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ONLINE EMPLOYMENT TECHNOLOGIES IN THE DIGITAL AGE: COLLECTION OF ESSAYS

TECHNOLOGIE ZATRUDNIENIA W EPOCE CYFROWEJ: ZBIÓR ESEJÓW

Summary: Platform work, which has recently emerged as a distinct employment technology in the post-industrial era, brought to the world by “Industry 4.0”, is not regulated by labour law or other branches of law in most European countries. The legal status of people working on digital labour platforms is uncertain. People employed online through the platform work at their own risk. They have no right to health care, social security, social and medical assistance, or the right to social assistance benefits. Labour is not a commodity, it is not a human service, it is not a technology. At the current state of knowledge, it is not clear exactly what European employment technologies are.

Keywords: digital age, electronic employment technologies, industrial revolution, platform work

Streszczenie: Praca platformowa, która wyłoniła się niedawno jako odrębna technologia zatrudnienia w epoce postindustrialnej, sprowadzona na świat przez „Przemysł 4.0”, w większości krajów europejskich nie jest regulowana przepisami prawa pracy ani przepisami innych gałęzi prawa. Status prawny osób pracujących na cyfrowych platformach pracy jest niepewny. Osoby zatrudnione online za pośrednictwem platformy pracują na własne ryzyko. Nie mają prawa do ochrony zdrowia, zabezpieczenia społecznego, pomocy społecznej i medycznej ani prawa do świadczeń pomocy społecznej. Praca nie jest towarem, nie jest usługą ludzką, nie jest technologią. W aktualnym stanie wiedzy nie wiadomo dokładnie, czym są europejskie technologie zatrudnienia.

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Słowa kluczowe: era cyfrowa, technologie elektronicznego zatrudnienia, rewolucja przemysłowa, praca platformowa

PREFACE

To systematize knowledge on the topic announced in the title, the author chose the form of an essay. The problems discussed in the individual essays in the article are indicated in the subtitles. The selected presentation formula, in accordance with the common understanding of the essay, allows the author to express his opinion and thoughts on the selected topic. By doing so, the author was not limited by rigid rules, which means that his text on electronic employment technology in the times of the fourth industrial revolution does not have to have a clearly defined structure. Traditionally, essays are written to convey information, consider a problem or express one's own reflections¹. Platform work, which has recently emerged as a distinct employment technology in the post-industrial era, brought to the world by "Industry 4.0", is not regulated by labour law or other branches of law in most European countries. The legal status of people working on digital labour platforms is uncertain. People employed online through the platform work at their own risk. They have no right to health protection, social security, social and medical assistance, or the right to social assistance benefits. Labour is not a commodity, it is not a human service, it is not a technology. At the current state of knowledge, it is not clear exactly what European employment technologies are. Knowledge of what is really important in matters relating to a person's position in labor relations does not allow us not to be concerned about digitalization, which is currently occurring on a global scale as the seed of a new social order. Scientific essays written in English allow readers, not only Polish, to indicate the hierarchy of values in the times of domination of electronic technologies of the post-industrial era. The philosopher tries to determine what is important in social relations. He asks "whether the family, the good of the community, work, the free market, tolerance, equal rights, individualism or religion will be placed first in the hierarchy of values, as the basis of social order"². According to the author of these essays, the latest phenomena such as electronic employment technologies should be added to this catalog of important values.

¹ An essay is a short written form that allows the author to express his opinion, thoughts and analysis on a selected topic. It is a personal text in which the author can present his thoughts and conclusions in a free way. Essay, sketch: literary, scientific, philosophical, written in prose, in which the author examines selected problems in a free – natural, not limited by rules – way. Źródło edukacyjne (educational resource): <http://zpe.gov.pl> [access: 11.02.2024].

² P. Cwikła, *Recht Kasandry. Konserwatyzm jako strategia perswazji* (Cassandra cackles. Conservatism as a persuasion strategy), "Acta Universitatis Lodziensis, Folia Sociologica" 2013, 46, p. 130.

