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Sailing through the Fickle Waters of Food Delivery Platform Work in Serbia: In Which Direction Will the Wind Blow?

Abstract

While it is true that food delivery platforms are a novel phenomenon, their presence was barely noticeable until the COVID-19 pandemic struck and a state of emergency was declared. This state of emergency led to various measures, including the imposition of curfews, sometimes extending for days. These restrictions on the freedom of movement rendered it impossible for citizens to leave their homes without special permits. Delivery couriers, equipped with the required movement permits, were seen as a lifeline by the housebound populace. Gradually, necessity evolved into habit, propelling these platforms to become some of the fastest-growing businesses in Serbia. Today, it is almost unthinkable to step outside without encountering a delivery courier from Glovo, Wolt or Mr. D. However, the rise of food delivery platform work in Serbia has not been without challenges. One significant issue is the limited protection afforded to self-employed persons working for these platforms. Additionally, there is a matter of violating the rights of employees in limited liability companies that have entered into "partnership agreements" with the platforms. The problem of informal employment also looms large, often manifesting in unofficial collaborations between entrepreneur-status workers and their colleagues. Despite efforts to address these issues, Serbia has yet to establish a clear definition of what constitutes a platform worker and the rights they are entitled to. This leaves us pondering the crucial question: where do we go from here?

Key words

Food delivery platform work, employer, employee, self-employed person, Serbia.

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1. Introduction

Serbia, while not unfamiliar with the concept of platform work, has traditionally seen a greater prevalence of crowdwork rather than on-demand platform services. Research conducted by the World Bank Group highlights Serbia as one of the countries with the highest per capita number of crowdworkers,[1] the figure that has only increased over time. However, it was not until the onset of the COVID-19 pandemic that on-demand platform work, particularly in the food delivery sector started to gain significant traction. This period was marked by numerous restrictions of daily activities and various liberties that are usually taken for granted, providing a unique opportunity for the on-demand platform business to thrive.

In Serbia, the state of emergency was introduced by the Government and along with it came curfews which, at times, lasted for days. That is when the need for food delivery platforms arose. Food delivery platform workers had permits to move freely and, therefore, they seemed like a saving grace. This need, however, very soon created the habit of using them, making the food delivery platform business one of the fastest growing businesses in Serbia. However, the popularity of the platform work also brought about great issues regarding the status of these workers, their protection, and rights they should, or can, be entitled to. The aim of this article, therefore, is to present the current situation regarding the food delivery platform work in Serbia, as well as to offer possible solutions for current problems that Serbia is facing in that regard.

2. Characteristics and Types of Platform Work

Platform work is a distinct form of remote work, characterised by being conducted outside both the employer's premises and the worker's home, leveraging information and communication technologies (ICT). Its key distinguishing features from traditional remote work include shorter engagement durations with workers and a broader client base. These aspects give arise to complexities in determining the legal nature of such work arrangements and in classifying the legal status of employers who engage workers in this manner.[2] It is important to recognise the diversity within platform work, which varies significantly based on factors, such as the type of services provided, the clientele, who sets the service prices, and the degree of autonomy workers have.[3] This diversity makes it challenging to apply a uniform legal qualification to platform work. The one constant, however, is the central role of the platform itself in these work arrangements.

1 Kuek *et al.*, 2015, p. 30.

2 Kovacs, 2017a, p. 88.

3 Florisson and Mandl, 2018, pp. 48–68.

Platform workers always provide services through the platform connecting them to users. A user is almost always an individual or a group of unknown persons who needs the work of one or more workers in the field of food delivery, accommodation, intellectual services, transportation, etc. Precisely because these are services that are short-term by their nature, platform workers do not establish long-term relationships with the platform and most often perform minor tasks that are often part of a broader work process, and all this during an extremely short period.[4]

Hence, platform work includes three parties: the platform, the user of a particular service (client) and the service provider (worker). The classification of platforms can be based on the type of resources they provide access to. In this context, platforms can provide access to: various information, personal data, goods or services, labour and money, i.e. capital.[5] In principle, however, the most important classification of platforms is of those based on mass work (crowdworking) and those based on the performance of work tasks per request (work on demand).[6] In the literature, crowdwork is often referred to as "white-collar" work, given that in many cases it can consist of complex platform work tasks, as opposed to on demand work tasks, which are usually referred to as "blue-collar" work, and which are most often performed by low-skilled workers.[7] In principle, white-collar work offers better opportunities for decent work, such as higher wages and better opportunities to balance family and work obligations.

