

# The impact of digitalization on labour law's fundamental legal institutions

Summary of Doctoral Dissertation



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## 1. Research topic reasoning and project definition

The post-industrial society has changed to an information / knowledge society.<sup>1</sup> This means the economy has undergone a systemic transition from the production of goods to the ‘production’ of services. This information society stems from ICT’s (Information and Communication Technology) revolution.<sup>2</sup> The so-called Fourth Industrial Revolution or Industry 4.0 – which built on the achievements of the Third Industrial Revolution – has arisen as a result of information society’s emergence.<sup>3</sup> Industry 4.0’s main characteristics are the following – mass production, IoT (Internet of Things), independent robots, creation of decentralized production networks, fragmented supply chains<sup>4</sup> and blurring lines between industry and services. If we put all these things together and add the facts of increasing globalization and societies’ changing to an ‘experience society’<sup>5</sup>, we get a totally fractured situation in the economy and also in society.<sup>6</sup> This ICT-based world is a phenomenon in which we can and must analyse the impact of digitalization on labour law’s legal institutions.

Due to the rise of the digital labour market and technological innovation, new forms of work have been born, such as ‘work-on-demand via apps’ and ‘crowdwork’.<sup>7</sup> This cluster of the labour market is categorized by the European Committee as part of wider tendencies,<sup>8</sup> such as

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<sup>1</sup>Török, Emőke: *Munka és társadalom – A munka jelentésváltozásai a bér munkán innen és túl*. L’Harmattan Kiadó, Budapest, 2014. 109.

<sup>2</sup>Valenduc, Gérard – Vendramin, Patricia: The mirage of the end of work. ETUI Foresight Brief nr 6, March 2019. 8.

<sup>3</sup>The Third Industrial Revolution has started with the wide spread of IT (Information Technology) tools and internet-using from the beginning of 1970’s. It made possible to get information all over the world and to automate some labour processes.

<sup>4</sup>See Weil, David: *The Fissured Workplace – Why Work Became So Bad for So Many and What Can Be Done to Improve It*. Harvard University Press, 2014.

<sup>5</sup>Török (2014) 111.

<sup>6</sup>Bankó, Zoltán – Szőke, Gergely László: *Az információ technológia hatása a munkavégzésre*. Pécsi Munkajogi Közlemények, Monográfiák 5., Utilitates Bt., Pécs, 2015.

<sup>7</sup>Legal literature divides the platform economy’s work (‘virtual work’) to two dimensions. First of all, the ‘crowdwork’ and second of all the ‘work-on-demand via apps’. See more: De Stefano, Valerio: The Rise of the «Just-in-Time Workforce»: On-Demand Work, Crowdwork, and Labor Protection in the «Gig Economy». International Labour Office, Geneva, Conditions of Work and Employment Series, 2016/71. [https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_443267.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_443267.pdf). (2020. 12. 15.) Gyulavári Tamás: Hakni gazdaság a láthatáron: az internetes munka fogalma és sajátosságai. *Iustum Aequum Salutare*, XV. évf, 2019/1. 25-51.

<sup>8</sup>Codagnone, Cristiano – Abadie, Fabienne – Biagi, Federico: The Future of Work in the ‘Sharing Economy’. Market Efficiency and Equitable Opportunities or Unfair Precarisation? Institute for Prospective Technological Studies, JRC Science for Policy Report EUR 27913 EN

outsourcing-based labour market globalization, workplace polarization and ‘non-standard’ work.<sup>9</sup>

It is not disputed that platform economy’s<sup>10</sup> economic and social processes are among the most discussed innovative labour law topics of the past few years. The traditional employment relationship is going through a basic transformation in general. This transformation creates new types of working possibilities i.e. new types of ‘workers’ who fall under a ‘grey area’<sup>11</sup> between the traditional categories of the employee and the self-employed.<sup>12</sup> Numerous issues showed that employment legislation and law enforcement, social partners and the society as a whole have to respond and react to these transformations in the long term, but we still do not know exactly how or in what form this reaction can and will take place. The workers’ employment protection in the platform economy is lower and narrower than that of traditional employees’.<sup>13</sup>

The platform workers’ issues – which I describe and analyse in my dissertation – are critical elements of contemporary international labour law discussions. But from my point of view we cannot stop at the ‘trendy’ questions. Technological innovation and gig economy are two important factors which overreach traditional, stable and binary standard employment relationships.<sup>14</sup> Anyhow I have to note as an interim conclusion that labour law regulation was created alongside binary contractual relationships. But as we can see, the real world is moving away from this model and, therefore, the system’s fundamental rethinking is obviously necessary.