INTRODUCTION: ESSAY 1 – ON ONLINE EMPLOYMENT TECHNOLOGIES OF THE POST-INDUSTRIAL ERA³

PLATFORM'S LEGAL STATUS

Platform work, which emerged recently is not regulated by employment or labour law in the majority of European countries. In the era of the sharing economy, it is necessary to focus on the obligation of the EU Member States to comply with international principles – the right to work in safe and healthy working conditions, to receive fair remuneration, the right of employed women to protection, the right to equal opportunities and equal treatment in matters of employment, the right to protection in case of termination of employment, the right of workers to the protection of their claims in case of insolvency of their employer, the right to dignity at work. People employed online through a platform work at their own risk. They do not have the right to health protection, social security, social and medical assistance or the right to benefits from social welfare services. Work is not a commodity, not a human service, not a technology. Rather than accepting non-serious arguments that the platform economy complies with all relevant legislation, including the *lex loci labouris*, EU Member States should at least: clarify the current employment status of “independent contractors”, guarantee them the right to organise and negotiate collective agreements, payment based on either piecework or project basis, social protection, a transparent system for resolution of disputes between clients and workers, improve their access to information about their clients *in spe* in order to develop co-operative labour management relations between workers' representatives and platform organisers.

MODERN ELECTRONIC EMPLOYMENT TECHNOLOGIES

The fourth industrial revolution, “Industry 4.0”, which is growing very dynamically today, is providing specialists from different, seemingly loosely connected fields of science, with knowledge about phenomena that were previously unimaginable. Who of those specialised in the social sciences, in particular labour law, economics and public policies such as employment policy as part of social policy, could have predicted in this decade of the 21st century that human labour would be recognised as a modern technological process. However, with the advancement of knowledge of electronic means of communication, it was conceivable that modern technology would become a competitive and even alternative technology used

³ For more see: A.M. Świątkowski, *Elektroniczne technologie zatrudnienia ery postindustrialnej*, Kraków 2019, p. 17-166 and the literature presented there.

to regulate work processes in the global labour market. This unimaginable phenomenon has already become possible in the early stages of the current digital era, the post-industrial era. One of the characteristics of online employment technologies in the post-industrial era is not only what we were used to – machine assisted and automated work processes previously performed by workers. Workers have accepted that some types of work, especially those performed in difficult to access or harmful conditions, that pose unavoidable risks to their lives and health, will be replaced by modern devices. Already during earlier industrial revolutions, the second and the third, preceding the modern post-industrial era, workers had become accustomed to being supported by processes, forms, methods, procedures, systems and techniques that facilitated their work.

LABOUR LAW AND THE FOURTH INDUSTRIAL REVOLUTION

The year 2019 marked the 100th anniversary of the existence and active functioning of the ILO, which has established the basic standards for the legal and social protection of workers in labour relations. The modern practices of using modern online technologies – introduced by the 4.0 industrial revolution and increasingly used in the post-industrial era – may pose a real threat to the protective function of labour law, initiated a hundred years ago and systematically developed by the ILO in the years 1919-2019.

A special place among modern employment technologies, automation, robotics and artificial intelligence is occupied by labour platforms. Workers perform tasks that could easily be considered as employment in the context of an employment relationship, self-employment by an entrepreneur who is at the same time an employee or persons carrying out orders or providing services or performing other activities or individual tasks for other interested persons or entities. Therefore, the author pays special attention to the situation of persons employed through labour platforms and also considers the legal status of the labour platform, which plays a neutral role of the organiser of work processes. In the legal relationships established as a result of its participation in online employment technologies, a labour platform could successfully act as an employment intermediary or even as an employer. Lawyers have debated two complementary forms of legally regulated employment. The first concerns services regulated by civil law. The other concerns employment relationships governed by labour law. Online employment technologies used in the post-industrial era to organise unregulated forms, methods, measures, processes, techniques, and ways of conduct of employers and workers in the course of performing a deliberate professional activity, aimed at satisfying the material and non-material needs of other persons or entities, do not change the nature of work. They only exclude the employment, which consists in the performance of

