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THE CONCEPT OF SUBORDINATION AS AN ELEMENT OF EMPLOYMENT FOR DIGITAL PLATFORM WORKERS IN THE REPUBLIC OF LITHUANIA

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ABSTRACT

This research analyzes one element – subordination – of employment relations indicated by the case law of the Republic of Lithuania according to which a civil relationship can be understood as an employment relationship. The elements by which independent contractors (self-employed persons) can be considered employees are established in the case law of the Republic of Lithuania but have never been analyzed in the context of platform workers. Therefore, first, the nature and features of the digital platform and the platform worker are analyzed. Second, the definition of subordination is considered in light of the distinction between employment and civil relations. Third, subordination is analyzed vis-a-vis the relations between the platform and the platform worker (independent contractor) and in light of proposed legal acts for platform workers.

KEYWORDS

Platform workers, independent contractors, employment relationship, civil relationship, platform.

INTRODUCTION

According to Michael Dunn¹, technology has dramatically reshaped work and employment, creating changes unimaginable a decade ago. Digital platforms have not only introduced new forms of work but also revolutionized how workers find opportunities. As indicated by Christian Lévesque, Peter Fairbrother, and Nicolas Roby,² this current phase of digitalization, notable for linked data, objects, and platforms, caused interferences in the employment relations. Advanced digital technologies like robotics, artificial intelligence, applications, etc., are more and more used in many advanced businesses.

Echoing the argument made by Michael Dunn³, platform work should be acknowledged as having a significant impact for employment that works through a digital tool, such as the apps Bolt, Wolt, and Discontract. This shift not only changes how workers connect with opportunities but also challenges conventional employment models by emphasizing flexibility and task-based work. Because of that, traditional employment shifts so that workers are eager to choose their own working time, the scope of their work, and the measures which help them to work, as well as the need to observe the impact of digitalization to the employment relations.

As stated by Sanja Stojkovic Zlatanovic and Ivana Ostojic⁴, economic and social changes demand a redefinition of labor institutions and protections. The platform work has appeared and offered flexible work and ability for the worker to choose over traditional employment relations. But the legislative part basically remain the same. Because of this, it is clear that the legislation in most countries lags behind this transformation, and we still lack legal regulation as digitalization impacts the performance of work functions.

There is still a lack of legal clarity on whether platform workers should be considered employees or independent contractors. For example, French employment relations have long been based on the distinction between salaried workers and entrepreneurs. The platform based economy has led to the creation of new yet ambiguous statuses that primarily expand the entrepreneur category⁵. The same has happened in other European countries where strong traditional employment exists, such as Spain, Germany, and Italy. Moreover, algorithmic management techniques (which is the key element when there is a possible implication on subordination in a civil relations and there is a need to indicate whether the relations are civil or employment) are included in the proposal for improved platform work legislation in the EU. Changeability may result from the use of algorithms in job management since they make it more difficult to make decisions regarding pricing, task assignments, and performance reviews. The proposals are meant to increase openness, guarantee that employees may contest rulings, and take part in the management of these algorithms⁶. Also, economic ramifications include

¹ Michael Dunn, "Making Gigs Work: Digital Platforms, Job Quality and Worker Motivations," *New Technology, Work and Employment* 35, No. 2: 1 // ISSN 1468-005X.

² Christian Lévesque, Peter Fairbrother, and Nicolas Roby, "Digitalization and Regulation of Work and Employment: Introduction," *Relations Industrielles/Industrial Relations* 75, No. 4 (Fall) (2020): 647 // <https://doi.org/10.7202/1074558ar>

³ Dunn, *supra* note 1, at. 3.

⁴ Sanja Stojkovic Zlatanovic and Ivana Ostojic, "Labour Law Status of Platform Workers – Between Autonomy and Subordination," *Regional Law Review* (2021): 269–282.

⁵ Chris Forde, Mark Stuart, Simon Joyce, Lindsey Oliver, Danat Valizade, Gabriella Alberti, Kate Hardy, Vera Trappman, Charles Umney, and Charles Carson, with contributions from J. Katja and G. Yordanova, *The Social Protection of Workers In the Platform Economy*, Directorate-General for Internal Policies, Policy Department A: Economic and Scientific Policy, European Parliament (2017): 14 //

⁶ <https://www.egmontinstitute.be/addressing-regulatory-gaps-in-the-booming-platform-economy-a-look-at-the-social-and-economic-implications-of-the-eu-proposal-on-platform-workers/>

the possibility of a change in platforms' cost structures as they could have to pay benefits and salary in accordance with conventional employment norms. This may result in a decrease in the flexibility that draws many people to gig work, which might decrease the labour pool or change the demographics of the workforce. On the social front, increased employment status may result in workers having more financial security, which is important for overall social welfare⁷. Therefore, the overall legal aspects for platforms workers will most likely have significant changes for the platforms itself and also for platform workers' (especially in a view of flexibility or work).