As my research results show, platform work has raised the need to adapt labour law in a ‘veterinary horse-like’<sup>15</sup> and mass-like manner. At the same time, these widespread disruptive

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<sup>9</sup> Comp. ILO (Nemzetközi Munkaügyi Szervezet): Non-standard employment around the world: Understanding challenges, shaping prospects. International Labour Office, Geneva, 2016

<sup>10</sup> Lobel, Orly: The law of the platform. *Minnesota Law Review*, Vol. 87, 2016 101(1) 87-116.

<sup>11</sup> Gyulavári, Tamás: *A szürke állomány. Gazdaságilag függő munkavégzés a munkaviszony és az önfoglalkoztatás határán*. Pázmány Press, Budapest, 2014.

<sup>12</sup> See Prassl, Jeremias – Risak, Martin: Uber, TaskRabbit & Co: Platforms as Employers? Rethinking the Legal Analysis of Crowdwork. *Oxford Legal Studies Research Paper*, 2016/8.

<sup>13</sup> EU-OSHA: Protecting Workers in the Online Platform Economy: An overview of regulatory and policy developments in the EU. Luxemburg, 2017. <https://osha.europa.eu/en/publications/protecting-workers-online-platform-economy-overview-regulatory-and-policy-developments/view> (2020. 12. 15.)

<sup>14</sup> Prassl, Jeremias: *Humans as a Service – The Promise and Perils of Work in the Gig Economy*. Oxford University Press, Oxford, 2018. 140.

<sup>15</sup> It is a Hungarian expression. It ensues from a figure in vet's schoolbooks illustrating a horse with symptoms of all the illnesses a horse can have.

effects have impacted or are constantly impacting traditional employment relationships as well, so they are not unique characteristics of platform work.

Accordingly, the employment relationship's conceptual elements are transforming. Besides platform work, we can see that, also under standard work arrangements, employees are working more and more independently in a digitalized environment. Digitalization *de facto* has put to trial the current regulatory system and rationale of labour law, for example in the field of liability for damages, working time, etc. The trial is to apply existing obligations and entitlements in a novel way to meet new requirements. For instance, a seemingly simple question (such as the using one's own device during work<sup>16</sup>) can cause several difficulties when applying basic, conventional statutory provisions. Nothing supports the importance of digitalization better than the fact that many international organizations (including the European Union) place more and more emphasis on measures and analyse the overriding challenges of digitalization in terms of labour law.<sup>17</sup>

## 2. Research methodology

'The impact of digitalization on labour law's fundamental legal institution' doctoral dissertation aimed to give an analysis primarily based on a review of international literature as complete as possible. The main reason for this approach is due to the currently limited resources in Hungarian scholarly literature, because of the novelty of the topic. Notwithstanding, during my research I still tried to completely utilize these national sources as well. As a consequence of limited Hungarian literature, the most crucial documents and papers I read were predominantly in English, Italian and French. One of my main aims was to introduce this topic to the national professional discussion and another was to interpret the related solutions and rules to Hungarian conditions. In addition, my thesis can be considered as a wide range 'synopsis' of official documents from the relevant international organizations such as the EU or the ILO

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<sup>16</sup> Kártyás, Gábor – Répáczki, Rita – Takács, Gábor: *A munkajog digitalizálása – A munkajog hozzáalkalmazása a digitális munkakörnyezethez és a változó munkavállalói kompetenciákhoz*. Kutatási Zárótanulmány, Budapest, 2016.