Platforms based on mass work (crowdworking) essentially act as employment intermediaries because they allow the user undertaking to access an unspecified group of workers who are ready to perform a specific work task for monetary compensation in return, at any time.[8] These platforms are not directly involved in the worker-client relationship, but they inevitably participate in all or some aspects of the planning, implementation, management or supervision of the distribution of labour among platform workers.[9] It should be emphasised that not all workers who work through the platform are in the same position, because for some it is the only source of income, and for others it is a way of acquiring additional funds. The most vulnerable category of platform workers are those workers whose income depends entirely on the work they do for the platform and who decide to do this type of work because they have no other choice.

4 In this way, the rigid labour law regulative is starting to be too narrow a framework for the modern economy, which became too dynamic for it. Jašarević, 2012, pp. 173–172.

5 Strowel and Vergote, 2019, p. 3.

6 The first category of platforms imply work that is performed in cyberspace in which there is no personal contact between the user/client and the service provider while, by contrast, the second category of platforms imply work that is organised through the application but is performed in the real world. Kovacs, 2017b, p. 2.

7 Urdarević and Antić, 2021, pp. 162–163.

8 Urdarević, 2021, p. 461.

9 Leimeister, Zogaj and Durward, 2016, p. 32.

According to certain statistical indicators, such workers make up about 40 per cent of all platform workers.[10] In that sense, it is also worth noting that Serbia is a country where a great proportion of workers per capita are engaged in crowdwork.[11]

Platforms based on on-demand work usually involve performing low-skilled jobs in the field of transportation, delivery, house cleaning, elderly care, and the like. In contrast to crowdwork, on-demand work through the platform is, accordingly, related to a specific locality, which is why it is spatially significantly narrower than crowdwork, while the nature of work performed through on demand platforms is such that it enables more detailed rules regarding the performance of work.[12] Here, the role of the platform is much more similar to that of the traditional employer, as it simultaneously controls and evaluates the work performance and, based on that, assigns or does not assign future tasks to the worker in question. Namely, although such platforms are often presented as merely a "market-place" for workers, i.e., as an intermediary in hiring workers for the client's needs, they actually often manage workers in the way that an average employer would do.[13] Some authors, therefore, believe that the establishment of work discipline through the digital rating of workers inevitably leads to a relationship of superiority and subordination,[14] and that, in that sense, platforms often speak the language of the market, but behave like traditional employers.[15] Therefore, the key question that emerges in the context of these digital platforms pertains to their true nature: Are these platforms merely neutral technological tools designed solely to connect workers with users, or do they, in fact, assume roles and functions traditionally associated with employers?

The legal nature of the work engagement of all platform workers is different, but, as a rule, they formally work as self-employed persons, while situations in which they have the status of platform employees are rare.[16] The platform worker will thus, in most cases, be exempt from the protective norms of labour legislation, due to the connotation of an "independent and free worker."[17] However, in most cases, there will be some kind of contractual relationship between the platform and the workers, if nothing else, then due

10 Berg, 2016, p. 19.

11 Kuek *et al.*, 2015, p. 30.

12 Božičić, 2020, p. 458.

13 Ivanova *et al.*, 2018, p. 8.

14 Klebe and Heuschmid, 2017, p. 199.

15 Prassl, 2018, p. 5.

16 Ivanova *et al.*, 2018, p. 3. An exception in this sense is, for example, Spain, where judicial practice has taken the position that platform workers require a case-by-case assessment of the existence of the characteristics of an employment relationship. Adams-Prassl, Laulom and Maneiro Vazquez, 2022, pp. 83–86.

17 On the other hand, the practice of zero-hour employment contracts also points to the fact that even an employment relationship does not always have to be a guarantee of security. Reljanović, 2020, p. 771.