Digital platforms are reforming independent employment by capitalizing on the widespread use of mobile devices, the vast networks of consumers and workers they can access, and their capacity to leverage rich, real-time data to facilitate more effective matches. The consumer benefits because they can get in touch with someone who can fix anything at home, clean it, or bring meals, groceries, or other supplies right to their front door. This can happen within a few hours of placing an order on the mobile app. As the economy expands and more opportunities arise, people seem to be choosing new or more careers in order to increase their income or increase their flexibility. But the problem of the type of occupation appears here.

In some countries platform workers are considered employees (according to the legal provisions or case law). In other countries, including Lithuania, where legal regulations for platform workers have not been adopted yet and there is no case law, platform workers by default are considered independent contractors. Usually, digital platform work is task-based, temporary, and often casual in nature (e. g., delivery). Therefore, the boundaries between real self-employment and disguised employment relationships are blurred⁸.

Since a legal framework for platform workers has not been adopted yet, and the legal status of platform workers might only be acknowledged by the list of criteria indicating whether civil relationships are more likely to be considered as employment relationships, the analysis of the most important of them – subordination – is necessary. Once most of the elements are indicated in the independent contractors' relations with the other party, the court might make the decision to consider civil relationships as employment relationships and independent contractors as employees.

The concept of subordination is pivotal when differentiating between civil and labour relations. Subordination, in the context of employment relationships, refers to the hierarchical relationship wherein an employee is subject to the authority, direction, and control of an employer. It represents a power dynamic that does not typically exist in civil relations. This is one important reason, among others, that clarification of subordination is needed.

The subject of this article is the legal status of digital platform workers in the context of Lithuania, and how the concept of subordination is applied to determine their employment relationships and rights. The article analyses the nature of the digital platform itself, and how the digital platform should be understood in the context of the legal status of platform workers, taking into account key aspects of subordination. As Austin Zwick states, the technology behind platform work is generally described as a simple

⁷ *Ibid.*

⁸ To cover the job status, an employer treats someone as a non-employee. However, dependent self-employment occurs when workers supply services under a contract that's not an employment contract but rely largely on one or a few customers for revenue and follow precise instructions (these are general reflections of most likely employment relations and not self-employment) (ILO, 2016b).

tool linking workers and customers⁹. According to Mark Freedland, certain elements of platform work, particularly its description, play an important role in understanding labour issues and their effects on platform workers. Technology is the key element when the structure of the relations between employer and employee are to be determined (technology using platform as a core works as intermediary but it also might be misleading). Confusion about it is important to the platform economy's financial success and its reputation as operating beyond labour law¹⁰. Therefore, the role of the digital platform is significant for analysis of subordination, in order to determine whether a platform worker is an employee or a self-employed person.

The article also addresses the definition of subordination, aiming at the same goal: the concept of subordination is important in shaping the legal status of the platform worker. As it is described by Sanja Stojkovic Zlatanovic and Ivana Ostojic¹¹, subordination, in conjunction with the employment contract, is crucial for establishing a typical employment arrangement; however, these components may also be included in civil or commercial contracts.

Subordination refers to the degree of control and direction exerted by an employer over a worker. In traditional employment relationships, subordination is a key factor in establishing an employer-employee relationship, as it often involves direct supervision, control over working hours, and the manner in which work is performed. The article investigates how this concept applies to platform workers, who may have more autonomy than traditional employees but still operate under the rules, regulations, and algorithms set by the platform. The analysis is aimed to clarify the importance of subordination as an element to the employment relations (which guides to a better understanding distinguishing employment and civil relations).

This article uses and combines logical and systematic analysis, comparative analysis, document analysis, as well as teleological, descriptive, historical, linguistic, other methods.

NATURE AND FEATURES OF THE DIGITAL PLATFORM

According to Alison Griswold¹², the idea behind the platform economy is simple: tech companies make digital markets within which people can use apps to buy and sell things without problems. On the surface, customers, sellers, and platform companies all seem to have the same goals: according to traditional microeconomic theory, supply and demand will work well in online markets that do not have many problems.

Digital platforms are online spaces where different users, like customers and businesses, come together. What makes digital platforms special is how they grow bigger and more useful as more people join them. We might call them "service-oriented platforms," or just "service platforms," because they are used as a link between customers and service providers. These platforms offer a variety of services, such as professional services, lodging, food, and transportation, using mobile and internet technology.

⁹ Austin Zwick, "Welcome to the Gig Economy: Neoliberal Industrial Relations and the Case of Uber," *Geo-Journal* 83, No. 4 (2018): 679.

