

Collective labour rights in the context of platform work

Methodology

- Comparative legal analysis
- Non-standard forms of employment
- Platform workers: special focus on
on-demand workers
- Factual examples

Introductory remarks

The spread of (Non Standard Forms of Employment) **NSFE** has generated a number of issues in relation to labour protection.

- ❖ The majority of **platform workers** are considered self-employed workers, even though the real nature of the job may indicate a disguised employment relationship.
- ❖ **Self-employed workers** have historically been assumed to be able to “defend” themselves on the market, without the need of state intervention, and, therefore, have generally been excluded from the scope of labour protection.
- ❖ As a result, they are facing serious limitations towards the enjoyment of their fundamental labour rights (LR), which have been recognized as human rights (HR), e.g. FoA and the right to CB.

Some data on platform work around Europe

- 17% of EU citizens used platforms in early 2016 (both users and providers).
- PWC (2016) estimated, for example, that the on-demand economy generated gross revenues of €32 billion in 2015 (around 0.2% of EU GDP).
- The growth of the on-demand economy accelerated since 2013, with total revenue growing 58% in 2014 and 79% in 2015.

The important role of CB for present and future challenges (1/2)

- CB as an essential right of the right to FoA is the most efficient way to counter the imbalance of collective bargaining as an essential element of the right of the freedom of association is the most effective way to achieve a countervailing power of the employer and reestablish a balance of forces in the employment relationship.

- The importance of CB is also confirmed by international supervisory bodies, e.g. ILO Committee of Experts, ECtHR.

The important role of CB for present and future challenges (2/2)

It is an “**enabling right**”, whose effective protection can be crucial for the actual exercise and enforcement of other HR and labour standards (ILO Committee of Experts).

- CB results in higher quality of the working environment, in areas, such as health and safety and working time and it is also associated with a lower incidence of various forms of intimidation and discrimination (OECD, 2019).
- Several CA have been concluded to regulate the role of technology.

E.g. on data protection of employees (Dagnino and Armaroli, 2019).

Platform workers: practical difficulties to freely associate

The business model is similar in all the country

- a) Frequent turnovers
- c) Individuality / lack of common identity
- c) Huge portion of workers can access platforms (low criteria of entry)
- d) Fear of retaliation from the platform

Platform workers: legal restrictions on their collective labour rights

- A) Two sources of issues:
- Existing limitations of labour law
 - Conflict of labour law with competition law: existence of strict antitrust laws that see self-employed as undertakings. (FNV Kunsten, CJEU)

2. Common ground: Collective labour rights enshrined in national constitutions

ITA → «*L'organizzazione sindacale è libera*» (Art. 39 Cost)

GER → «*Das Recht, zur Wahrung und Förderung der Arbeits- und Wirtschaftsbedingungen Vereinigungen zu bilden, ist für jedermann und für alle Berufe gewährleistet. Abreden, die dieses Recht einschränken oder zu behindern suchen, sind nichtig, hierauf gerichtete Maßnahmen sind rechtswidrig*

. (Art. 9 III GG)

NL → *Het recht tot vereniging wordt erkend. Bij de wet kan dit recht worden beperkt in het belang van de openbare orde* (art. 8)

FRA → Tout homme peut défendre ses droits et ses intérêts par l'action syndicale et adhérer au syndicat de son choix (art. 6 Preamble).

First Category: No legal approach on platform work

- Some countries, do not address the issue of platform work at all.
- Examples: Hungary and Russia

Second Category: Topic of discussion without legal consequences thus far

- In Other countries the problem is seen and discussed by the law makers, but without any legal consequences (yet).
- Germany: pre-election discussion.
- Netherlands: Actual attempt of the government to research the issue, *inter alia*, by a Commission (Borstlap), but until now, no further actions have been taken.

Third Category: Countries addressing platform work

Some countries actually address the issue of the platform workers through:

- Holistic approach (Italy): Measures attempting to address the issue of classification of workers more in general, including platform workers.
- A distinction must be made between countries designing law specifically to address the issues of platform workers and offer some protections. (*lex specialis*, Italy/France) Also, attempts to exclude them from labour protection (Belgium/France).

Third Category: Holistic approach of Italy

- Italy: Holistic approach, Art. 2 d.lgs. 81/2015
(before the modifications by d.l. 101/2019)
- Holistic: Applying not specifically to platform workers but setting general classification standards



«The subordinate worker discipline is to be applied to the collaboration relationships which actually consist of exclusively and mainly personal, continuous activities whose means of execution are set by the client also in terms of schedules and wherabouts».

Third Category: Countries addressing platform work – including approach of Italy

- Italy: The change of the Holistic approach by d.l. 101/2019 clarified that such discipline also considers platform workers



«self-employed persons engaged in the delivery of goods on behalf of others in the urban area and with the help of bicycles or motor vehicles through digital platforms.»