<sup>17</sup> Az Európai Parlament 2016. január 19-i állásfoglalása a digitális egységes piaci intézkedéscsomag megvalósításáról, 2015/2147(INI); Az Európai Parlament 2017. június 15-i állásfoglalása a közösségi gazdaságra vonatkozó európai menetrendről, 2017/2003(INI); Az Európai Parlament és a Tanács (EU) 2019/1152 Irányelve az Európai Unióban alkalmazandó átlátható és kiszámítható munkafeltételekről (2019. június 20.); A Tanács Ajánlása (2019. november 8.) a munkavállalók és az önálló vállalkozók szociális védelemhez való hozzáféréséről (2019/C 387/01), stb.

(International Labour Organization), moreover from prominent research centres, ‘think tanks’ like Eurofound, ETUI, etc.

After reviewing the above-mentioned documents, it became clear to me that some expressions are used differently with varied meaning in a number of research papers which is quite confusing when analysing this field. For this reason, my dissertation has a significant purpose to clarify the main concepts and notions. As such, I have created a so-called ‘dictionary’ which aims to show the semantic dilemmas / contradictions between traditional expressions and innovative trends. It can be considered as a ‘translation’ or a ‘matching’ key that highlights the platform economy’s ‘tricks’. These terminological twists reinterpret the basic notions of labour law and the elements of its pragmatics.

I have also used statements from several (approximately six to eight) targeted professional (semi-structured) research interviews to develop my own conclusions. Furthermore, my thesis is also built on some prominent national and international researches’ and interviews’ outcomes in which I have also participated or currently participate.<sup>18</sup>

The sporadic and multidisciplinary nature and characteristic of the topic and also the dissertation itself is definitely necessary and undeniable. But as a whole, it primarily focuses on labour law-related challenges and relevant issues. It seems clear that it is impossible to tear out this topic from the socio-economic environment and handle it as a self-standing, floating legal issue.

In light of the research project’s reasoning and the above-described methodology, my primary goal is to discover and analyse the dogmatic, structural effects of digitalization on labour law’s fundamental legal institutions. Moreover, to support a thesis according to which the

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<sup>18</sup> Scholarship – ÚNKP-20-4-I-KRE-5, New National Excellence Program of the Ministry for Innovation and Technology from the Source of the National Research, Development and Innovation Fund, September 2020 – August 2021. Eötvös József Research Center (National University of Public Service), one-year tender for research in the field of digitalization and labour law, January-December 2020. i-Rel – Smarter industrial relations to address new technological challenges in the world of work, VS/2019/0081. New Employment Forms and Challenges to Industrial Relations – Reference: VS/2018/0046 Improving expertise in the field of industrial relations, <https://aias-hsi.uva.nl/en/projects-a-z/newefin/newefin-project.html>. Scholarship – Campus Mundi (Hungarian organization) traineeship programme for PhD research, March-June 2019, Italy. Scholarship – Julius Rezler Foundation to maintain national PhD studies, 2018/2019 academic year.

technological innovation creates pressing, permanent and consistent transformation in labour law's regulatory system and basic pillars.

### **3. The dissertation's structure**

After describing the research methodology (*I.1 Research Methodology*) in the first chapter (**I. Introduction**), the dissertation briefly outlines the main theoretical perspectives of the notion of work which are relevant in the light of digitalization. In addition, it analyses the purpose of employment regulation, more precisely its targeted interpretation in the context of digitalization. This analysis is needed because the 'purposive approach' lens can help us to examine labour law's new challenges (*I.2 The Future of Labour Law*). Lastly, the first chapter summarizes the main related, significant economic theories with some relevance to employment that led to the emergence of the platform economy and give basis for this development (*I.3 Economic 'foundation' of digitalization*).

The dissertation's next main chapter (**II. General Foundations**) is a contextualizing one. On the one hand, I determine the core definitions of my research in relation to the economy and work. On the other hand, I show data and statistics on digitalization here (*II.1 The base of digitalization*). Moreover, this chapter provides a chance to discuss and analyse the most significant, digitalization-related policy papers and official documents by the EU (*II.2 The EU's answers*). After reviewing these strategic documents, the chapter attempts to outline the EU's possible future regulatory direction(s) in the field (not only because our country is also member of the EU).