work, from the universally binding protective standards established by the ILO. Entrepreneurs using modern electronic technologies take advantage of the opportunity created by the specific understanding of work, which in the post-industrial era is not considered a common good of a higher level enabling the realisation of the meaning of human existence, a commodity or a service. According to them, work is associated with the process of modern communication, which allows the use of electronic technology by the interested persons and entities, employers and workers. However, the use of such tools in the work process does not give grounds for considering work as technology. Modern technologies, which are the synonym of economic and social development, lead to economic and civilisation growth. However, as far as employment is concerned, which consists in the provision of work by people, it is impossible to consider as work any activity than that regulated by labour or civil law. For this reason, the activities currently undertaken on a large scale by employers, resulting in the exclusion of people performing work only because of the fact that they are directly controlled in the work processes by modern electronic technologies, should not be accepted. The instruments for the protection of, excessively developed in legal, international and national regulations, make it difficult for entrepreneurs to carry out their professional activity. However, the protective function of law, developed by trade union organisations and politicians, does not justify the online employment technologies used especially in the service sector. Online employment technologies allow entrepreneurs not to comply with basic obligations, including the following: equal treatment of workers, compliance with daily and weekly working time standards, payment of minimum wages, universal protection of stability of employment and the right to social security benefits. Persons employed through online labour platforms do not enjoy the above rights. The entrepreneurs for whom the persons employed through digital work technologies provide work do not bear any risk for them. A high degree of flexibility in employment, which is expressed in the full freedom of employer's conduct in relation to employed persons eliminates the century-old *acquis* of the ILO and takes the legally unregulated employment relations back to the times when the "organising" regulations of factory legislation were in force, modelled on the "master and servant law".

WORK ON DEMAND

Apart from technologically advanced communication devices, a labour platform does not need to have any devices or tools necessary to perform a specific service that requires a specific amount of work by the performer of the tasks falling within the scope of the service. The platform acts as an intermediary for distributed tasks performed by people who report their willingness to perform them. It also plays an

important role as requester and contractor. It is a specific filter between the requesters and the workers performing certain services. At the same time, it does not have the obligations arising from employment relationships. There are no labour law relationships between those who order a specific service and those who carry out the order placed on the labour platform. The phenomenon of the “work on demand” is the absence of any relationship between the entity or person requesting a specific result and a person who uses his or her skills to perform for the requester a specific task required by the latter. The labour platform generates profits only by facilitating and supporting the contacts between requesters demanding performance of specific tasks and providers of the services. The phenomenon of popularity of employment platforms, considered the basic modern form of online employment technology, involves the constant and systematic growth of this modern technology, despite sometimes significant differences, obviously to the detriment of those employed, as compared with work provided under employment relations based on labour law.

The above disproportion is clearly visible in matters concerning remuneration for work performed by freelancers, sole traders or enthusiasts. The above-mentioned research, conducted with the participation of trade unions, confirmed the observation about the lack of response from the EU authorities to the postulates of some trade unions about the need for legal regulation of the contemporary phenomenon of online employment technology. It reveals the lack of awareness on the part of state authorities and other stakeholders, mainly social partners, on matters relating to the extent of the phenomenon of online employment technologies. The GIG economy is not the exclusive effect of the 4.0 industrial revolution and the post-industrial era it initiated.

FREEDOM AND SECURITY

Contemporary labour markets, international, national and local, are diverse and varied. In the post-industrial era, it is therefore necessary to develop a formula to balance two universal values closely related to work: freedom and security for workers. Member States should regulate the status of workers in a transparent manner. Trade unions working for the benefit of employed persons do not advocate the recognition as employees of persons providing services consisting in carrying out work through employment platforms. They also oppose the prevailing practice of automatic unification of the legal status of workers who are considered “sole proprietors”, “independent contractors” or self-employed. They aim at the widespread application of the same objective criterion, i.e. the extent and degree of influence of the employing entity on the work performed for the same or other unspecified persons or entities. They wish to draw the attention of the Member States which regulate the status of workers to the fact that anyone who meets the condi-

tions to be regarded as an employee under the applicable labour law, should also be regarded as such when carrying out work on the platform. Public authorities and social partners in the post-industrial era will be obliged to develop an innovative model of a new social order in diversified labour and non-labour employment relationships. The hybrid forms of employment should ensure for workers the economic and social rights equal to those enjoyed by employees in the industrial sector. However, the above postulate cannot be realised without a comprehensive and profound reform of political, legal, organisational and financial guarantees for the exercise of labour and social rights by all workers, including those not covered by labour law. In the post-industrial era, the authorities of economically and civilisation ally developed countries are obliged to implement public policies: educational, employment and other related policies in order to bring into the national labour markets as soon as possible the groups of people who can use the latest technologies at work.

