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THE GROWING VULNERABILITY OF WORKERS, REFLECTIONS AT THE FIRST HUNGARIAN PLATFORM CASE

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ABSTRACT

In the first part of the paper, the authors analyse a case involving an electronic platform intermediary in a food delivery - delivery service case, in which the Supreme Court ruled that the deliverer was a contractor/agent and not an employee, as the board qualified it. However, the authors argue that the position of the Court of Appeal could also be accepted, which would allow for a classification as dependent self-employment arising from a formal self-employment. The second part of the paper analyses the contractual framework of traditional employment relationships, pointing out the increasing vulnerability of the related processes. The blurring of both platform work and traditional employment leads the authors to the conclusion that labour law instruments must be provided to protect the vulnerable worker.

KEYWORDS Dependent work, irregular work, long-term self-employment, electronic platform contract, self-employment

1. Introduction – platform work in Europe

Platform-based work is defined by the European Council as a form of employment in which organisations or individuals use online platforms to interact with other organisations or individuals with the aim of solving specific problems or providing specific services in return for payment (European Commission, 2024). This definition captures a growing problem for the European labour market somewhat broadly. The growing emphasis on this issue is justified by the increasing number of people working on digital platforms. In the European Union there are around 28 million people who can be considered platform workers. Their rights and employment status are often unclear, both nationally and internationally. The EU Commission has therefore proposed an

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EU directive to ensure fair working conditions for all those who earn their living by working in online services (Haufe Online Redaktion, 2024). On 12 March 2024, the European Parliament and the Council of the European Union agreed on a directive that also addresses the employment status of platform workers. The directive establishes a presumption, making it easier to reclassify platform workers, tens of millions of whom work for a platform across Europe, as employees. The presumption may be rebutted by employer providing counterevidence on the part of the digital platform, but persons working through digital platforms, their representatives or national authorities may invoke this legal presumption and claim that the person working was wrongly classified. The presumption lists five indicators, of which if two are met in the context of a given employment, then the relationship with the platform will be an employment relationship for the platform worker. Among these indicators are a cap on the amount of money the worker can earn, supervision of the worker's work, control over the allocation and distribution of tasks, control over the worker's working conditions, including restrictions on the choice of working hours, and restrictions on the worker's freedom to organise his work, including restrictions on the worker's appearance and behaviour. An important difference between national rules may be that Member States may add additional indicators to the list of five based on national law.

This uniform presumption is particularly needed because countries in Western Europe categorise these global platforms differently, leading to chaotic relationship qualification results across the EU. In related status litigation, several judgments have been handed down, which classify the same employment circumstances differently, sometimes as employment and sometimes as self-employment. Hießl concludes that it is difficult to draw general conclusions on the prevailing patterns in existing national case law - in particular the heterogeneity of platforms and the systematic reform of their structure and working methods, the lack of case law on certain types of platforms and the inconsistency of judicial assessment in many countries. This is particularly problematic for our country, as there has been no platform case law in Central and Eastern Europe, apart from the case presented below. Taking the Western European examples as a starting point, some issues seem to be more country specific; others are (almost) general, such as how to deal with the absence of an obligation to work. In this context, there are notable innovations in the enforcement of the law, particularly in countries that have so far taken a very strict approach to the minimum hours' criterion, such as Germany. In Spain, the key to the recognition of employment status has been a reassessment of the concept of the most appropriate means of production for economic activity - an issue of much less importance in other countries. However, this is only one manifestation of a more general trend towards greater emphasis on elements of

organisational integration, which can also be observed in countries such as France, Germany, Ireland, Italy, the Netherlands, Switzerland and the UK (Hießl, 2024, pp. 77–85).

2. The first Hungarian (and Central and Eastern European) platform case

In Hungary, platforms employ platform workers in a contractor relationship, like foreign examples. Foreign jurisprudence classifies platform workers as employees or entrepreneurs based on their greater or lesser dependence on the platform, ignoring the platform's relationship with the compulsory social security of platform workers. This was also the case in the first Hungarian platform case, a lawsuit brought by a platform worker against the defendant digital food delivery platform "Netpincér", where the platform worker sought a declaration that his legal relationship was not a long-term business relationship but an employment relationship. At first instance, the General Court classified the disputed working relationship as an entrepreneurial relationship, classifying it as a more liberal legal relationship. At the second instance, upholding the claimant's appeal, the Court of Appeal classified the claimant's activity as a caterer for the defendant as an employment relationship, holding that it was a close and continuing obligation. The defendant then applied to the Supreme Court, in the context of a review procedure, for the judgment of the Court of Appeal to be altered and for it to be held that the contract was a long-term contract of employment. The Supreme Court upheld the defendant's position and classified the legal relationship as a contract of an entrepreneur.

