszewski, W. et al. (eds.) *Kodeks pracy. Komentarz*. Warsaw : Wolters Kluwer.
- Jaśkowski, K. (2024) ‘Komentarz art. 22’ in Maniewska, E. and Jaśkowski, K. (eds.) *Kodeks pracy. Komentarz aktualizowany*. Warsaw: LEX/el.
- Kullmann, M. (2022) ‘Platformisation’ of work: An EU perspective on Introducing a legal presumption’, *European Labour Law Journal*, 13(1), pp. 66–80.
- Lehdonvirta, V. (2016) ‘Algorithms that Divide and Unite: Delocalisation, Identity and Collective Action in “Microwork” in Flecker, J. (ed.) *Space, Place and Global Digital Work*. London: Palgrave Macmillan UK, pp. 53–80.
- Mirosławski, T. (2023) ‘Platform work as a manifestation of a new form of employment in the era of the fourth industrial revolution’, *Z Problematyki Prawa Pracy i Polityki Socjalnej*, 21(4), pp. 1–16. <https://doi.org/10.31261/zpppips.2023.21.07>
- Mitrus, L. (2024) ‘Polska regulacja pracy platformowej de lege ferenda z perspektywy prawa Unii Europejskiej’, *Acta Universitatis Lodziensis. Folia Iuridica*, 2024(107), pp. 147–157. <https://doi.org/10.18778/0208-6069.107.12>
- Musiała, A. (2014) ‘Prawna problematyka świadczenia pracy przez samozatrudnionego ekonomicznie zależnego’, *Monitor Prawa Pracy*, 2014(2).
- Orłowski, G. (2007) ‘Umowa zlecenia a „miękkie domniemanie stosunku pracy”’, *Monitor Prawa Pracy*, 2007(3), pp. 134–136.
- Potocka-Sionek, N. (2022) ‘Niewidzialni pracownicy, czyli kto stoi za sztuczną inteligencją’, *Studia z zakresu Prawa Pracy i Polityki Społecznej*, 29(2), pp. 105–119.

- Prassl, J. and Risak, M. (2016) 'Uber, TaskRabbit, & Co: Platforms as Employers? Rethinking the legal analysis of crowdwork', *Comparative Labor Law & Policy Journal*, 37(3), pp. 618–651.
- Raczkowski, M. (2019) 'Bezpieczne i higieniczne warunki pracy w zatrudnieniu cywilnoprawnym', *Praca i Zabezpieczenie Społeczne*, 2019(1), pp. 66–70. <https://doi.org/10.33226/0032-6186.2019.1.8>
- Rogalski, A. (2020) *Cyfryzacja i praca platformowa: informator dla pracowników*. Warsaw: Friedrich-Ebert-Stiftung, Przedstawicielstwo w Polsce.
- Schlachter, M. (2022) 'The initiative of the European Commission for improving working conditions in platform work', *Miskolci Jogi Szemle*, 17(2), pp. 384–392.
- Sitko, N. (2025) 'Presumption of the employment relationship of digital workers and the protective function of labour law', *Z Problematyki Prawa Pracy i Polityki Socjalnej*, pp. 1–19. <https://doi.org/10.31261/zpppips.2025.23.01>
- Skowron, R. (2020) 'Cybertariat – prawo pracy a nowe formy zatrudnienia w ramach ekonomii współpracy', *Przegląd Prawno-Ekonomiczny*, 2020(4), pp. 153–173. <https://doi.org/10.31743/ppe.9948>
- Sobczyk, A. (2018) *Podmiotowość pracy i towarowość usług: analiza prawna*. Krakow: Wydawnictwo Uniwersytetu Jagiellońskiego.
- Standing, G. (2011) *The precariat: the new dangerous class*. London: Bloomsbury Academic.
- Świątkowski, A.M. (2019) *Elektroniczne technologie zatrudnienia ery postindustrialnej*. Krakow: Ignatianum.
- Tomanek, A. (2017) 'Ciężar dowodu w prawie pracy' in Baran, K.W. (ed.) *System Prawa Pracy. Część ogólna. T. I*. Warsaw: Wolters Kluwer.
- Tomanek, A. (2017) 'Status osoby samozatrudnionej w świetle znowelizowanych przepisów o minimalnym wynagrodzeniu za pracę', *Praca i Zabezpieczenie Społeczne*, 2017(1), pp. 13–20.
- Tomaszewska, M. (2025) 'Komentarz do art. 22' in Baran, K.W. (ed.) *Kodeks pracy. Komentarz*. Warsaw: Wolters Kluwer.
- Unterschütz, J. (2013) 'Ograniczenie w zakresie zawierania umów na czas określony a „miękkie” domniemanie istnienia stosunku pracy', *Rozprawy Naukowe i Zawodowe Państwowej Wyższej Szkoły Zawodowej w Elblągu*, 2013(16), pp. 123–140.
- Unterschütz, J. (2020) 'Digital Labour Platforms: Dusk or Dawn of Labour Law?' in Wrątny, J. and Ludera-Ruszel, A. (eds.) *News Forms of Employment*, 2021(95), pp. 319–341. https://doi.org/10.1007/978-3-658-28511-1_20
- Unterschütz, J. (2021) 'Come Together Now! New Technologies and Collective Representation of Platform Workers', *Acta Universitatis Lodzianensis. Folia Iuridica*, 2021(95), pp. 61–69.