A necessary condition for the success of post-industrial processes is the adoption by the authorities of developed countries of appropriate measures to adapt the instruments developed in the industrial era to the changes taking place in the post-industrial era. Trade union organisations see the social dialogue conducted by the social partners as an opportunity to manage the phenomena and processes triggered by the changes in the post-industrial era. Until routine work is replaced by machines and techniques based on the latest developments in science, technology, engineering and mathematics, the authorities in developed countries should encourage the social partners to conclude collective agreements. Decentralisation of negotiations on matters relevant to the parties to a collective agreement makes it possible to regulate collective rights and obligations in the collective labour agreement. The reactivation of collective agreements facilitates adaptation of more or less advanced industrial societies to a new era of the post-industrial age.

DIGITALISATION AND ITS CONSEQUENCES

The changes brought about by digitalisation should also be taken into account. In the post-industrial era, changes are needed in labour law, where the distinguishing factor between work carried out under an employment relationship and work carried out under civil law contracts and self-employment is the legal concept of the employee's subordination to the employer. Such a division of workers into employees and non-employees disturbs the balance between social protection, competitiveness and flexibility of labour market institutions. Labour platforms are a good example of digitalisation of employment. It is therefore necessary to analyse the foundations and legal framework of the employment of people who offer work through labour platforms. With the exception of a few EU Member States

(France, Spain) where public authorities have taken limited measures to regulate the legal status of those working on these platforms, this extremely important issue has not been regulated in other EU countries. The provision of services consisting in the performance of work through online platforms is one of the most evolving phenomena in the global labour market. The legal status of these workers is not regulated by law. This is related to the fact that some of the workers have started to provide services as part of the implementation of the idea of “goods sharing economy”. Parties to legal transactions involving platform participation are in most cases considered to be self-employed. Therefore, they do not enjoy any employee and social rights. The EU Member States, with few exceptions, do not take steps to regulate the legal situation of persons employed in platform work. The Frankfurt Declaration on Platform-Based Work adopted at the initiative of trade unions in 2016 aims to recognise as employees those who perform subordinated work within the framework of the platform. This study presents the specificity of employment through online labour platforms.

The 4.0 industrial revolution is blurring the existing boundaries between human work and the online employment platforms, machines, technology, algorithms and artificial intelligence. The modern transformation taking place in the five-year period (2018-2022) is critical for the establishment and development of modern employment relations. Modern technological transformation, if managed wisely, can lead to an increase in the value of human labour. The problem is that many workers fear that machines, robots, algorithms, modern technologies and artificial intelligence will take their jobs. The reality is that only certain types of work can be replaced, to the benefit of society, by machines. However, the value of the work itself will increase and the work will still be done by people with higher levels of professional skills.

ESSAY 2: FUTURE DEVELOPMENT OF ELECTRONIC EMPLOYMENT TECHNOLOGIES⁴

YOUNG PEOPLE’S ATTITUDES TO EMPLOYMENT

The post-industrial era in the global economy is a process which cannot be reversed. However, it can be managed in such a way as to take advantage of the opportunities offered by the development of innovative employment technologies for economic growth and desired civilisational changes in individual societies. Some young people of the Millennial generation show positive attitudes towards employment and express their expectations towards working in the services and

⁴ Ibidem.

present their own reflections on these unusual forms of employment, different from the traditional ones of the previous industrial era. The costs of this development will undoubtedly affect some members of the working society who are used to working in traditional forms of employment which are still defined as standard, based on a full-time work performed on the basis of employment contracts concluded for an indefinite period, which guarantee the protection of the stability of the employment relationship.