It is worth briefly summarising the main details of the case. Between 18 October 2019 and 15 January 2020, the applicant carried out courier services (Mf.I.50.063/2022/7., 2023), worked on a platform basis for the defendant as a self-employed person under a civil law relationship. The applicant carried out the activity by signing up one week in advance on Wednesday of each week for a period when he wished to carry out courier duties and then logging on to the Roadrunner application during the periods he undertook.

The applicant carried out his courier duties by logging in at the beginning of the agreed period and the automated system sent him a number sequence, which was the first step of the delivery, which he had to accept. The application then displayed the restaurant from which the food was to be delivered, the applicant picked up the parcel at the restaurant with the identification corresponding to the number line and when this was recorded in the application, he was then given the address to which the food was to be delivered to the customer. Several restaurants in the city have also contracted with the Roadrunner electronic platform for food delivery services, by delivering food to their customers using

their own platform workers, so presumably many of the couriers are doing platform work for a living for this company under the same conditions. The Roadrunner platform thus enters framework contracts with several young people to provide food delivery courier services, during a free period of 2-4-6 or 8 hours per day, called 'active periods', which they specify for a week, and gives them individual orders via the Roadrunner app to deliver food from which restaurant to which customer address. After the app assigns which restaurant to deliver the food to which customer address, the courier must deliver the food from the restaurant to the customer address via the app in the "warm bag" provided by the platform, which also ensures the quality of the food to be delivered. In addition, the courier must keep the GPS that he has purchased switched on during the delivery of the food to show the route and to communicate with the app. The vehicle (motorbike, scooter or bicycle) and the clothing advertising the app must be provided by the courier and worn by him. The agreed availability period is 1000 HUF per hour, on top of which the deliverer is entitled to a delivery fee for each delivery. The deliverers who undertake to provide 8 hours of courier service per day shall be granted 30 minutes of rest time, calculated at half the hourly rate.

The Courts addressed all the elements of employment, but it is worth noting that the Court of Appeal stressed that platform working is still a phenomenon that lacks specific legal regulation, with only one draft directive in the European Union at the time of the judgment. Pending its adoption and the establishment of legal harmonisation, the courts applying the law have no other instrument at their disposal than to examine the specific content of the legal relationship in question in the context of the existing legal provisions, i.e. the binary model (civil law-based work - employment relationship). Without a further category, the labour relationship can only be classified as a civil or employment relationship under the binary model based on the extent to which the platform has a strong right of command and control over the platform worker to carry out the task and whether the platform contributes to the social security of the platform workers. The evolution of these two factors will determine whether this form of work should be kept within the framework of civil law or labour law. The courts have only examined whether a job title was established, the way in which remuneration was paid and the employment obligation. However, it should be stressed that the Court of Appeal and the Supreme Court reached different conclusions on the assessment of the facts in the review proceedings.

The Supreme Court (Mf.I.50.063/2022/7., 2023, par. 72-73) found that the applicant was required to make continuous food deliveries in accordance with the orders under the framework contract, which the Court classified as a commission. This is an obligation to produce results arising from a continuing