to the fact that they must register and agree to the terms and conditions of work that the specific platform sets.[18] However, what is noticeable not only in Serbia, but also in the practice of other countries,[19] is the emergence of the quadrilateral nature of on demand platform work. With this form of platform work, in some cases, the standard trilateral nature of work through the platform is lost (platform-user-worker) and another party is added to the equation (in the case of Serbia, a limited liability company). In this sense, specifically in Serbia, the legal basis for working through food delivery platforms can be found in various "partnership agreements", which the platform can conclude both with a self-employed person (trilateral relationship) and also with a limited liability company (quadrilateral relationship) which will then make its employees available to the platform for the purpose of performing the tasks given through it.[20] The quadrilateral nature of this relationship cannot be viewed as intrinsically negative (other than the fact that currently, the food delivery platform is not given the obligations it should have due to the fact that its behaviour is very similar to that of an employer), however, some irregularities have been observed in practice in Serbia. Such complexities manifest in two primary forms. Firstly, when a limited liability company is involved in the relationship, the dynamics can become convoluted. Secondly, even in ostensibly trilateral relationships, an additional layer is often added due to informal alliances between workers who are registered as entrepreneurs and their colleagues. These irregularities, as well as the possible forms of normative action regarding the current practice, will be explained in the following sections.

3. Food delivery platform work in Serbia

Although it cannot be said that food delivery platforms are an absolutely new phenomenon (the first food delivery website was created in 2006 and in 2014, it was turned into an application),[21] the existence of such platforms was almost imperceptible until the COVID-19 pandemic struck, when a state of emergency was declared by the Decision of the Government of Serbia.[22] The state of emergency as such brought about with it various measures, allegedly with the aim of preventing the spread of the disease, and thus the curfew practice followed, which, at times, lasted for days. Such restriction of citizens' freedom of movement, although supposedly necessary at that moment, also made their normal daily life impossible, since they did not have the opportunity to leave their homes even if they needed medicine, unless they were persons to whom special permits were

[18] Risak, 2018, p. 9.

[19] Fairwork Germany Ratings 2021. Labour Standards in the Platform Economy, p. 2.

[20] Labour standards in the platform economy, Fairwork Serbia ratings 2022, p. 3.

[21] *Ibid.*, p. 3.

[22] Decision on Declaring a State of Emergency (*Odluka o proglašenju vanrednog stanja*), Official Gazette of the RS, No. 29/2020.

issued. This is precisely the moment in which the delivery of food through the platforms flourished, since the deliverers of the platforms had the mentioned movement permits and were, therefore, perceived by the citizens as a saving grace. Over time, what presented a need at the beginning of the pandemic also created a habit, and thus food delivery platforms relatively quickly became one of the fastest growing businesses in Serbia. Today, it seems simply impossible to leave one's home without seeing a Glovo, Wolt or a Mr. D delivery courier (which is also a company whose origin and way of operating can still essentially only be guessed at). On the other hand, the manner in which these platforms work, as well as the position of their workers in Serbia, is more the subject of newspaper articles than of the interest of the scientific and professional public. Nevertheless, over time, mainly due to the work of non-governmental organisations, a certain picture of the position of workers working through food delivery platforms has been acquired, while the exact picture regarding their number is still impossible to construct.

According to the data available in the 2022 Fairwork Report, in Serbia, the engagement of food delivery platform workers through employment contracts with limited liability companies prevails today.[23] Theoretically, such a variant of engagement should certainly give a slight advantage to such workers, since they have the status of an employed person, and due to the fact that employment carries with it the full scope of labour law protection contained in the Labour Law[24] as the main regulation in the field of labour relations. Hence, it is somewhat logical why the majority of such workers would opt for this form of engagement rather than the status of an entrepreneur (self-employed person) and a direct business relationship with the platform. Furthermore, the status of an entrepreneur entails the obligation to pay taxes, the amount of which is not negligible.[25]

This entrepreneurial aspect has indeed led to the emergence of various informal alliances among workers with entrepreneur status and their colleagues. In such a relationship, workers select a "victim" from among themselves who will be officially registered, conclude the appropriate agreement with the platform and who will then pay compensation for work to other workers in cash. This arrangement allows the registered entrepreneur to enjoy certain benefits, such as social insurance.[26] Additionally they earn a commission for the services provided to their colleagues.

On the other hand, other workers are absolutely legally invisible and, therefore, are not able to count on any legal protection. The reasons for this type of "trade" can be

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[23] Labour standards in the platform economy, Fairwork Serbia ratings 2022, p. 19.

[24] The Labour Law (*Zakon o radu*), Official Gazette of the RS, Nos. 24/2005 to 95/2018, Article 2.

[25] The Law on Personal Income Tax (*Zakon o porezu na dohodak građana*), Official Gazette of the RS, Nos. 24/2001 to 6/2023, Articles 31–33.