This model of employment is gradually becoming a thing of the past. The days of predominance of the standard forms of employment, defined by the term (long-term or indefinite-time employment), have passed into history. Now, instead of making unsuccessful attempts to change employment regulations in the Labour Code, which consist in establishing legal presumptions of employment under an employment contract, restricting the freedom of the parties to legal relationships under which work is provided on the basis of atypical (especially young people who will be entering the labour markets in a few years' time, should get used to the need to adapt to the changing needs arising from the introduction and spread of modern technologies that enable replacement of human work with machines, robots, automatons and from other changes necessitated by the 4.0 industrial revolution and the use of electronic and other flexible forms of employment. It is difficult to predict the consequences of such a social policy for the economy and civilisation based on human labour.

HYBRID FORMS OF EMPLOYMENT AND BALANCING UNIVERSAL VALUES

In the post-industrial era it is therefore necessary to develop a formula that makes it possible to balance two universal values that are closely linked to work: freedom and security of workers. Public authorities and social partners will have to commit themselves to developing an innovative model for a new social order in diversified labour and non-labour employment relationships. The hybrid forms of employment should ensure for workers the economic and social rights equal to those enjoyed by employees in the industrial sector. Electronic employment technologies of the post-industrial era should use the methods used in social policy: diagnostics and forecasts aimed at determining the direction of employment policy development in labour markets. In the post-industrial era, the authorities of economically developed countries are obliged to implement public policies: educational, employment and other related policies to ensure that as many people as possible who are able to use the latest technologies enter national labour markets as quickly as possible. A necessary condition for the success of the post-industrial processes is that the authorities of the developed countries take appropriate

measures aimed at adapting the instruments developed in the industrial era to the changes in the post-industrial era. Trade unions see the social dialogue conducted by the social partners as an opportunity to manage the phenomena and processes triggered by the changes in the post-industrial era. Decentralisation of negotiations on matters relevant to the parties to collective agreement makes it possible to regulate rights and obligations in the collective agreement – without restrictions on all important issues for employees, their trade union representatives and for the employer. The reactivation of collective agreements facilitates easier adaptation of more or less advanced industrial societies to a new era of the post-industrial society. Governments, public authorities and active citizens should focus more on the impact of electronic technologies in the post-industrial era on industrial employment. These are commitments made by public authorities in different countries to some of the older workers employed in the previous era of full-time employment in industrial plants. They expect that by replacing routine work by concentrated machines and techniques based on the latest achievements in science, technology, engineering and mathematics, the authorities in developed countries will encourage the social partners to conclude collective agreements. They believe that, in the post-industrial era, there is a need for changes in labour law regulations, where the distinguishing factor between work performed under an employment relationship and work performed on the basis of civil law contracts and self-employment is the legal subordination of the employee to the employer. Such a division between employees and non-employees disturbs the balance between social protection, competitiveness and the flexibility of work market institutions. Labour platform is an example of digitalisation of employment.

THE BASIS AND LEGAL FRAMEWORK FOR EMPLOYMENT THROUGH EMPLOYMENT PLATFORMS

With the exception of some countries (France and Spain), other EU countries do not regulate the status of people employed through these platforms. Provision of labour services through online platforms is one of the most evolving phenomena in the global labour market whereas the legal status of workers is not regulated by law. This involves, among other things, the start of the provision of services by some workers in pursuit of the idea of a “goods sharing economy”. Participants in legal transactions involving platforms are in most cases considered to be self-employed. A declaration adopted in Frankfurt am Main in 2016 is moving towards recognition as employees of those who perform subordinated work within the framework of labour platforms. The first essay analyses the specificity of functioning of labour platforms. It presents and discusses the legal constructs resulting from the tripartite relationship between the entity or the person ordering