business which is governed by civil law. In the Court's view (Mf.I.50.063/2022/7., 2023, par. 77), the defendant was not under an employment obligation because it had no interest in employing the applicant on a permanent basis. His only commercial interest was to have enough contractors to ensure that there were always enough couriers available for periods of their own volition to ensure that the food delivery service was adequately supplied. Therefore, the defendant did not undertake any obligation to open an active period of sufficient number and nature to meet the applicant's needs during the term of the contract and to provide the service during the active periods confirmed by the applicant. The applicant was not under any obligation to be available under Article 52 of the LC, since he was not obliged to be available on any day of the year under the framework contract. He could choose not to report for any active period, even for weeks or months (Mf.I.50.063/2022/7., 2023, par. 78). However, the defendant had created a competition between couriers to promote its own efficiency and customer satisfaction and therefore grouped couriers according to the length and frequency of the active periods they undertook. The deliverers were not, however, disadvantaged by the downgrading. Their remuneration was set equally, by the app and, despite the downgrading; all deliverers were allowed to apply for an active period (Mf.I.50.063/2022/7., 2023, par. 79-80). As regards remuneration, although the hourly rate for the period of provision undertaken within an active period is in principle a basic wage, while the title wage can be considered as a wage supplement, it is also a wage for the performance of a commission or assignment contract. The plumber or electrician also charges the cost of repairing the pipes because of the work in hours worked, plus the cost of the work on the spot. In the same way, in our view, a lawyer charges based on the lawyer's fee schedule for court time, document preparation time and counsel time. The Supreme Court also takes a similar view but does not illustrate this in the text of the judgment (Mf.I.50.063/2022/7., 2023, par. 73-81 & 119). There are no compulsory working hours in the legal relationship under examination. According to the Supreme Court (Mf.I.50.063/2022/7., 2023, par. 74), the applicant was able to decide, depending on his personal needs and pace of life, to notify the defendant that he wished to be available only on days and at times and for periods convenient to him. The applicant therefore had the exclusive right to organise his own work, as, for example, a tailor who orders clothes, if he must go out on site, the time is fixed by mutual agreement between the client and the contractor based on their schedules. It must be seen that these circumstances in the case clearly pointed in the direction of self-employment, since, even reflecting only on the latter circumstance, Hungarian labour law does not recognise any form of employment, even in atypical employment relationships, where the employee himself can determine how much and when

he wishes to work and when he is available. Moreover, the food delivery worker was entitled to terminate his on-call status at any time (Sziládi et al., 2024).

For platform workers, economic dependence on a single platform is often the case, as it was in this instance. Here it should be seen that for the purposes of establishing subordination and dependence, it is irrelevant whether the service provider is economically subordinate. Even an employment relationship providing a low, insignificant income can be considered an employment relationship, provided that other conditions are met. What is relevant in this context is that the employer must have the right to give instructions and the right to control the place, time and manner of work (Sziládi et al., 2024). In the opinion of the Supreme Court, a subordination like that of employment relations did not exist between the applicant and the defendant, since the indication via the defendant's app of who is to deliver what from whom to whom and where to where is a customer communication that exists in all undertakings and contracts (Mf.I.50.063/2022/7., 2023, par. 82). According to the Supreme Court (Mf.I.50.063/2022/7., 2023, par. 83), the requirement to use GPS does not confer a right of control on the defendant. The mandatory use of GPS was not intended to monitor the plaintiff's performance of its work, but to check whether the food deliveries had been carried out in accordance with the contract. Here, we must briefly mention the complexity of the verification by GPS use from a qualification point of view. However, the international comparative studies show that GPS monitoring is an employment element in the context of platforms which some of the courts assessing it consider that, as it is necessary for the operation of the platform, it cannot be a relevant element in the question of whether there was a subordination relationship. Presumably, the Hungarian final decision falls into this category. However, most foreign decisions clearly commit that it does not matter that there was another main reason for this form of control, since it has the effect of controlling employees. This latter position is also taken by Belgian, French, Spanish, Finnish, Dutch and English jurisprudence. However, in the Portimão case, for example, the Portuguese court recently categorised transporters as self-employed for this very reason (Hießl, 2024, p. 37). Therefore, looking at the assessment of the individual elements at EU level, it appears that most of the traditional qualification elements constitute a precarious category overall, which requires legislative development at international, EU level, especially given the international presence of platform employers and the scale of the problem.