¹⁰ Mark Freedland, "New Trade Union Strategies for New Forms of Employment – A Brief Analytical and Normative Foreword," *European Labour Law Journal* 10, No. 3 (2019): 179 at 181–82.

¹¹ Sanja Stojkovic Zlatanovic; Ivana Ostojic, *supra* note 2, 270.

¹² Alison Griswold, "Uber's Secret Weapon Is Its Team of Economists," *Quartz* (14 October 14 2018) // <https://qz.com/1367800/ubernomics-is-ubers-semi-secret-internal-economics-department> [https://perma.cc/Z5JQ-9VUU]

Platform work is very diverse. It can be classified according to several parameters: (i) skills requirement for tasks: higher- or lower-skilled workers; (ii) selection process: decision made by platform, platform worker, or client; and (iii) location of tasks: work is performed online or on-location. Online platform work (also called crowd work) refers to tasks that platform workers carry out from any suitable location on their electronic devices. Platform workers often fulfill their duties remotely, typically from home using a computer or cell phone to reach the customer. Interactive services, such as online classes and consultations, also fall into this category. While on-site platform work requires a specific physical location, it is still facilitated online, similar to other types of platform labor (and these services also require the usage of technologies, e. g. a sell phone or tablet)¹³. As Pape Marketa explains¹⁴, services in this group include cleaning, beauty services, photography, transportation, delivery, and short-term rentals. Due to the diversity of platform work, a "one-size-fits-all" solution to improve working conditions and social security benefits is not feasible. This article focuses on the location-based platforms (scope includes platforms that organise work performed by individuals).

In general, digital platforms provide a variety of services, including platforms for individual users, platforms for mediating work agreements, platforms for commercial transactions, and hybrid platforms that combine various services.¹⁵ All these types of digital platform are social-oriented.

According to the OECD (The Organization for Economic Co-operation and Development), online platforms are digital middlemen that make it easier for people to meet, do business, and share information, goods, and services over the internet.¹⁶ At first, the OECD called these platforms "intermediaries." But these days, the word "platform" is used more and more to refer to a digital space where people build value, not just a way to meet or facilitate¹⁷. In essence, these concepts frame digital platforms as the go-between for service consumers and providers, not merely facilitating interactions but also enabling the redistribution of generated value within new digital ecosystems.

However, the platform's function is not implied to be the same as that of a straightforward middleman by the definition of an information service. The European Parliament and Council approved Regulation 2019/1150 on June 20, 2019, with the aim of enhancing the openness and fairness of online intermediation services offered to business customers. Online brokerage services are defined by this regulation's Article 2(2) as those that satisfy each of the following criteria: (a) According to Article 1(1)(b) of Directive (EU) 2015/1535 of the European Parliament and of the Council, these constitute information society services; (b) they allow business users to offer products or services to customers in an effort to expedite the start of direct business-to-consumer transactions, regardless of the location in which those transactions are ultimately completed; (c) they are supplied to business users under the terms of a contract between

¹³ *Improving the Working Conditions of Platform Workers* // https://fondazioneantoniolombardi.it/wp-content/uploads/2022/02/1.-EPRS_BRI2022698923_EN.pdf

¹⁴ Pape Marketa, *European Parliamentary Research Service*, PE 698.923, Members' Research Service (March 2024).

¹⁵ Todor Kalamatiev, Nikola Murdzev, "The Notion of Digital Labour Platforms and the European Incentive for Improvement of the Working Conditions of the Platform Workers," *Harmonius: Journal of Legal and Social Studies in South East Europe* (2022): 212.

¹⁶ K. Perset, "The Economic and Social Role of Internet Intermediaries," *OECD Digital Economy Papers* No. 171 (2010) // <https://doi.org/10.1787/5kmh79zszs8vb-en>

¹⁷ L. Belli, and N. Zingales, "Online Platforms' Roles and Responsibilities: a Call for Action": 25–38; in: L. Belli et al., *Platform regulations: how platforms are regulated and how they regulate us* (Rio de Janeiro: FGV Direito Rio, 2017).

the service provider and the customers to whom the business users offer products or services¹⁸.

The “digital labour platform” is any person or entity that provides a service that meets the following criteria: (i) it is provided, at least partially, online through electronic means like a website or mobile app; (ii) it is offered at the request of a customer; (iii) it requires work done by individuals for payment, whether online or in a physical location; and (iv) it uses automated systems for monitoring or decision-making. “Platform work” is any job a person can perform through a digital platform based on a contract with the platform, regardless of whether the customer is directly contracted with the person providing services or not¹⁹.