The third chapter (**III. Platform work**) – which is the core of the entire research – deals with the individual and collective labour law aspects of platform work. I analyse these two aspects in different but related subchapters. With this dual approach, encompassing both essential pillars of labour law, I would like to emphasise that my main goal is to explore and analyse platform work's labour law related issues systematically and in full. In regard to the individual aspect (*III.1 Individual Aspects – The notion of employee and the classification discourse*), I found that practical issues and collisions between parties culminate at courts. So courts become one of the main fields of problem solving. These trials engaged in classification claims where workers fight to be (re-)classified as employees. Thereafter, I describe the main characteristics of platform work's special actors as such: platform – worker – client (*III.1.2 Actors of platform*

work). Then the reader can find a ‘pros and cons’ list about classifying platform workers. It describes court rulings from various countries globally in which the courts ruled, on one way or another, on the question of platform workers’ legal status. I have tried to ensure that my analysis of the relevant international case-law is complete, up-to-date,<sup>19</sup> and detailed, purposefully analyzed from my own logic and pre-set criteria. The closing part of this chapter shows possible solutions to determine platform workers’ legal status and analyses their positive and negative sides (*III.1.3 The Classification of Platform Workers*). These tentative solutions describe the so far arisen possibilities that can address the platform workers’ legal statuses. Some of the legal solutions make it possible for platform workers to have – at least some – labour law guarantees like working time, rest periods, minimum wages and so on. This main chapter’s prime source is the comparative analysis of case law in light of international literature and my individual angle.

The second big subchapter – as I mentioned before – relates to collective rights of platform workers (*III.2 Collective Aspects – Platform workers’ collective rights*). The main source of the research here is based on case studies and best practices. I contrast the platform workers’ factual needs with the international legal requirements (*III.2.1 Delineation of Causes and Basic Problems*). After that, I define the much needed (and debated) extension of collective rights to platform workers and the possible legal dilemmas of such an extension. First of all, I analyse the parties’ ability to conclude collective agreements and then the factual and legal obstacles of collective bargaining between platforms and workers’ representatives. Moreover, I describe the CJEU’s (Court of Justice of the European Union) judgments related to competition law and collective bargaining (*III.2.2 The Emergence and Scope of Collective Rights*). The next subchapter deals with the presence of these theoretical issues in the real world and in practice (*III.2.3 Labour Relations’ Response to the Challenges of Platform Work*). On the one hand, I examine the issue of how the traditional worker representatives and union-like organizations are changing in the world of platform economy. These changes include organizational and structural transformation. On the other hand, I sketch a global inventory of the so far documented, prominent bargaining achievements of the platform workers, dissatisfied with working conditions (such as collective agreements or other arrangements). Then I analyse the unique collective actions and ‘strikes’ which were organized by platform workers (*III.2.4 Actions of platform workers*). Last but not least, I make some notes – relevant to this field –

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<sup>19</sup> By the closure of the dissertation: 20/12/2020



about the theoretical issue of applying labour rights as human rights (*III.2.5 Employment rights as human rights?*).

This is followed by an exploration of the Hungarian situation (*III.3 Hungarian situation report*). Due to peculiarities and novelty of the topic, this part could be no more than an illustration of an ambitious ‘snapshot’ about the Hungarian legal system and labour relations in the light of platform work. It is important to point out that this part has no intention of explaining in detail each sub-theme, because those were mostly already developed in Hungarian academic papers. The evaluation of national situation is rather a secondary (outlook-like) position in terms of this dissertation. I examine whether platform workers’ issues discussed so far appear in Hungary or not and, if so, with what characteristics. Firstly, I describe platform work’s embryonic presence in Hungary (*III.3.2 Initial cases*). Then I analyse direct actions by the government, trade unions, academic life and also from the point of the ‘self-organized’ groups (*III.3.3 Initial reactions*). As a closing topic, I briefly describe the current Hungarian employment situation and platforms’ possibilities to operate within it. Precisely, I analyse different potential and relevant employment forms and their pros and cons for platform workers, or for platforms (*III.3.4 Labour law- related regulatory framework, possibilities of operation*).

The last crucial chapter deals with digitalization’s effects on traditional employment (**IV. Digitalization’s effects on traditional employment**). These effects are essential because they demonstrate a kind of ‘spill over’ effect and show the impacts of platform work in relation to day-to-day, standard employment. The topics in this chapter maybe look randomly chosen at first glance but a consequent approach links them together. There is a lot common in the four independent subtopics dealt with here, in this chapter. Namely, platform work’s (digitalization’s) analogy in employment and its spill over, system-level effect. Moreover, the need for additional, innovative regulation is now clearly articulated and manifested in the given subjects. And the fundamental disruption of certain basic employment “dogmas” is also a common point in these topics.