Returning to the Hungarian case, the Supreme Court also argued against subordination on the grounds that the place of availability was not fixed. The deliverer could have been anywhere (Mf.I.50.063/2022/7., 2023, par. 86). The vehicle, mobile phone and GPS needed to provide courier services were not

provided by the defendant, as is the general rule in an employment relationship, but by the courier as a contractor (Mf.I.50.063/2022/7., 2023, par. 87). It should be noted that in the case of an employment relationship, there is also a clause whereby the employee provides the work equipment. The use of a box to keep food warm is based on a legal obligation for reasons of food safety (Mf.I.50.063/2022/7., 2023, par. 89). The fact that the defendant required the applicants to display the name and specific logo of the defendant company on their food boxes and clothing as advertising does not imply that there is an employment relationship, since it is an extension of the courier service business by means of a franchise (right to lease) contract which can be linked to the contract of employment (CIV, § 6:380). Finally, according to the Court of Appeal, the fact that the applicant was not integrated into the defendant's work organisation, that the invoicing was done in the applicant's own name and on his own behalf and that the statement of account issued in this respect cannot be regarded as a payroll (Mf.I.50.063/2022/7., 2023, par. 84) clearly indicates a civil law background.

Overall, it can therefore be seen that, both from an international perspective and assessed at the national level[3] that there is a complex, immature, case-by-case, case-by-case, and even within a case, between different levels of court, and difficult to follow system for the work mediated by the platforms. The new directive, which will take years to transpose into national law, may provide a point of reference for future platform workers, who are still in a very vulnerable position (given the Hungarian example and the international situation). But behind this vulnerability lies a longer process which has affected the labour market. The following lines highlight this dogmatic process.

3. Increased vulnerability of workers through the evolution of labour contracts

Two main forms of labour contracts have developed in the economic sector to date. The first is traditional economic work, one type of which is the employment contract, and the second is the long-term contract of entrepreneurship and assignment, or a combination of the two. This second form may also take the form of a formal contract of entrepreneurship or a contract of assignment but is similar in content to an employment contract. The other main form within a work contract differs from the traditional form in that the employers use an electronic tool, a digital platform, to create and monitor the contract. This is the so-called "gig economy", which is legally divided into the two types in the same way as the traditional one. Only whereas the economic and sociological starting

[3] In the Hungarian literature, there are clearly positions in favour of the employment status of this legal relationship, see Nádas & Zaccaria (2024) p. 283.

point for traditional permanent forms of work is the more binding nature of the work contract, the reverse is true for electronic employment, where the more liberal nature of the work contract is the primary form. Having described above the platform nature of the gig-work world, which is currently dominated by platform work, and one type of problem it poses (the question of the qualification of the legal relationship), we will now focus on traditional labour, evaluating it from this perspective.

Regarding traditional forms of labour, it can be stated that the typical content of an employment contract is the engagement of the employee to perform so-called contingent work, which is usually carried out under the direction, instruction and control of the employer, usually on the employer's premises. However, in contrast to this initial basic type, the employer's company gives the employee more freedom of movement in the form of flexible work, which is more important for the operation of the company from a professional or managerial point of view, and which is less subordinate to the employer's business and more like a contractor's assignment, tending towards subcontracting. This can make the relationship like that of a permanent contractor and/or subcontractor. At the same time, in the case of a permanent contract of service and a contract of assignment, or a combination of the two, the worker, although dependent on the contractor, i.e. the long-term client or principal, has much greater flexibility and autonomy. The contractor does not directly instruct or control the worker, but entrusts him with the performance of tasks, which the long-term entrepreneur or agent (trustee) reports periodically to his regular client or customer. Hence, the legal-dogmatic boundary between an informal relationship of a more entrepreneurial or agency nature and a long-term contract of entrepreneurship or agency may become relative and the two may slip into each other, especially when the worker or the long-term contractor or agent is a natural person. Generally, the worker may be a natural person in the case of an employment contract, whereas in the case of a long-term contract of entrepreneurship and/or assignment, the contracting party may be a legal person. From a historical point of view, it should be added that, at the same time, it is not a legal person but a civil law partnership that may conclude a service contract. In agriculture, this is the case of threshing and harvesting groups, where the group leader concludes the labour contract with the employer on behalf of the group based on the mandate of the group members (Juhász & Prugberger, 1987; Prugberger & Siendler,1988). There have also been cases where tenanted houses have a single-family caretaker contract, where the caretaker's duties are contracted by the landlord to the head of the household on behalf of the family, and the landlord does not employ a separate “caretaker” (Prugberger, 2015, pp. 92-93).