The phrase “that digital platforms provide services” is crucial here. Since digital platforms are digital tools and cannot supply services on their own, they must establish relationships with other parties to guarantee that the services that are offered are provided. The important part of understanding these platforms and their way to supply services is looking at subordination, which means how the platform controls what happens on it (the part of automated monitoring or decision-making systems). Usually, the businesses who run these platforms have a lot of power over how they work, what rules users must follow, and how they use people’s data. For example, a food delivery app curates the user experience by determining which restaurant promotions are highlighted and how the courier who delivers food is rated. Therefore, when we talk about digital platforms, it’s key to think about who’s in charge and how they’re making decisions, because this impacts everyone who is engaged in working with platforms.

Thus, to put it very broadly, the main function of digital labour platforms is to enable the exchange (buying and selling) of work services. On these digital platforms, the following characteristics are crucial in defining work relationships: (i) paid work is scheduled through an online platform; (ii) the client, the worker, and the online platform are the three parties involved in this digitally enabled work arrangement; (iii) the goal of the work arrangement is to complete specific tasks or address specific issues; (iv) the work is usually outsourced or subcontracted; (v) larger jobs are broken down into smaller, individual tasks; and (vi) services are provided on a per-request basis in accordance with immediate needs.

Digital platforms maintain control over the links between platform workers, customers, and the platform by setting the terms and conditions, which shapes the main elements of employment. This important function of a digital platform requires closer analysis of the concept of subordination.

It is important to analyze subordination because it affects a platform worker’s status and rights, such as pay and benefits. It ensures that workers are fairly protected by helping to modify labour rules to better suit the gig economy. Power disparities are also highlighted by this analysis, which supports just negotiations and treatment for all. It also looks at the wider effects on the labour market, striking a balance between worker protection and innovation but also keeping the balance between flexibility for workers and business management for the platforms, including the scope of monitoring of platform workers. Jurisdictions differently interpret the concept of subordination and

¹⁸ European Parliament and Council, Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services, OJ L 186 (2019).

¹⁹ European Parliament legislative resolution of 24 April 2024 on the proposal for a directive of the European Parliament and of the Council on improving working conditions in platform work (COM(2021)0762 – C9-0454/2021 – 2021/0414(COD)).

taking into account that the aim of this article is to analyze how subordination element is comprehensible under Lithuanian law, the following section refers to the definition of subordination under Lithuanian Labour Law.

THE DEFINITION OF SUBORDINATION IN LITHUANIAN LABOUR LAW

Article 32, Part 2 of the Labor Code of the Republic of Lithuania (hereinafter referred as LC) focuses on the concept of subordination to the employer and states that subordination to the employer refers to the performance of a job function where the employer has the right to control or direct all or parts of the work process and the employee is subject to the employer's instructions or to the rules of the workplace²⁰. Standard work is generally thought to be full-time, subordinate labour with no set length. This definition is important because it describes the challenges faced by those in positions of power and control dynamics of the employment relationship. The clause needs to be broken down and described as follows to be understood in relation of the employment:

1. *Performance of job function*: this section suggests that the worker was employed to carry out responsibilities or activities that are listed in their contract or job description. It implies that when the relationships are described as job relations, one of the essential components is the work function (not the outcome). In this case, employer not only determines *what* functions must be performed by the worker but also describes *how* the function should be performed.

2. *Employer's right to control*: this is a main aspect once subordination is in question. This means that the employer has the power to control, guide, and make decisions on how the employee performs his/her work, has a right to give instructions and concentrates on how the function is performed, such as: setting specific work methods, standards, deadlines, or quality requirements.

3. *Extent of control*: The employer is able to control or influence either all or part of the work process. This indicates the work function may require better supervision and specific instructions to give, while others might be orientated to the autonomy, but still set by the employer (employer implements job descriptions). If the employee fails to follow the employer's instructions, it might lead to a decision that the employee breached their work duties (i.e. a negative outcome from not correctly performing work functions or not performing work functions at all).

4. *Subject to employer's instructions and workplace rules*: it is important to consider that the employee must follow the instructions given by the employer and comply with the rules and regulations of the workplace, e.g., following company policies, procedures, and guidelines. The breach of the procedures might also lead to a negative outcome – a breach of employee's work duties.

5. *Implications for the employment relationship*: in the light of an employment relationship, the employee is usually integrated into the employer's organizational structure and must fulfill employer's orders, is integrated in the workflow organization, processes. They actively support the overall goals of the organization while following the guidance and supervision of the employer. In most cases, this is not the element in many civil contractual relationships where the person is basically autonomous. This part will be analyzed further in this article.

²⁰ Article 32, Part 2 of the Labour Code of the Republic of Lithuania (TAR 2016-09-19, i. k. 2016-23709).