the performance of services, the labour platform and the performer of the work process – the employed person. It presents a dominant concept of work performed outside the legal framework of an employment relationship, within the framework of self-employment by individual entrepreneurs. It emphasises that those who perform work under civil law contracts (contract for specific work or services) are not entitled to benefits regulated by labour law. For this reason, the author considers the possibility of recognising as employees the persons who provide work to its clients who order services through the platform. The future of work presented in the report published in 2018 by the World Economic Forum shows that the transformation taking place in the last five years (2018-2022) will be decisive for the establishment and development of modern forms of employment. Modern technological transformation, if managed wisely, can lead to an increase in the value of human labour. The problem is that many workers fear that machines, robots, algorithms, modern technologies, artificial intelligence will take their jobs. In fact only particular types of work can be replaced by machines, for the benefit of society. The value of labour performed by people with higher professional qualifications will increase. The opportunity for those who lose their jobs is to supplement and adapt their professional skills to modern technologies. This, in turn, requires a fundamental change in the approach to the learning workers and those entering the labour market. The concept of permanent long-term employment, which was dominant in previous eras, should be replaced by the need for continuous, systematic training, which can guarantee temporary employment and adaptation to new, modern electronic technologies in the labour market.

ESSAY 3: COMBINING WORK AND SELF-EMPLOYMENT: A COMPROMISE TECHNIQUE⁵

In Spain, a separate, hybrid category of workers has been distinguished that is somewhere between self-employed and employees, 75% economically dependent on one client for whom the work is provided. The “Riders Law” (Royal Decree 9/2021), the result of an agreement between the social partners⁶, signed on 11 November 2020, guaranteed to economically autonomous workers on digital platforms the legal position of self-employed workers, who have been granted the rights previously available only to employees. Self-employed workers are a specific phenomenon functioning under the traditional name of the “grey area”, created by the judicial authorities in accordance with the principle of “presumption of employment”. It allows workers to understand the content and principles of the

⁵ For more see: A.M. Świątkowski, *Przystosowywanie elektronicznych form zatrudnienia do standardów unijnych* [Adapting electronic forms of employment to EU standards], „Palestra” 2022, 6, 36-53.

⁶ The Unión General de Trabajadores and the Confederación Sindical de Comisiones Obreras.

algorithms that regulate employment relationships on employment platforms. The Royal Decree changes the status of workers by introducing a new obligation to inform the legal representatives of workers about artificial intelligence and the use of the algorithm and stipulating that the works council (or about parameters)⁷. The new obligation entered into force on 12 August 2021. It concerns worker decision-making by a company where an algorithm or AI operates. The new law will not apply to employment decisions based solely on human intervention from start to finish. Employers should provide workers' representatives with clear information about the parameters, rules and instructions on which AI algorithms or systems are based. The main objective is to make workers' legal representatives aware of how AI algorithms or systems are used, in whole or in part, to make business decisions that affect working and employment conditions. Failure to comply with the new information obligation qualifies as a serious violation and may result in the Labour Inspectorate imposing a fine of EUR 750 to EUR 7,500 after 1 October 2021. In addition, the worker's legal representatives can make a claim for damages against the digital platform. Royal Decree 9/2021 contains two main provisions⁸.

The first imposes an obligation on platforms and persons and entities managing them to clearly demonstrate which users of these platforms meet the criteria used to classify people working there as self-employed. The decree states that the legal requirement of dependence, which is the key to understanding whether there is an employment relationship between the service user and the platform, is met if the organisation, management and control are carried out by the algorithm. It also states that the exercise of managerial prerogatives may be "direct, indirect or implied". Thus, whenever the algorithm determines the terms and conditions of service and work, it should be understood that the requirement of legal dependence is met. The second provision introduces the obligation to inform workers about the parameters and rules on which algorithmic management is based. It affects decisions on access to work and terms of employment.

ESSAY 4: A NEW APPROACH ADOPTED BY THE EUROPEAN UNION TO COMBINE SUPPLY AND DEMAND FOR PAID WORK ON EMPLOYMENT PLATFORMS⁹

The EU's regulations on labour platforms are a new way to match supply and demand for paid work. The EU wants to improve the employment conditions and

⁷ Rules and instructions on which algorithms or artificial intelligence systems are based, which influence decision-making regarding working conditions/influencing: working conditions, access to and retention of employment, including profiling.

⁸ Royal Decree No. 9 of May 11, 2021. Accessed on 31 July 2023, <https://www.boe.es/boe/dias/2021/05/12/pdfs/BOE-A-2021-7840.pdf>.