Platform: *«the computer programs and procedures used by the customer which, regardless of the place of establishment, are instrumental to the activities of delivery of goods, fixing the compensation and determining the modalities of performance of the service»*

- Similar approach in France (article I.7341.1.). Certain types of platform workers, like couriers, should have access to collective labour rights.

Third Category: Countries addressing platform work – excluding approaches

- Some countries addressed the issues of platform workers, some especially the drivers in a negative way by actively excluding them from the national labour law
- Belgium: Loi relative à la relance économique et au renforcement de la cohésion sociale du 18 juillet 201, excluding all platform workers (tax background)
- France: Loi relative au travail, à la modernisation du dialogue et à la sécurisation des parcours professionnels du 8 août 2016, and the law of the mobility act 2019
- Both attempts have been found unconstitutional.

Freedom of association and collective bargaining as universal rights

The right to FoA is contained in a number international human rights treaties around the world (e.g. UDHR, Articles 20(1) & 23(4); ICCPR, Article 22; ICESC, Article 8; ECHR, Article 11).

Likewise, other international documents safeguard this right as a human right with respect to trade unions and employers' organizations (e.g. ILO, Convention No. 87; European Social Charter (Revised), Articles 5).

- The right to CB is also enshrined as a fundamental human right in several labour and human rights documents (e.g. ILO, Convention 98; ECHR, Article 11; CFREU, Article 28).
- It has been recognized as a human right by a number of bodies supervising the implementation of human rights treaties (e.g. ECtHR in *Demir and Baykara*: extended reference to ILO Conventions No. 87 and 98, as well as to the ILO Committee of Experts).
- Fundamental labor rights should be applicable to every worker

FoA and CB as universal rights

Many of the restrictions that platform workers face regarding the enjoyment of their rights to FoA and CB are at odds with the wording and principles of human rights and labor rights instruments.

- The ILO Committee on Freedom of Association has repeatedly pointed out that Conventions No. 87 and 98, should apply to all workers, regardless of the existence of an employment relationship that it is often non-existent. Few exceptions apply (e.g. armed forces and the police).
- The supervisory bodies within the Council of Europe have taken a similar approach: ECtHR in the case of *Sindicatul Pastoral Cel Bun v. Romania* and the European Committee of Social Rights in *Irish Congress of Trade Unions v. Ireland*.

Collective dimension: actions

Actions of traditional unions

- a) CGIL -Just Eat
- b) UGL- Assodelivery
- c) IGM for metal workers (on demand as well as crowdworkers are covered)

Legal proceedings

- a) Bologna 31.12.2020
- b) FNV - Netherlands

Others collective actions

- a) Bologna Charter of Riders
- b) Deliverance
- c) LDH-Uber
NB. Trilatera agreement

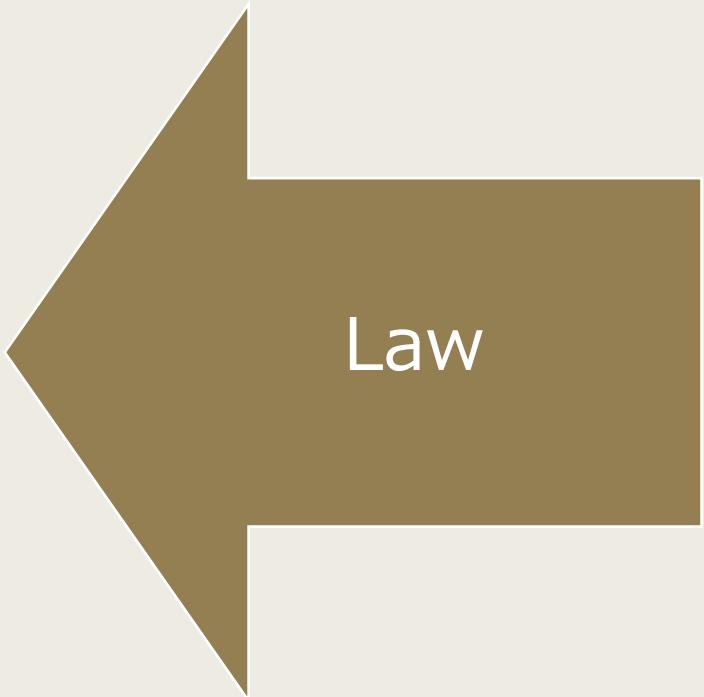
grassroot movements

- A) "Riders Union Bologna",
- B) "Deliverance Project Torino",
- C) "Deliverance Milano".

→ The former founded in the fight against the precariousness of work and the lack of protections the common interest of all riders, despite their different working condicions; instead, the second coalition defines itself as an instrument to share experience and to try to create connections in a contest where automation and precariousness isolate the workers involved; "Deliverance Milano" defines itself as an autonomous social union, which is auto-organized and that is a support network for the food delivery workers.

Conclusion

There are no best practices: each country has to puzzle together it's solutions



Law



Collective
Actions