Basically, subordination appears in order to guarantee efficiency and compliance. Platform workers are observed using a range of digital technologies that are intended to detect and analyse actions including keystrokes, web and application use, and geo-location, and they also might use the tools provided by the platform. These solutions make it possible to measure time and monitor in real-time, giving platforms insights into workers work, where they work, etc. Comprehensive reporting capabilities in these systems also aid in monitoring adherence to security and organisational standards, with the goal of preserving efficiency, guaranteeing data security, and upholding business rules. Also, workers are rated by the customers, which might later allow the platform to apply disciplinary measures for platform workers.

Article 32, Part 1 of the Labour Code of the Republic of Lithuania, in general states that an employment contract itself is an agreement between an employee and an employer, according to which the employee undertakes to perform a work function under the authority of the employer and for his benefit, and the employer undertakes to pay wages for this²¹. The conclusion of the employment contract focuses on the job function and authority and not to the result. Therefore, as we see from the legal provisions, when employment relations are defined along with the concept of subordination, the abovementioned elements on subordination states that it is the employer's right to control how employee performs work function, and set responsibilities for employees. The subordination clause is crucial if the employment relationship must be confirmed.

The Supreme Court of Lithuania stated that an employment contract requires the employee to be supervised by the employer while working. According to Article 32(2) of the Labour Code, subordination implies that the employer controls or directs part or all of the work process and the employee must follow employer's instructions or workplace regulations. The difference between employment contracts and civil contracts is that in the latter the work is done for the salary but autonomously, without the other party's supervision²². The subordination of the employee in the employment relationship means that it is the right of the employer to unilaterally give instructions or determine the rules according to which the work is to be performed, but without violating the contract and the imperative requirements of public law²³. The performance of work functions is inextricably linked to the employer's control and the carrying out of his legal instructions, as noted above. In this situation, it is insufficient to have a specific level of subordination between the parties based on the nature of the activity performed; it is also unusual to have a fixed payment for the work performed because these payment arrangements are not exclusive to labour relations or civil contracts (such as those involving the provision of services for compensation, contracts for contract work, and commission contracts, among others). In the context of interactions governed by the law of contractual services, this is not unusual²⁴.

Therefore, one of the hallmarks of an employment relationship is that the employer has the right to direct how, when, and where the employee performs their work. When performing his/her job functions, the employee must follow the job procedure and employer's instructions, whereas civil contracts do not include subordination²⁵.

²¹ Article 32, Part 1 of the Labour Code of the Republic of Lithuania (TAR 2016-09-19, i. k. 2016-23709).

²² Supreme Court of The Republic of Lithuania (4 April 2023, judgement no. e3K-3-109-684/2023 (Lithuanian case)).

²³ Tomas Davulis, *Commentary on the Labour Code of the Republic of Lithuania* (Vilnius: VĮ Registrų centras, 2018), 132.

²⁴ *Ibid.*, 14

²⁵ Supreme Court of The Republic of Lithuania (11 February 2001, judgement no. 3K-3-264/2002).

When discussing the interaction between civil and employment contracts the Court of Cassation has also repeatedly emphasized that the employment contract is one of the main legal forms for the exercise of a person's right to work, but that work, as an activity or process of creation, may be used and the result of work may be obtained in forms other than employment, such as, for example, by means of contracts governed by civil law²⁶. In some instances, courts recognize that certain activities or creative processes can be carried out not just within an employment framework, but also through different legal means, such as a civil agreement. This differentiation is important for distinguishing between employment contracts and civil agreements or other legal relationships. For instance, in a construction case, the court noted that under an employment contract an employee is expected to consistently carry out a specific role, which is independent of the end result and requires adherence to work processes and employer instructions. However, the court found that, in this case, the constructors were engaged in a specific task – insulating a house – rather than a continuous role. They worked independently, used their own tools, and their compensation was based on the work completed. According to the court's view, such an arrangement is more indicative of a civil relationship rather than an employment one²⁷.

In summary, the abovementioned provisions of the Labour Code of the Republic of Lithuania and the case law practice sets a structure for understanding the power dynamics in an employment relationship in the Lithuanian legal system, highlighting the employer's right to control and set rules on the performance of employee's job functions, in order to fulfill the obligations under the employment contract. This understanding is fundamental in distinguishing employment relations from other types of occupations. As long as one of the employment relations elements is subordination and the employee's integration into the employer's organizational structure, it is necessary to check if subordination is also a subject of platform work.

SUBORDINATION AND CONTROL IN DIGITAL LABOUR PLATFORMS

While analyzing the elements of subordination and the general definition of the digital platform, one of the aims of this article is analyze how aspects of the concept of subordination is manifested in the relations between platform workers and the platform. While the specifics of this control are still a subject of ongoing research, this discussion aims to provide an initial overview and lay path for future interpretation of the subordination concept in digital platforms.