- Unterschütz, J. (2025) 'Sankcje karne za naruszenie przepisów wdrażających dyrektywę platformową?', *Z Problematyki Prawa Pracy i Polityki Socjalnej*, pp. 1–13. <https://doi.org/10.31261/zpppiips.2025.23.07>

Acts of law, documents

- Act of 26 June 1974 Labour Code (consol. Journal of Laws of 2025, item 277, as amended).
- Act of 16 May 2019 amending the Road Transport Act and some other Acts (Journal of Laws of 2019, item 1180).
- Constitution of Republic of Poland (Journal of Laws of 1997, no. 78, item 483).
- Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU, OJ L 188, 12 July 2019.
- Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union, OJ L 186, 11 July 2019.
- Directive (EU) 2024/2831 of the European Parliament and of the Council of 23 October 2024 on improving working conditions in platform work, OJ L, 2024/2831, 11.11.2024.
- European Trade Union Confederation (2022), *Resolution on the proposal of the European Commission of a Directive on improving working conditions in platform work and way forward ahead of the ordinary legislative procedure*; [online]. Available at: <https://www.etuc.org/en/document/etuc-resolution-proposal-european-commission-directive-improving-working-conditions> (Accessed: 8 December 2025).
- International Labour Organization (2021) *World Employment and Social Outlook – The Role of Digital Labour Platforms in Transforming the World of Work*, Geneva; ISBN 978-92-2-031941-3.
- Państwowa Inspekcja Pracy (2025) *Sprawozdanie z działalności Państwowej Inspekcji Pracy w 2024*, Warszawa, pp. 1–243; [online]. Available at: <https://www.pip.gov.pl/o-nas/sprawozdania> (Accessed: 8 December 2025)
- Statistics Poland (2025) *Labour force survey in Poland – quarter 2/2025*, Warsaw; [online]. Available at: <https://stat.gov.pl/obszary-tematyczne/rynek-pracy/pracujacy-bezrobotni-bierni-zawodowo-wg-bael/aktywnosc-ekonomiczna-ludnosci-polski-2-kwartal-2025-r-,4,59.html> (Accessed: 8 December 2025)

Court decisions

- Judgment of 4 December 2014 of Court of Justice C-413/13 FNV Kunsten Informatie en Media v Staat der Nederlanden.
- Judgment of 17 November 2016 of Court of Justice (C-216/15, Betriebsrat der Ruhrlandklinik gGmbH v Ruhrlandklinik gGmbH)
- Judgment of 20 December 2017 of Court of Justice (C-434/15, Asociación Profesional Elite Taxi v Uber Systems Spain SL).
- Judgment of the Supreme Court of 23 September 1998 r., II UKN 229/98, OSNP 1999, no. 19, issue 627.
- Judgment of the Supreme Court of 6 October 2004 r., I PK 488/03, OSNP 2005, no. 10, issue 145
- Judgment of the Supreme Court of 23 October 2006 r., I PK 113/06, Pr.Pracy 2007, no. 1, issue 35.
- Judgment of the Supreme Court of 26 March 2008 r., I UK 282/07, LEX no. 411051.
- Judgment of the Supreme Court of 10 May 2018 r., I PK 60/17, LEX no. 2486218.
- Judgment of the Supreme Court of 11 September 2013 r., II PK 372/12, OSNP 2014, no. 6, issue 80.

Internet sources

- Ojczyk, J. (2025), *Kurierzy na etatach? Oto plany rządu* [online]. Available at: <https://businessinsider.com.pl/prawo/praca/kurierzy-na-etatach-oto-plan-y-rzadu/4cf7n9s> (Accessed: 8 December 2025).
- Nowy Obywatel (2022), *Powstał związek zawodowy w Pyszne.pl* [online]. Available at: <https://nowyobywatel.pl/2022/11/20/powstal-zwiazek-zawodowy-w-pyszne-pl> (Accessed: 8 December 2025).