Firstly, in relation to working time, I analyse the so called ‘right to disconnect’ that has become a more and more crucial labour law issue lately. I examine the question of permanent availability in a wider context (*IV.1 Working time – the Issue of ‘Permanent Availability’*). Secondly, I deal with algorithmic, AI-based (artificial intelligence) decisions. The core of this chapter is employers’ managerial prerogatives and its transformation in the world of

digitalization (*IV.2 Employer's Managerial Prerogatives – the Issue of Algorithmic Decision-making*). I start by describing some examples from the practice, moving from specific to general. That means I give a rationale with platform work's features and close with its spill-over to standard employment relationships. Then I discuss algorithmic, AI-based decision-making's relevant legal problems. These problems show us the specific needs and guarantees generated by AI. Following this I describe the main labour law-related structural effects within the managerial prerogatives due to algorithms. Thirdly, I examine digital tools for work and the employer providing these to the employee (*IV. 3 Tools for Work – BYOD*). My goal is to explore the transformation of this fundamental feature of employment. I analyse the practice of BYOD (Bring Your Own Device) policy which is used to determine the employees' tools usage for work. Fourthly, I present specific and novel occupational health issues in the digital world. I also describe the initial answers to these challenges (*IV.4 Occupational Health – Novel Risks in Employment*). I contrast the positive and negative effects of technological innovation's impacts on occupational health.

The dissertation closes with concluding remarks (**V. Conclusion**). This chapter collects and emphasizes my main finding of the research.

#### **4. Summary of main findings**

After an in-depth analysis of all the relevant literature, I can summarize the doctrines I have accepted as 'paradigms' as follows. Besides the research dealing with the effects of digitalization on labour law's legal institutions, I consider the *purposive approach*<sup>20</sup> of labour law as a central, crucial issue; I also try to systematically match the new, digitalization-related challenges to this approach. Secondly, I accept the following idea as a doctrine. '*Work*' always will be work' independent of its legal or 'grammatical' classification (especially referring to the new kinds of work like gigs, tasks, rides etc.).<sup>21</sup> If there is work with 'dependent' elements, also according to the idea of the purposive approach, some kind of labour law guarantees seem justified. Thirdly, regarding the increasing diversity, variousness and fragmentation<sup>22</sup> of forms of the world of work, it seems reasonable to establish a scheme for *universal labour*

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<sup>20</sup> Davidov, Guy: *A Purposive Approach to Labour Law*. Oxford University Press, Oxford, 2016.

<sup>21</sup> Prassl (2018)

<sup>22</sup> See also new forms of employment. <https://www.eurofound.europa.eu/topic/new-forms-of-employment>

*guarantees*.<sup>23</sup> This idea is more and more discussed in academic literature.<sup>24</sup> This scheme could assure basic employment protection to all workers, regardless of their legal position (standard, non-standard, employee, self-employed or anything else). Obviously the character and the extent of protection should be differentiated.

According to my point of view, if we talk about labour's digitalization<sup>25</sup> or the future of work, we have to restrict this notion. This restricted form of definition, first and foremost, affects the novel working forms' appearance and their classification. Because these are the 'symptoms' of digitalization which are dogmatically crucial and have genuine spill-over implications. In spite of that, the phenomena has been used with numerous different understandings in practice and also in literature.<sup>26</sup> In my opinion, the plain use of technologic achievements and tools in employment relationship does not mean *per se* labour's digitalization. This expression – with regard to international tendencies – should be used more carefully and precisely to describe new types of work. Obviously we still cannot close out completely the simple use of technology from the notion, nor does the dissertation (as Chapter IV. deals with the issue). I do not consider for example teleworking techniques or software as essential achievements of digitalization as such (as the they do not create fundamental regulatory challenges in labour law by itself).