Although in most jurisdictions they are recognized as independent self-employees, platform workers are the closest to employees in terms of their relationship: they carry out the instructions of the applications through which customers are found; they are subject to the rules laid down for the provision of the service; and, they are not able to determine their own price for services, etc.²⁸ In France, for example, where there is evidence of significant control by the platform—for example, via the establishment of work schedules or close monitoring through apps—courts have recognised platform workers as employees. Similarly, platform work discussions in Germany often center on

²⁶ Supreme Court of The Republic of Lithuania (27 June 2006, judgement no. 3K-3-387/2006).

²⁷ *Case law in administrative law in cases of administrative offences concerning illegal work summary and recommendations for the application of law* (2005, 24).

²⁸ Tomas Davulis, "Savarankiškai dirbančių asmenų teisė į kolektyvines derybas ir teisė į streiką," *Darbo teisės iššūkiai besikeičiančiame pasaulyje* (Vilnius: Mykolo Romerio universitetas, 2020), 43.

whether employees are free to choose how they want to organise their work or whether the platform's policies and oversight mechanisms control them²⁹.

Hence, it could be proposed that all work relationships deviating from traditional employment parameters may be categorized as non-typical. This category includes a range of work arrangements that do not fit the framework of regular full-time, long-term jobs with one employer. Gig economy jobs, which frequently have more flexible terms and deviate from the traditional employer-employee dynamic found in ordinary employment, may also be a part of these non-traditional connections.

As stated by Paul Schoukens and Alberto Barrio³⁰, the use of digital platforms often erodes conventional job structures, resulting in a combination of temporary, part-time, and self-employed positions that typically lack customary features such as mutual obligations, legally binding agreements, or economic dependence. Depending on the platform, there are different levels of control over the legal relationship between the digital platform and the worker. Lately, the first ever legal document was approved by the European Parliament, on April 24, 2024, which is called the Directive of the European Parliament and of the Council on Improving working conditions in platform work (Directive)³¹.

This Directive establishes the first-ever EU rules on algorithmic management in the workplace. One of the directive's main features is the establishment of a rebuttable presumption of employment for platform workers, provided that certain requirements pertaining to platform direction and control are satisfied. This include salary caps, performance monitoring, authority over job allocation and working environment, and limitations on work arrangement. The regulation also emphasises the need of AI transparency and human supervision in the workplace, stating that human decision-making should be included in any choices that influence the working conditions of employees and that employees should be informed about the use of AI in monitoring and assessing their performance. The Directive also notes that there are people who experience subordination to varying degrees of control by the digital labour platforms they operate through, for instance as regards pay levels or working conditions. According to one estimate, up to five and a half million people working through digital labour platforms could be at risk of employment status misclassification³². Therefore, the legal framework to the emergence of platform work, including the use of automated monitoring and decision – making systems, is important. Algorithmic management can obscure the fact that workers on digital labor platforms are under the platform's control and supervision. Therefore, the question here arises: what kind of subordination is applied for those who work on a digital platform?

In traditional employment, subordination is quite general, with the employer having the possibility to generate task to the employee and establish procedures, standards, and policies. However, a digital platform often allows individuals the flexibility to choose their working times and locations, yet their financial and organizational

²⁹ Felix Sieker, "Platform Work and Access to Social Protection across Major European Countries," *Journal of International and Comparative Social Policy* 38, No. 3 (2022): 193–207 // <https://doi.org/10.1017/ics.2022.13>

³⁰ Paul Schoukens and Alberto Barrio, "The Changing Concept of Work: When Does Typical Work Become Atypical?" *European Labour Law Journal* 8, No. 4 (2017): 310.

³¹ European Commission, *Proposal for a Directive of the European Parliament and of the Council on Improving Working Conditions in Platform Work*, COM (2021) 762 final, 2021/414 (COD) (Brussels: European Commission, 9 December 2021).

³² PPMI, *Study to Support the Impact Assessment of an EU Initiative on Improving Working Conditions in Platform Work*, 2021.

outcomes are typically very much dependent on the platform. Here the question arises whether the subordination in the relation between the platform and platform worker is direct or indirect. Therefore, the subordination might be classified in three different categories: economic, organizational, and result-oriented. For digital platforms the following two are relevant: economic and result-oriented; and both of them might be considered indirect subordination.