[26] As is the case with pension and disability insurance rights. The Law on Pension and Dissability Insurance (*Zakon o penzijskom i invalidskom osiguranju*), Official Gazette of the RS, Nos. 34/2003 to 138/2022, Article 12(1)(1).

completely different, but the most prominent one is the financial aspect. Namely, Serbia is a country where almost 400.000 inhabitants live on the minimum wage[27] the amount of which, among other things, is calculated on the basis of the minimum labour price.[28] The amount of the minimum labour price, on the other hand, is determined based on several elements, one of which is the minimum consumer basket.[29] In 2022, for example, for the month of June, as much as 400g of beef was included in the composition of this consumer basket (which should feed a family of three), while as much as about EUR 13.5 was set aside for health needs.[30] Not surprisingly, workers thus opt for a larger amount of money that will be paid to them in cash rather than for labour law protection and rights based on social insurance, and this way of doing work enables them to do this.

It is also noteworthy that the income earned by workers on food delivery platforms in Serbia often surpasses the average national income.[31] Given the context, it goes without saying that various bonuses linked to the number of completed orders serve as a significant incentive for workers on food delivery platforms, but this also leads to self-forcing that can push the body to its limits. The stimulant in this sense, however, certainly is the very way of management through algorithms as well, which also includes the supervision of the platform over the work of the delivery courier, and which is inasmuch specific due to the fact that the platform knows every step taken by the courier, starting from the acceptance of the "gig", through picking up the package, until the precise moment when the delivery was made. In this way, not only that the application has a control over the work process itself, but can also collect data that will later be used to evaluate the performance of workers, while it can also influence the behaviour of workers through various automatic messages.[32] And all of this thanks to the simple use of algorithms. In this way, in fact, through the very design of the work process of different food delivery platforms, both supervision and management of the workforce is enabled. Since the mentioned management system implies the use of algorithms, in the literature it is also called algocratic where

> "the algocratic system of governance consists of programming schemes embedded in global software platforms that structure possible forms of work performance."[33]

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27 Bradaš, 2021, p. 7.

28 The Labour Law, Article 111(2).

29 *Ibid.*, Article 112(3).

30 Ministarstvo trgovine, turizma i telekomunikacija, Kupovna moć stanovništva – potrošačka korpa, <https://mtt.gov.rs/extfile/sr/37879/KUPOVNA%20MOC%20avgust%20%2020221.pdf> (accessed 21 December 2022).

31 Medial earnings in September 2022 amounted to around EUR 500. Urdarević and Petrović, 2022, p. 5.

32 Ivanova *et al.,* 2018, p. 7.

33 Aneesh, 2009, p. 349.

It is, simultaneously, indicative that the term "algorithmic disciplining" is also mentioned in the literature,[34] while it was noted that in some cases this type of management can go so far as to be called "algorithmic despotism."[35] The fact that such platforms have such a "digital reputation system", which implies that the platform can evaluate the work of the worker, even when he does not accept tasks, greatly calls into question the real autonomy of the worker, that is, his freedom to accept or not to accept a specific task. Therefore, in other words, it raises the question to what extent such jobs can actually be considered flexible.[36] On the other hand, it is exactly this type of system, which implies the application of various rewards and punishments based on the data available to the application, that leads workers to a state of, relatively speaking, disturbed consciousness, which begins to perceive such a way of doing business as a type of game they must complete. In other words,

> "the combination of responsive data and real-time messaging […] transforms a dry offer into a gamified mission, harnessing the kind of level-up logic and micro dopamine hits that are well understood in the gaming and gambling industries."[37]

That is where the term gamification comes from, due to the fact that, even though the platform does not displace workers from their work environment, the use of various video game-like instruments in day-to-day operations affects the behaviour of delivery couriers.[38]

When all of that is taken into account, it is also visible that this entire organisation of work leads to its commodification, as well as to the commodification of these workers themselves, since they are starting to be considered a kind of service—"human as a service"—and the extended arm of the application while, in addition to that, this kind of work is not even considered as work but as "gigs", "tasks", "services", etc.[39] In other words, in the eyes of the consumer, the performer of work is often not the worker but the application, so a delay due to traffic or bad weather, or any subjective reason for dissatisfaction of the client, can also be a reason for a bad rating that will be assigned to the courier, where, as we have seen, the benefits or the "punishments" that such a worker can receive, will also depend on such a rating. It is, therefore, unnecessary to explain the position of a Serbian food delivery platform worker who performs such tasks in the form of informal employment, bearing in mind that the higher amount of money that he

[34] Gurumurthy, Chami and Bharthur, 2021, p. 4.