Platform workers generally do not have employment contracts, instead they have so-called 'task contracts', for instance. They do not have a work schedule, but rather mark their availability. They cannot be 'fired' but can instead be deactivated.<sup>27</sup> In most cases, workers do not assume any unfair processes as the surface of platforms' operation shows an objective and neutral procedure.<sup>28</sup>

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<sup>23</sup> Universal labour guarantee, ILO – Global Commission on the Future of Work: Work for a brighter future. Geneva, 2019. 35. [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---cabinet/documents/publication/wcms\\_662410.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---cabinet/documents/publication/wcms_662410.pdf) (2020. 12. 15.)

<sup>24</sup> Sipka, Péter – Zaccaria, Márton Leó: A tervezőasztal dilemmája a munkajogi jogalkotásban: várat építsünk vagy börtönt? In: Auer Ádám – Berke Gyula – György István – Hazafi Zoltán (szerk.): *Ünnepi kötet a 65 éves Kiss György tiszteletére - Liber Amicorum in honorem Georgii Kiss aetatis suae LXV*. Dialóg Campus Kiadó, Budapest, 2018. 837-848.

<sup>25</sup> Makó, Csaba – Illéssy, Miklós – Borbély, András: A digitalizáció és a munkavégzési formák. *Magyar Tudomány*, Évf. 179., 2018/1. 61–68.

<sup>26</sup> E.g. „app-based work”, see e.g. Netz, Dániel: Applikációalapú munkavégzés a gyakorlatban. *Munkajog*, 2018/3., 39–43. Lásd még: Czirók, Andrea – Nyerges, Éva: Digitalizáció a munkajogban II. Távmunka a gyakorlatban. *Munkajog*, 2018/4., 40–46.

<sup>27</sup> Rosenblat, Alex: *Uberland – How Algorithms are Rewriting the Rules of Work*. University of California Press, Oakland, California, 2018. 159.

<sup>28</sup> Rosenblat (2018) 108.

After analysing court decisions related to platform workers' classification, I can clearly state that there is a disparate, incoherent trend of case law at both international and national level (I go in details in the Chapter III.1.3.1). The reason of this incoherent trend is that, even often in the same country referring to the same platform, the Courts have found employee status in some cases, and self-employed status in others.

The binary, two-dimension model<sup>29</sup> seems simplified, schematized and hardly applicable in a sense. Besides this binary system, there are some other opportunities and attempts to include these undefinable legal relationships into the existing realm of labour law. I analyse these various attempts in Chapter III.1.3.2. I categorize the various tentative solutions into five groups depending on which legal relationship could be the most appropriate of platform workers' employment.<sup>30</sup> According to the first idea, platform workers would remain in the same category as they are now, which is mostly self-employment. The second option says, taking into consideration the parties' agreement as a bogus employment, that it would result in a 'classic' employment relationship. As the next stream of thought states, platform work is an atypical employment relationship. The forth solution could be a brand new – *sui generis* – legal category of workers. Last but not least, the fifth idea emphasizes, as a main track, to guarantee universal labour protection to each and every worker, independently of the actual legal status. I find this last solution the most convincing and reasonable from these attempts.

Besides these specific various solutions, it is still a question whether the classification of workers is necessary or not.<sup>31</sup> According to one standpoint, the identification of platform workers' legal status is the main task. On the other hand, there is an opposing idea which says that the most significant issue created by the platform economy in employment regulation is to rethink the redistribution of protective guarantees, rather than to recontextualize the subordinated employment.<sup>32</sup> According to my point of view, choosing the golden middle way is a viable option for now, but not in the long run. I mean we cannot fully ignore the need for

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<sup>29</sup> The features of binary models see also: Freedland, Mark – Kountouris, Nicola: *The Legal Construction of Personal Work Relations*. Oxford University Press, Oxford, 2011. 112–116.

<sup>30</sup> Gyulavári gives similar options: Gyulavári, Tamás: Uber sofőrök és társaik: munkavállalók vagy önfoglalkoztatók? *Jogtudományi Közlöny*, 2019/3., 105. (a továbbiakban: 2019b)

<sup>31</sup> Explained in more details: Chapter III.1.3.3 ('Klasszifikáljunk, vagy sem?').