An individual employed on a digital platform is under the control of the platform in two significant ways: economic subordination, where automated systems have the power to make or influence decisions that affect their working conditions, such as recruitment, work assignments, remuneration, health and safety, and contractual status; and result-oriented subordination, where automated monitoring systems track, supervise, or assess work performance, often by gathering personal data³³). That means that the platform worker most likely is a subject of indirect subordination regarding pricing and evaluation (but in most cases platform workers are evaluating not by the platform but by the customers). This insight leads to the decision that traditional subordination, which is relevant for the employment relations, cannot be applicable to the relations between platform workers and the platform.

Platform workers rely on the platform for income, as they can't set their own prices; the platform sets hourly rates, and price negotiation is not allowed. In Lithuania, Bolt users' customer feedback can restrict workers' access to higher-paying jobs, affecting their earnings³⁴. This is important for the valuation part, for the tools which the platform uses, which which helps the platform to evaluate the performance of the platform worker.

The third type of subordination – organizational – in some cases might not be considered as an element, especially, if the digital platform is unable to assess the service provision process. This means that the platform might not have processes implemented to control how the platform worker delivers services or performs the delivery functions. In most cases, the platform can only evaluate the result, and can give recommendations on how to act on a platform and has the control over the economic perspective (setting price) (also, indirect subordination). Therefore, if it is nearly impossible for the digital platform to supervise the platform worker's methods, then the concept of subordination should be adapted to a different approach and not be applied too broadly to platform workers.

The Article 5 of the Directive states:

[the] contractual relationship between a digital labour platform and a person *performing* platform work through that platform shall be legally presumed to be an employment relationship *when facts indicating control and direction, according to national law, collective agreements or practice in force in the Member States and with consideration to the case-law of the Court of Justice, are found. Where the digital labour platform seeks to rebut the legal presumption, it shall be for the digital labour platform to prove that the contractual relationship in question (is not an employment relationship as defined by the law, collective agreements or*

³³ *Ibid.*

³⁴ International Labour Organization, "Digital Labour Platforms and the Future of Work: Towards Decent Work in the Online World," *Report* (2018) // https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_645337.pdf

practice in force in the Member States, with consideration to the case-law of the Court of Justice)<...>³⁵.

The subordination criteria outlined in the Directive are overly broad and the most important role for deciding whether the relations are employment or civil is for Member States to decide. The current provisions in the Directive may not accurately reflect the reality of platform work because the subordination element is used in a way that is now set by the case law practice (which for example in Lithuania, any kind of subordination is an element of the employment relations). Platform work, even though it is linked to self-employment now and related to the employment relations, might be mixed of two (employment and civil relations) if each element of the employment relations is analyzed through the lens of work in digital platforms and not self-employment in general.

Considering the recent jurisprudence of the Supreme Court of the Republic of Lithuania, which states that subordination in employment involves the employer's right to unilaterally issue instructions or set rules for performing work, without breaching the employment contract or mandatory public law, the classification of a platform worker as an employee in the light of the broad definition of subordination becomes debatable. If the essence of subordination is the provision of instructions and control (in general how the platform worker performs the work function), then digital labour platforms typically do not provide daily instructions on performance of the tasks to platform workers. More often, digital platforms might instruct on service delivery methods to the end client and assess the work based solely on the outcome, such as client ratings of the platform worker (evaluation). According to the Directive, a digital labour platform is able to: (i) evaluate the work performance, (ii) affect the decision making, (iii) control the pricing, and (iv) provide access to trainings, etc. In terms of the national definition of subordination, in most of the cases digital platform work is likely to be understood as employment rather than civil relations.

In order to determine whether subordination as a feature of the employment relationship applies to the platform, subordination should be analyzed within the framework of other labour law institutes: (i) subordination and working and resting time, (ii) remuneration, (iii) safety at work, and (iv) limits of liability. In this case, in order to determine whether subordination as an element of the employment relationship exists between the platform and the person acting on it, the factual analysis should look at how the institution of work and rest correlates between the platform and the employee (i.e. whether the platform regulates when the person works or not, when he/she is given rest time, etc.). It is also important to determine to what extent the labour law institution of remuneration for the work function is relevant for the platform operator (i.e. whether the platform operator can influence his/her own remuneration, negotiate remuneration, or is entitled to a component part of the remuneration). Equally important are the institutes of responsibility and safety at work. In the analysis of the relationship between the person acting on the platform and the platform, the fact that the platform has the possibility to suspend the ability to act on the platform, to provide guidelines for acting on the platform or to prohibit acting on the platform altogether (the institute of responsibility in the employment relationship), is also relevant. If the platform has the possibility to discipline the person acting on the platform, this can also be considered subordination through discipline as an attribute of the employment relationship. Similarly, if the platform provides the person operating the platform with the tools to work

³⁵ *Supra* note 25, Article 4.

on the platform and trains the person on how to operate the platform, these features can also be considered subordination in an employment relationship. Thus, in each case, it is crucial not only to determine in general terms whether the platform controls the person acting on the platform, but also through which institutes of the employment relationship the subordination operates, with which of them it correlates, and what level of such subordination exists in the relationship between the platform and the person acting on it.