It seems that the distinction between employment and long-term self-employment is easy to draw when the long-term worker is a contractor or a commissioned legal person. Formally, this is certainly the case, but in substance, there may be a conflation of a long-term contract of self-employment where a legal person works as a long-term subcontractor to a main contractor. Although formally not an employee, in substance it may become like an employment relationship, because the general contractor exercises direction, supervision and control over its subcontractor, which in practice makes the subcontracting relationship like an employment relationship. If the subcontractor is a sole proprietorship or a legal entity and works on a permanent basis as a subcontractor for general contractors, their economic vulnerability increases and, to blunt the other party's dominant position, they seek protection either through a small business association or a trade union safety net, similar to collective labour law, which ensures the protection of workers' existential and social interests. In the case of long-term subcontracting, however, where the self-employed is a natural person, his vulnerable position vis-à-vis the main contractor in the old EU Member States could be protected "ex lege" by the self-employment rule, which was based on the now repealed European Economic Community (EEC) Directive 86/613.

The self-employment relationship established on the basis of this Directive is characterised by the fact that it is subject to a person who, in addition to the limited number of days and hours per week laid down in the Directive, performs contingent work for his contractor for more than two months, similar to a normal employment relationship (in German law, for example, an employee-like person), not in an employment relationship but in a formal long-term contract and/or work relationship with the contractor. This requires that the worker has neither a company nor an employee but is "self-employed". In this case, he is considered "de iure" as a permanent contractor and/or agent and not as an employee (Gyulavári, 2014, pp. 133-136; Kiss, 2020, p. 180; Prugberger, 2021. pp. 2-6.; Solymosi-Szekeres, 2021). Therefore, unlike under employment law, he or she must bear the costs of compulsory social security (Schulin, 1989, p. 10).[4] In the case of employment, European law still provides for compulsory social security based on the Bismarckian principle, under which the employer shared the cost of contributions to the employee sickness and pension insurance co-insurance schemes, which were set up in public and private mines and public mints, with the employees, in most cases, sharing the cost of contributions in half (Csízmadia et al. 1972, p. 278). This system of employer contribution to cover has been inherited from both the Bismarckian (Germanic and Francophone-Latin) and the Beveridge model (United Kingdom) up to the present day. This

[4] See Prugberger (2008) for a comprehensive overview of Western Europe.

practice was developed in Western Europe to avoid employers having to contribute to the compulsory social security cover of employees, and to pass it on in full to the employees. This has been adopted by the individual States, confirmed by the Directive, whereby, if the above conditions are met, the employer may establish a formal long-term service relationship with his worker instead of an employment relationship and may therefore be exempted from contributing to the worker's compulsory social security costs ex lege, but must apply the provisions of labour law protecting the worker (Schulin,1989, pp. 130-169; Prugberger, 2008, Chapters IV.-V.).

In the post-communist Central and Eastern European countries, the burden of compulsory pension and health insurance for employees is still borne to a much greater extent by the employer than in Western European countries, a situation which Hungary is not exempt from either. This is why foreign companies that bought a large proportion of state-owned companies during privatisation after they were converted into joint-stock companies have sought to convert not only more flexible employment relationships, but also those involving dependent work, into self-employment. In many cases, this has taken the form of abuse of rights to the detriment of workers. Hungary was not exempt from this. Following the sale of the State Insurance Institute to Dutch insurance companies after it had been split up into several joint stock companies, the employment relationships of the salesmen working for the State Insurance Institute in the form of casual employment were converted into long-term contracts by the Dutch insurance companies taking over. They continued to work for the new company, as they had done for the State Insurance Company, going door-to-door in their respective districts to conclude insurance contracts with their customers and to maintain the contracts already concluded to stabilise them. Once a week, they had to go to the head office to report to the contracting department on what they had done that week and were given the following week's tasks. In addition, if a contractor working such a casual shift was required to work 'extra' on-call duty outside working hours, or on a weekly rest day or public holiday, he was entitled to overtime and extraordinary work allowances. The Dutch insurance companies regularly used their workers who had been reclassified as long-term contractors for the same on-call work, rather than their regular employees, on the basis that as contractors they could work when they wanted and were therefore not subject to working time limits or to overtime and extraordinary work allowances. On this basis, they were denied paid holidays and two days' pay for a weekly rest day, which they only received at their basic rate of pay without any additional pay if they were on call. Hungarian employers have done the same when they have terminated the employment of a succession of legal advisers and converted their continued employment into permanent legal assignments, only to avoid having to contribute to the