[35] Griesbach *et al.*, 2019, pp. 8–9.

[36] In principle, platform work implies the autonomy of workers to choose when will they work, what tasks will they perform and in what way. However, practice has shown that the reality is a little different, as evidenced by Uber's operations and the practice of removing workers from the system due to the small number of accepted rides (about which drivers did not have data that would allow an assessment of their profitability). Choudary, 2018, p. 18.

[37] Munn, 2017, p. 10.

[38] Warmelink *et al.*, 2020, p. 331.

[39] De Stefano, 2016, pp. 4–5.

"can" count on when performing his work is also the reason why he waived any labour law protection, as well as social insurance rights.

Irregularities that have been noticed in Serbia when it comes to persons who are employed by limited liability companies and who perform work for the food delivery platforms, on the other hand, are entirely different and mostly concern the employment contracts that such workers conclude. It has been observed, for example, that such contracts are often concluded for a minimal number of working hours, which is a scenario in which employees work much longer and receive part of the money (for working hours based on the contract) to their bank account, and part of the money in cash (for the additional period of time they spent working).[40] But even if the irregularities did not exist, this type of engagement does not represent a realistic picture of this situation because, regardless of the fact that these workers are formally employed by such companies, their actual employer, realistically speaking, is the platform. The platform is the one assigning tasks, supervising the work of these workers, and is also the one that can prevent them from accessing work at any given moment. This situation, on the other hand, is partly a product of the fact that the work itself is carried out with tools/equipment owned by the worker, which is often an argument for renouncing the labour law relationship between the worker and the platform.[41]

An additional problem is that, although the condition for performing this type of work through a limited liability company is the existence of an employment contract, concluded in accordance with the regulations, the validity of such contracts is also an issue that is often not verified by the platform itself, nor by the labour inspectorate.[42] However, truth be told, this is probably too much of a challenge for the labour inspection, since the deficit of labour inspectors is a big problem in Serbia. This is also indicated by the fact that, according to the report of the European Commission, it is estimated that the current number of labour inspectors (214) needs to be increased to 360.[43] This need is also evident from the fact that, according to available data, 134,958 business entities are currently registered in Serbia.[44] Nevertheless, in 2022, certain improvements were also noticed, which is indicated by the fact that the Wolt company ensured that the employment contracts of persons employed in this way contain appropriate provisions regarding the rights under the mandatory social insurance, as well as that it started

40 Labour standards in the platform economy, Fairwork Serbia ratings 2022, p. 20.

41 Urdarević and Antić, 2021, p. 164.

42 Labour standards in the platform economy, Fairwork Serbia ratings 2022, p. 31.

43 Commission Staff Working Document, Serbia 2022 Report, Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2022 Communication on EU Enlargement policy, Brussels, 12 October 2022.

44 Agencija za privredne registre, <https://www.apr.gov.rs/%d0%bf%d0%be%d1%87%d0%b5%d1%82%d0%bd%d0%b0.3.html> (accessed 29 May 2023).

monitoring their implementation.[45] Additionally, some improvements have been noted in the area of occupational safety and health, as both Glovo and Wolt have provided evidence of training workers for safe and healthy work, as well as the provision of personal protective equipment (although, according to the workers) this kind of equipment has its flaws.[46] What are the flaws of such equipment and whether such equipment can really provide adequate protection is a question that the author cannot currently answer. However, what is indisputable is that, in accordance with the current Law on Safety and Health at Work, the employer is obliged to ensure that the personal protective equipment is appropriate and does not endanger the safety and health at work of the employee.[47] It is, however, unclear why, e.g., the Wolt company took it upon itself to provide such equipment, since this platform supposedly does not have the role of an employer.

Self-employed persons who work through food delivery platforms do not have the right to collective bargaining since, according to the current Labour Law, only employees can organise into unions.[48] Collective action of such workers towards the platform, on the other hand, is also not possible, which is not surprising considering that the valid Serbian Law on Strike[49] was passed in 1996, when the bilateral nature of the employment relationship (employer-employee) could not even be questioned. Currently, however, the situation regarding the right to strike is not much different in comparative law, despite the fact that the fundamental standards of the International Labour Organization regarding the freedom of association and the right to collective bargaining and to collective action do not decisively exclude from the scope of their application self-employed persons (who can often be found in dependent position).[50] However, there are exceptions, as proven by the French El Khomri law, which gives self-employed platform workers both the right to organise and the right to strike. Nevertheless, the legislator, interestingly, avoids the use of the term strike, using the language construction "concerted refusal to provide the service" and that solely for the purpose of describing the legal consequences of such actions of those workers.[51] Additionally, the Law failed to provide clarification of the matter of the legal status of platform workers in general, but rather just defined its personal scope by limiting its application to the self-employed workers that are using

45 Labour standards in the platform economy, Fairwork Serbia ratings 2022, p. 22.

46 *Ibid.*, p. 22.