Therefore, most likely, the national legislation must consider (i) who generally makes the impact on evaluating the platform worker: the platform or the service receiver; and (ii) how control over the platform worker is expressed and who is responsible for the final result. According to the Lithuanian Labour Law, the legislator must consider the main aspect of the employment relations: the employee is employed to perform the work function instead of delivering the result). This distinction highly influences the overall concept of subordination. When determining the nature of a digital platform worker's relationship—whether it is employment or civil—it's not just the existence of subordination that's important, but also the form and part it takes.

This leads to the outcome that the platform may control only a part of the entire delivering of the services process (by setting the general rules, influencing pricing and monitoring evaluations). However, if the overall decision-making and monitoring exists, then the relation between the platform worker and the digital labour platform is more likely to be considered an employment relation.

To sum up, the debate focuses on the complex relationship between digital platforms and platform workers, considering the amount of control and the amount of autonomy that exist in these digital relations. While digital platform work is flexible, there is an underlying form of subordination, which can be broken down into economic, organizational and result-oriented categories, and which affects platform workers' autonomy and financial performance. This should be analyzed further. The EU Directive aims to address these concerns by laying down general rules for algorithmic management and describing employment relationships. Subordination (control and monitoring) criteria is set as the key for deciding whether the relation between platform workers and the platform is employment or civil. In any case, to adopt the Directive, it is important to analyze the subordination concept in detail, and to analyze the scope of control and decision making, as well as who is responsible for the overall decision making and control of the platform worker. The outcome is important for determining the employment status of the platform worker.

CONCLUSION

The notion of subordination, which is essential in characterizing work interactions, becomes more important in Lithuania's digital platform economy. This article questions traditional occupation models while analyzing one element which usually defines employment relations – subordination; and the article assesses how it appears to platform work occupation. Lithuanian and EU legal provisions mostly reflect the traditional employment relationship and adapts it a bit to platform workers – but the core elements remain the same in terms of their relation to traditional employment. This article has indicated several outcomes of analyzing subordination as an employment element for platform workers:

1. Digital tools called "service-oriented platforms," or just "service platforms," became a link between customers and service providers. Today customers use platforms (e. g. apps to order food, for rentals, daily services for housing, as taxi services, etc.).
2. The exchange of services is the main function of the digital labour platforms. On these digital labour platforms, the following characteristics are important in defining work relationships: (i) work is scheduled through an online platform; (ii) the client, the worker, and the online platform are the three parties involved in this digitally enabled work arrangement; (iii) the goal of the work arrangement is to complete specific tasks or address specific issues; (iv) the work is usually subcontracted; (v) larger jobs are broken down into smaller, individual tasks; and (vi) services are provided on a per-request basis in accordance with immediate needs.
3. The EU Directive creates a legal presumption that a digital platform and a person doing platform work through that platform have an employment relationship if there are indications of control and supervision, as determined by national law, collective agreements, or current practices in the Member States, and in accordance with Court of Justice case law.
4. To determine whether individuals operating on a platform are subject to subordination, it is important to analyze subordination through various labor law institutions (according to Lithuanian and EU law): (i) working and rest time, (ii) payment, (iii) occupational health and safety, and (iv) the amount of responsibility. Each time the decision shall be made whether specific relations are employment or civil, it should be taken into account if the platform regulates the working hours and rest periods, remuneration, and whether they are controlled/disciplined by the platform.
5. The Supreme Court of the Republic of Lithuania explains that subordination (control) to the employer refers to the performance of a work function where the employer has the right to control or direct the whole or part of the work process and the employee is subject to the employer's instructions or to the procedures in force in the workplace (Article 32(2) of the Labour Code of the Republic of Lithuania). This feature also distinguishes the employment relationship from other similar relationships, in particular those based on civil contracts (like work on digital platforms). This leads to the outcome that the platform worker is more oriented to the results (e.g. that the item ordered is delivered) than the performance of the function (e.g. how the item is delivered). However, subordination, as an employment element here, might be considered as indirect subordination (e.g. the platform can provide guidelines on how to act on the platform; it can adopt disciplinary measures, etc.).
6. Despite the flexibility of working on digital platforms, there is an underlying subordination that impacts platform workers' financial performance and autonomy (indirect subordination). Indirect subordination can be classified into three categories: organizational, economic, and result oriented. Economic and result-orientated are the most relevant to platform work.
7. In light of Lithuanian legal acts, case law, and the EU Directive, the subordination element is indicated only in a general way and is yet not adopted to the specific contexts of platform workers.

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