compulsory employee social security costs of the employment relationship (Prugberger, 2006, pp. 64-65; Prugberger, 2003, pp. 8-9). For these reasons, when the government led by Viktor Orbán doubled the minimum wage during the first FIDESZ-KDNP coalition government, employers, to avoid having to double the social security contributions they pay for their employees, reduced the time they employed employees to four hours a day, i.e. by half. At the same time, their work for the other four hours was classified as permanent self-employment, even though they continued to work the same contingent work for the second four hours as they had done for the first four hours (Prugberger, 2006, p. 57). For this reason, forced self-employment has been a central theme in the Hungarian literature. The phenomenon of forced self-employment has been described above, how this process took place in Hungary after the regime change, but it is not only a bad memory of the past, which is still being implemented by internet-based labour exchange. In this system, workers are not integrated into the employer's organisation through the conclusion of a contract of employment but are linked to it by a loose chain of civil law. This chain can be cut at any time by the company using the worker, unlike in an employment relationship, so that the chain loosely embraces the client/contracting company. At the other end of the chain is the worker who is clinging to it, typically tied to a firm that keeps him economically dependent, since his livelihood depends on this single link. There is no safety net behind him to protect him if the client breaks this chain by stepping over the simple bulwarks of civil law. If we look only at the case of termination, we can see a few negatives, as there is no protection against dismissal, no severance pays, and no recourse to the system of grounds for termination, in contrast to the strict rules of labour law which sanction wrongful termination.

The possibility of forced self-employment is assisted by the legal concept of contractual freedom. Labour law is characterised by a specific, indirect type requirement (Kiss, 2007, p. 7): the parties are free to choose between employment contracts, contracts of agency, contracts for services and other types of contracts. However, an employment contract is not to be judged by its name but by its actual content (Gyulavári, 2010, p. 341). If, for example, the nature of the activity in the working relationship indicates a subordination between the parties, there must be an employment relationship between them (Kiss, 2006, p. 269). This qualification activity is typically governed by the now repealed Directive 7001/2005 FMM-PM, the relevant provisions of the LC and the general principles of jurisprudence (Mfv.II.10.214/2012/5., 2013). This Directive uses primary and secondary ratings. Primary qualifiers include, for example, job definition, personal work responsibilities or subordination. In this context, the Directive emphasises the hierarchical relationship, especially at the level of personal subordination.

Hungarian labour law is characterised by the instability of the demarcation criteria (Kiss, 2007, p. 7), which is also the case in current judicial practice. Initially, Hungarian judicial practice classified formally permanent self-employment relationships as civil law contracts according to the title of the contract until the labour inspectorate reclassified the fully dependent work-type relationships as employment contracts with a fine. Then a turning point appeared, in which the contract was not classified as an invalid contract unlawfully disguising an employment relationship, based on Article 207. par. 6. of the former CIV (Handó, 2003). At the same time, research by Tamás Prugberger, András Fabók and Zsuzsa Somogyi has shown that the Hungarian establishments of the same Western European countries that apply self-employment rules in their own countries and treat those who are self-employed in their own countries as workers in a permanent agency relationship in their own countries are applying double standards. To allow insurance companies to continue this practice, they have, as it has become clear, obliged their workers working in this way to form a limited partnership with family members, since they are then no longer performing their duties as natural persons but as a company (Prugberger & Fabók, 2000; Somogyi, 2006).

Following the accession of the Central European countries to the European Union, this was a clear double standard, which became untenable because of EU directives prohibiting discrimination and stating the application of the principle of equal treatment. However, this double standard was still sought to be applied by multinational companies in such a way that it would be legal for self-employment provisions like those that such formal companies were obliged to apply to workers in their parent companies in their own country not to apply to their branches in the new Member States when they concluded employment contracts. To this end, the employers' federations of the old Member States have repealed the self-employment Directive 86/613 with the European Parliament by means of EU Directive 2010/41, which allows the parent companies of the old Member States to continue to use formal permanent self-employment like the work relationship in their own country if they do not wish to employ their workers in a freer and more informal atypical employment relationship. They can do this despite the fact that, although the self-employment directive has been repealed, this does not mean that Member States should repeal legislation allowing for protected self-employment. In fact, in Central European countries, including Hungary, they can invoke the repeal of the Directive without any further need to apply the permanent contracting/assignment to avoid having to contribute to compulsory social security for employees without having to apply labour law provisions protecting workers' rights and interests resulting from self-employment.