47 The Law on Safety and Health at Work (*Zakon o bezbednosti i zdravlju na radu*), Official Gazette of the RS, No. 35/2023, Article 10(1)(3).

48 The Labour Law, Article 6. The fact that the Labour Law offers the full scope of labour law protection exclusively to employed persons has been the subject of criticism from both the professional and scientific public for a long time.

49 The Law on Strike (*Zakon o štrajku*), Official Gazette of the RS, Nos. 29/96 to 103/2012.

50 Roşioru, 2022, pp. 139–142.

51 Chatzilaou, 2020, pp. 95–96.

these platforms for the exercise of their professional activities, without qualifying all platform workers as such.[52]

The collective action of persons employed in limited liability companies, on the other hand, seems somewhat pointless since, although formally and legally they are their employers and, therefore, they can only take this kind of action against them, their real employer is the platform. Again, it is pointless to discuss the right to a collective action of workers that find themselves in informal employment, because they certainly (even if they wanted to) cannot have any rights deriving from the employment relationship, and, therefore, also the right to organise into a union, or to a collective action. However, they do not strive for this and so far, at least as far as the author is aware, no such worker has initiated court proceedings to determine his status of an employee of the platform, since they prefer short-term financial gain over labour and social protection.[53] The question that such behaviour raises, on the other hand, is whether that means that such workers have absolutely lost faith in the protection that the employment contract as a legal instrument can offer them? Anyhow, the lack of interest of these workers to seek a judicial protection also makes it impossible for the court to determine whether the relationship that these workers have found themselves in has the nature of an employment relationship and, thus, whether the platform should be qualified as an employer.

4. Current Lack of Regulative and Possible Solutions Regarding Food Delivery Platform Work in Serbia

Despite some initial efforts, Serbia has currently paused efforts to regulate the status of platform workers. In the case of those engaged in crowdwork, the approach has been somewhat reversed. The focus has shifted to addressing the tax treatment of these workers, despite the lack of a precise legal definition for them in existing regulations.[54]

On the other hand, since Serbia has the status of a candidate for membership in the European Union and the obligation to harmonise its law with the legal *acquis* of the European Union, the conceptual shift could be the Directive on transparent and predictable working conditions in the European Union[55] which stipulates the recognition of a minimum catalogue of rights for all workers, including those who work under the aus-

[52] *Ibid.*, pp. 97–98

[53] The situation in comparative law is completely different, where this issue has repeatedly appeared before the courts. Adams-Prassl, Laulom and Maneiro Vazquez, 2022, pp. 76–91.

[54] Urdarević, 2022, p. 16.

[55] 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 (Official Journal of the EU L 186, 11 July 2019, pp. 105–121).

pices of new forms of work, as well as those who work through platforms.[56] Namely, the Directive introduces, for the first time, the right to "minimum predictability of work", in the sense that platform workers, as well as others who work in new forms of work, have the right to be informed in advance of a work assignment within a reasonable notice period, and the right to refuse a work assignment without adverse consequences if such an information was not given.[57] In addition, the Directive prescribes the obligation of the employer to inform workers (in written form) about the important aspects of the work that they should perform,[58] where this written statement should be perceived as a practical means which allows the information provided by the employer to be made more relevant to the employees.[59] In this way, the worker is informed about the nature of the work, the amount of the remuneration he can expect, the reference hours and days within which he may be required to work if the work pattern is entirely or mostly unpredictable, the place of work, etc. This turned out to be a big problem for food delivery platform workers in Serbia, since such workers often cannot count on clear and transparent contractual terms and conditions.[60] Acting in accordance with the Directive would imply a redefinition of the concept of an employee in terms of the Labour Law, and even, perhaps, the introduction of a certain *sui generis* category that would be somewhere between a self-employed and an employed person. This last approach, however, carries with it the risk of the workers who should essentially be qualified as employees being subsumed under that category, since it would certainly entail a smaller scope of rights, and thus lower costs for employers as well.