⁹ For more see: European Council (2023). EU rules on platform work. Accessed on 31 July 2023. <https://www.consilium.europa.eu/en/policies/platform-work-eu/>.

social rights of those working in the casual labour sector through the new rules. During the COVID-19 pandemic, platform work has become increasingly popular and taken for granted, partly thanks to more common shopping and food deliveries. This is becoming an impulse for innovation and a factor of employment growth. The EU is the first legislator in the world to attempt to propose legislation specifically designed for platform work. Platform work is a form of employment where organisations or individuals use an online platform to reach out to other organisations or individuals to solve specific problems or provide specific services in return for a fee. Platform work is very diverse, which makes it difficult to regulate. The vast majority of people working through platforms are indeed self-employed. However, it is estimated that 5.5 million people are miss-classified as self-employed. They meet all the criteria for being an employee. A common concern is the quality of work offered to workers and the conditions of their employment. The most common issues are lack of sick pay and limited access to unemployment benefits or income support schemes. There is also an ongoing debate about whether platform workers should be considered employees rather than independent contractors, responsible for their own social security and controlling their own income. Platform work will continue to grow, but it is clear that it is a regulatory and institutional challenge and its impact on the economy and society is uncertain. While labour law applies to platform workers who are employed, many others are, at least formally, self-employed. Member States have different approaches to platform work. National responses are patchy and legislation tends to target specific sectors, such as carpooling and food delivery. Platform workers are already mentioned in some EU legislation, such as the Directive on transparent and predictable working conditions. The new directive considers self-employed persons to be professionally active¹⁰. Transparent and predictable working conditions for platform workers are also mentioned in the Council Recommendation on access to social protection for workers and the self-employed. On 6 December 2018, the Employment, Social Policy, Health and Consumer Affairs Council reached a political agreement on this document. On 12 June 2023, the Council developed a position on it. It helps to determine the correct employment status of platform workers and establishes the EU's first legislation on the use of artificial intelligence in the workplace. The proposed directive aims to make it easier for people working through digital labour platforms to have access to a legal employment status that corresponds to their actual employment arrangement: an employment

¹⁰ A.M. Świątkowski, *Dyrektywa 2019/1152 – przejrzyste i przewidywalne warunki pracy w Unii Europejskiej. Część 1* [Directive 2019/1152 – transparent and predictable working conditions in the European Union. Part 1, “Europejski Przegląd Sądowy” 2020, No. 4, p. 15-21; A.M. Świątkowski, *Dyrektywa 2019/1152 – przejrzyste i przewidywalne warunki pracy w Unii Europejskiej. Część 2* [Directive 2019/1152 – transparent and predictable working conditions in the European Union. Part 2], “Europejski Przegląd Sądowy” 2020, No. 7, p. 22-28.

contract or a civil law contract for the provision of services. Under the new rules, a person is considered to be an employee if three of the following six criteria are met: (a) the digital labour platform sets the upper limits of the salary level; (b) the worker must comply with certain rules regarding appearance and behaviour towards the recipient of the service or the client of the work; (c) the performance of the work is supervised through the platform, including by electronic means; (d) the platform restricts the freedom to choose working hours or periods of absence; (e) the freedom to accept or refuse assignments is also restricted; (f) the possibility of expanding the customer base or performing work for third parties is restricted. According to the principle of legal presumption, a digital labour platform is required to prove, in the procedure in which the correct employment status of a platform worker is determined, that the employment relationship does not exist. Once it has been established in such a procedure that a person has an employment relationship, such person should benefit from the labour and social rights deriving from that employment relationship. Depending on the national systems, these may include: minimum wage, collective bargaining, working time and health protection, paid leave, better access to protection against accidents at work, unemployment and sickness benefits, contribution-based pensions. Algorithmic systems are used to organise work and manage employees through apps or portals. Employees are often unaware how algorithms work and how decisions are made. This is why the directive is to increase transparency in the use of algorithms by platforms, ensure human oversight of working conditions and provide the right to challenge automated decisions. National authorities often find it difficult to access data on platforms and the people working through them. This is even more difficult when platforms operate in several Member States. Then it may be unknown where and by whom, employee or self-employed, the work is provided. The future directive aims to increase the transparency of platforms. Above all, it should clarify existing obligations to report work to national authorities and oblige platforms to provide them with key information about their activities and workers. In 2019, the Council discussed new forms of work and adopted the relevant conclusions inviting the EU to consider possible rules to protect workers. On 9 December 2021, the EU submitted draft rules on platform work to the two co-legislators - the Council and the European Parliament. In the Council, they were analysed by the Social Affairs Working Group. It deals with all legislative and non-legislative work related to employment and social policy. On 12 June 2023, the Council adopted its position. Before the new provisions become EU law, the Council will have to negotiate their final content with the European Parliament.