4. Conclusion

In our study, we introduced the complex world of platform issues, with a special emphasis on the first platform case in Central and Eastern Europe. Highlighting several critical points, we found that there is an uncertain system for the qualification of legal relationships, but this is not only true for platform work. In this assessment, we looked at the evolution of labour relations. We have concluded that, while giving in to pressure from employers to assert their interests in traditional forms, the EU has critically excluded self-employment, which is protected by labour law, it is right to introduce it for digital platform employment in the form of a European Union directive. The directive therefore pushes these digital platform contracts in the direction of employment relationship, but at the same time, since there are also economically dependent self-employed outside the platform, the principle of equal treatment could be infringed. Therefore, de lege ferenda, in addition to the developments in the EU, György Kiss's proposal in the preamble of the first draft of the 2012 LC should be included in the preamble of the LC, according to which if self-employment is similar to employment and the self-employed person is existentially and economically dependent on the employer, the formal undertaking should be treated as an employment relationship in terms of its content, extending certain labour law protection instruments to it. This could be done by Hungarian legislation independently of the EU Directive or by building on the text of the Directive. Therefore, if the work contract is of a long-term contractor or agency nature, but the economic dependence exists, disputes arising from the legal relationship could be treated as self-employment with a status like that of an employee under the LC.

In addition, it would be essential to standardise the approach of the judiciary in view of the growing problem, which would include an international assessment of the platform work, highlighting the experience accumulated in other jurisdictions, which could be put to good use in the application of domestic law in similar cases. The decisive character of the judicial approach is undisputed in the case of self-employment, which is economically dependent and therefore difficult to categorise, and is also emphasised in the German literature. In German law, the labour courts have jurisdiction in labour law disputes arising from the employment relationship of persons with a legal status like that of employees, even though they are not employees but have a special, intermediate status. Debald considers this legal consequence important because it is the judge, who is sensitive to social law values, who must decide in cases of self-employed persons who, although not employees, are economically dependent on the client and therefore have a social protection claim (Debald, 2005, p. 139). In our view, economically dependent self-employment (i.e. not

freelancers in general, but the economically dependent working class), whether platform-based, as in the present case, or traditional, non-digital employment, requires protection under labour law because it embodies a specific subordinate employment, in which the need for social (including labour law) protection is felt, as it is taken as the basis for the protection of the intermediate status in German literature.

For the time being, the general extension of the category of employee to platform work is also difficult, as the EU picture shows, and until the EU directive is transposed, it is useful to examine international research findings and use the results to support the judicial approach. The key role of this has already been demonstrated in the German literature. Indeed, until the protected self-employed status is "created" in any form, the need for protection under labour law is indisputable, and only uniform application of the law can provide a reassuring temporary answer.

It is the legislator's responsibility to find a satisfactory solution to this issue, as we can agree with the international demand that labour law should open to new forms of employment in the platform economy (Klebe, 2017, p. 3). The final judgment emphasises that *"[the] Curia did not take a position on a general question of legal policy or legislation in the present case, but on the specific case in question, on the basis of the legislation on which the application is based"* (Mfv.10.091/2023/7., 2023, para. 110). It can be seen from this that, at the time of the decision, the court was aware of the underlying vulnerability which stigmatises the fate of the modern platform worker. Unfortunately, this vulnerability is terribly exacerbated by the "wheel of fortune" illustrated by the present case, i.e. the total uncertainty as to the classification of the worker's legal relationship in the event of litigation. This is also because, as in the case discussed above, none of the courts was interested in whether the platform would contribute to the compulsory social security of platform workers. In this case, it was clear that this was not the case, as indicated by the platform's internal rules, which explicitly stated that it employed platform workers as contractors. It would therefore be appropriate to clarify these issues, including the question of the evolution of compulsory social security, to standardise the approach of the courts.

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