The legal presumption of an employment relationship of persons performing platform work, such as the one presented within the Proposal for the Directive on improving working conditions in platform work,[61] on the other hand, does not seem like a realistic solution. This, namely, in author's opinion, due to the fact that such a solution has the potential of driving away the business of such platforms out of the Serbian market, mainly because it does not "bring anything to the table" to such platforms, other than

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56 Although it has been observed that this new "hybrid" concept of a worker may create certain problems when it comes to the implementation of this Directive. Georgiou, 2022, pp. 201–202.

57 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 (Official Journal of the EU L 186, 11 July 2019, pp. 105–121), Article 10.

58 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 (Official Journal of the EU L 186, 11 July 2019, pp. 105–121), Article 4.

59 Kenner, 2003, p. 194.

60 Labour standards in the platform economy, Fairwork Serbia ratings 2022, p. 23.

61 Proposal for a Directive of the European Parliament and of the Council on improving working conditions in platform work, Article 4.

the additional costs.[62] In other words, the positive aspects of the Directive should be felt most by the competitors of digital platforms, as well as by the Member States that will collect revenues from taxes and contributions. The platforms themselves, on the other hand, should be satisfied with the fact that the Proposal for the Directive will "ensure legal certainty and transparency for all parties involved" and, therefore, reduce the number of cases brought before the courts. It seems that the European Commission did not consider the fact that digital platforms, in their work, rely on a large number of currently available workers, who are ready to provide fast services at a relatively low price. A business model in which platforms primarily rely on self-employed persons, or persons employed by subcontractors, enables them to generate income and provide services while transferring the risk of business to the self-employed and to the subcontractors. Such workforce is significantly cheaper for the platforms compared to the one that would have to be employed, which contributes to their efficiency and competitiveness on the market. Therefore, it is really an open question how will the requalification of a large part of platform workers, i.e. their translation into classic employment, affect the survival of the business model of digital platforms.

In that regard, one of the possible directions in which a normative solution in Serbia can be sought could be the regulation of on-demand platform work in general following the example of temporary agency work. In that scenario, on-demand platform workers would establish an employment relationship with a temporary work agency (in this case, a platform), with the sharing of obligations, i.e. duties and responsibilities deriving from the employment relationship, between the agency and the user with whom the agency has concluded the contract on assignment of workers. In other words, on-demand platform workers would establish an employment relationship with the platform, and then the platform would assign them to the user, with the obligation that the user previously provides them with certain minimum working conditions, and that the platform pays compensation for their work. No contractual relationship would exist between the user and the worker, as is the case with the current regulation on agency employment in Serbia.[63] However, for obvious reasons (the fact that food delivery platform workers do not perform their work within a longer period at the user's premisses), obligations of users of food delivery platforms would be pretty much non-existent. That is also the reason why there would be no consequences when it comes to the demand for food delivery platform work. In contrast to that, users of other types of on demand work (such

[62] The estimated financial impact of such a policy would, at the EU level, increase the annual costs of these platforms up to EUR 4.5 billion if the platforms were to be forced to hire their self-employed workers. Commission staff working document impact assessment report (accompanying the document Proposal for a Directive of the European Parliament and of the Council on improving working conditions in platform work), p. 34.

[63] The Law on Agency Employment (*Zakon o agencijskom zapošljavanju*), Official Gazette of the RS, No. 86/2019, Article 11.

as cleaning services, care for the elderly, etc.) would have to face some obligations they should have when it comes to safety and health of these workers, the hours of work, etc. In case of food delivery platform work, such a solution could be an adequate one, especially because such platforms really do act as employers and not as employment intermediaries. In this sense, the platform worker would conclude an employment contract with the platform[64] and have a status similar to that of a temporary agency worker, while the platform would have the status of a temporary work agency and would have to meet certain conditions to be registered for the performance of this activity. This solution, again, would certainly not be well received by the platforms that are the subject of this article, regardless of the fact that they realistically do behave like employers, due to the same reasoning given in the part of the article in which the presumption of an employment relationship of a platform worker was mentioned.