CONCLUSION: ESSAY 5 – THE UNDERUTILISATION OF LABOUR¹¹

A part of the public opinion does not approve of the above measures taken by the EC with regard to digital platforms. The EC intends to organise, and in fact civilise, the forms of employment of persons working on such platforms. The organisers of digital platforms have been accused that by employing de facto active persons acting as employees on these platforms, they force them to function in the form of self-employment. The implementation of the above intention can be recognised on the date of its implementation within the next year, in 2025 into the EU law, and then to the national labour systems of the EU Member States. This means that as many as 1.5 million professionally active people may lose the right to earn freely. Opponents of the above-mentioned potential change in the EU and national labour markets consider the presented intention of the EU Commission as sufficient reason to start a debate on the social aspects of economic systems. This important social function and area of activity is supported by values other than profit and global drain. Ladislau Dowbor presents a diagnosis of global systemic pathology. The author asks whom electronic employment technology serves. Who are the global systems of systemic employment technology serving in the digital age. He suggests that contemporary financial capitalism is a kind of paradigm of the old, but not completely forgotten, economy, according to which a minimal percentage of the world's rich retain the privilege of exploiting the global community of several billion economically active people. The under-utilization of the workforce is a particularly glaring dimension of our economic weakness because in addition to the social drama, it is a massive economic incompetence. Millions of people work in the informal sector. The income of these workers is about half or more of the income of the formal worker. These are people who essentially do everything they can in an unproductive way. Being an "individual entrepreneur" no doubts often provides a more dignified appearance of underutilization, but we can see in "uberisation" and irresponsible outsourcing itself what that can mean. And we have millions of people who are formally unemployed. To this we must add the immense discouragement, people who are of working age, but have given up looking for work. We can add people classified as employed, but who work only a few hours. Ladislau Dowbor followed a project in which the city's unemployed were registered and organised in Operação Praia Limpa, which allowed sanitation work to be carried out, the removal of sewage from the rain channels, which restored the bathing properties of the beaches, and consequently tourism, hotel ac-

¹¹ For more see: L. Dowbor, *O społeczną funkcję ekonomii. Kwestia ludzkiej godności*, Warszawa 2023, p. 38-39. This book was published in Polish in 2023.

tivities and the like, transforming a temporary operation into permanent jobs. The mayor laid the groundwork for their dynamism. Economic and social planning relies heavily on the articulation of underutilised factors. Ideological arguments have always tried to justify inequality with the lack of initiative on the part of the poor. The poor do not need to be taught willingness to work. They need opportunities. This involves public planning and initiatives rather than ideological discourse.¹² The underutilisation of production factors in some countries clearly shows the central dimension of economic and social paralysis, which is the loss of systemic productivity and radical managerial incompetence. These are immense resources drained in an unproductive way, while the state, which is the main articulator of the system, is paralysed. The solutions lie in organising synergy: bringing together the fallow land and the unproductive workers, mobilising finance to provide scientific and technological support and productive investment, guaranteeing basic income to stimulate demand for increased production. The common denominator of countries that work, even with different political systems, is to orient the economy towards the well-being of families, mobilising not only companies but also the state and civil society organisations. It is therefore worth supporting the European Commission's chosen method of developing electronic employment technology, based on the concept of full-time work with no chance of even partial recovery of long-term employment.

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¹² L. Dowbor, *Rescuing the social function of the economy: A question of human dignity*. Accessed on 31 July 2023, <https://dowbor.org/wp-content/uploads/2022/09/22-Rescuing-the-social-function-of-the-economy-.pdf>.

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