However, another possible solution for the Serbian legislator, according to the concept of temporary agency work, would be to make appropriate changes to the existing Law on Agency Employment[65] whose scope would then expand to such workers (food delivery platforms workers) as well. The guiding idea of such a solution would be a greater level of protection of food delivery platform workers, but it would also have certain advantages for all other actors interested. The state would finally succeed in putting this type of work into some kind of a legal framework. On the other hand, such workers would get the employee status and would, therefore, have all the rights deriving from the employment relationship (even the right to organise collectively) while, perhaps, if such changes were to be adopted, people who are already employed could be enabled to work on the basis of a contract on additional work.[66] Food delivery platforms would have to conclude the contract on the assignment of the employee with the temporary work agency and, therefore, would have to provide the assigned employees with certain rights (e.g. occupational safety and health), but they would also have access to a workforce that has already been selected and that meets certain criteria in terms of knowledge, ability and reliability. Furthermore, even though it may seem that the rights that food delivery platforms would have to secure to the employees of temporary work agencies would also imply higher operational costs, which certainly is the case, that is not the only aspect of this solution, at least cost-wise. One should also consider the costs that those platforms

64 Temporary agency work necessarily implies the existence of an employment contract. Risak, 2018, p. 10.

65 The Law on Agency Employment.

66 Namely it is possible, according to the norm of the Labour Law, to conclude a contract on additional work, according to which an employee who already has a full-time job with another employer, but needs additional income, can perform supplementary work. Hence, according to the Law, other employers are allowed to hire these employees to the maximum of one-third of full-time working hours, thus protecting workers from exhaustion, but giving them the possibility of earning an additional income as well. The Labour Law, Article 202.

would have if they were to be defined as employers, considering the fact that such a qualification of these platforms would also imply a more complex structure in terms of the personnel they would have to hire. For example, the qualification of a food delivery platform as an employer would also imply the need of hiring people who would work in accounting for the purpose of calculation and payment of wages, as well as of hiring people who would provide HR services and the ones that would work in legal services, etc. Therefore, a solution in which they would be qualified as user undertakings would probably be more acceptable for these platforms rather than the one previously presented (in which they would have the status of temporary work agencies).

It is indisputable that whatever direction the state decides to take, it must be well thought out. With all of the disadvantages that work through food delivery platforms entails, it is absolutely undeniable that such platforms represent an opportunity for work for people who face difficulties in finding work, but also for those who need additional income. It is, therefore, necessary to find a solution that will not significantly affect the business of such platforms, but which, on the other hand, will also provide an adequate level of protection to these workers.

5. Conclusion

The sudden expansion of work via food delivery platforms, as a result of the COVID-19 pandemic, found Serbian legislature completely unprepared, which is not surprising since the issue of work performed via platforms is still a hot topic even in comparative law, which encountered this phenomenon much earlier. Food delivery platform work in Serbia does not only lead to the problem of the lesser extent of protection that self-employed persons who perform work for the platform are provided with. It also leads to the violation of rights of employees of limited liability companies that have concluded a "partnership agreement" with the platform, as well as to the problem of informal employment, which some of these workers find themselves in.

Despite several attempts, Serbia has still not managed to find a solution that would define what a platform worker actually is and what rights he could and should count on. There are more possibilities in this sense. One possibility is to redefine the concept of an employee or to form a certain *sui generis* category that would be somewhere between an employee and a self-employed person. The latter solution carries with it a great risk of workers who should essentially be qualified as employees being subsumed under that category. The third possible solution is the application of the concept of agency employment (in which the platform would assume the role of a temporary work agency). Such solution, however, implies the existence of an employment contract and, therefore, the definitive definition of such platforms as employers, even though, given their powers, they essentially are employers, regardless of their formal and legal status. The fourth

possible solution—although somewhat similar to the third one due to the fact that the inspiration behind it is, again, temporary agency work—would be the one in which food delivery platforms would assume the role of the user undertaking. On one hand, this would increase the scope of the obligations of these platforms as well, but would also, on the other hand, provide them with the access to an already carefully selected group of workers. Additionally, these particular workers would also have greater legislative protection, without the need to define food delivery platforms as employers (a solution that would create even higher operational costs for these platforms).

And although it is indisputable that food delivery platform workers must be entitled to a certain range of rights from the employment relationship, any further step in defining such rights would have to be taken very carefully, because every single recognised right based on work also implies costs and, therefore, represents a disincentive for food delivery platforms to remain in the Serbian market. With all of the disadvantages that work through food delivery platforms entails, it is undeniable that such platforms are an opportunity for work for people who face difficulties in finding work, but also for those who need additional income.

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