<sup>32</sup> Menegatti, Emanuele: On-demand Workers by Application – Autonomia o Subordinazione? In Grandi, Gaetano Zilio – Biasi, Marco (szerk.): *Commentario breve allo statuto del lavoro autonomo e del lavoro agile*. Wolters Kluwer Italia, Milano, 2018, 109. Representing similar aspects, Tamás Gyulavári considers the issue of calling the employment of Internet workers secondary to the content of the regulation. Tamás Gyulavári: Internetes munka a magyar jogban – Tiltás helyett szabályozás? *Pro Futuro*, Évf. 8. 2018/3. 95.

classification (formal issue) as long as the new guarantee system is not precisely elaborated (content issue).<sup>33</sup> I can agree with the aforementioned idea namely that reconsideration of labour guarantees' redistribution is far more important than classification. However, as long as redistribution of protection is only a theoretical idea, workers' classification can be the single mean to guarantee minimal protection to platform workers. Furthermore, at the end of the day, all kinds of redistribution require some elements of classification.

Regarding the collective labour law aspects of my dissertation and in the light of Chapter III.2, I have clearly concluded that it is necessary to ensure collective rights for platform workers too. Firstly, it is justified by the fact that these workers are vulnerable and their status is highly unstable. We have to give them an opportunity to exercise their rights and freedoms of association and enforce their interests independently from their legal status. Secondly, the need for regulation in this regard is proven by the genuine, independent actions, increasing number of 'strikes' by platform workers, although they do not have any clear, established legal opportunity to do so. Thirdly, the legal arguments are also leading us this way. Namely freedom of association and right to strike can be increasingly interpreted as human rights or widely extended rights. It looks like nowadays we would see genuine "platform workers' labour law" evolution, in line with the historical analogy of labour law's original development.<sup>34</sup> As the situation is about collective structures' acknowledgement and institutionalization such as during the industrial revolution. There is room for optimism as we observe historical examples. Besides this, not only collective voices and their increasingly stronger power can control the parties' originally unrestricted contractual freedom but also some state interventions. The state slowly insinuates to this contractual freedom with legislative solutions, court decisions, the issue of classification and some right-extension to platform workers.

As a warning, I still have to highlight that creating relevant policies and planning legal regulation is difficult because we do not have any detailed information about platform workers' sociological and physical circumstances, as statistics are poor in this field.

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<sup>33</sup> Gyulavári divides platform workers' protection issue into two categories: formal and content issues, see Gyulavári (2019b).

<sup>34</sup> Kun, Attila: A munkajog történeti fejlődésének vázlata, In: Kiss György (szerk.): *Munkajog*, Ludovika Egyetemi Kiadó, Budapest, 2020. 47-58.

As my research results show, platform work has raised the need to adapt labour law in a ‘veterinary horse-like’<sup>35</sup> and widespread manner. At the same time, these disruptive effects expanded or are constantly expanding into the field of traditional employment relationships, so they do not remain characteristic solely within the sphere of platform work. As a result of this overriding effect, I declare that the classic structure of the standard employment relationship’s qualifying features strongly ‘sways’ because of challenges generated by digitalization. The issues that have arisen in the case of platform work are actually apt symptoms of this ‘sway’ (taking into account to the problem of classification). Therefore, these circumstances prove my hypothesis that digitalization and platform work has a robust spill over, system-level effect to traditional labour law as well. Moreover, in the case of the aforementioned, discussed traditional labour law institutions (see, Chapter IV: working time, employer’s prerogatives, working tools, occupational health and safety), some specific, novel needs and attempts to fundamentally (re-)regulate this area start to appear. The novel effects in this area ‘require’ the institutionalization of some kind of additional guarantees. In many cases and in several countries, this need for regulation already seems to be manifested in some issues (either at the level of legislation, or in the form of an agreement between the parties, or in the form of softer policies at least).

The aforementioned, already ‘manifested’ issues can be shortly summarized as follows. Regarding *working time*, the phenomenon of the ‘right to disconnect’ can be considered as a significant and innovative attempt to limit ‘permanent availability’. I can state that the ‘right to disconnect’ becomes a brand new, original employee right in more and more national systems (a Hungarian domestication may also arise in the future).

In the context of *employer’s prerogatives*, the concrete regulatory issues and needs of algorithmic management increasingly seem to develop (for example the need for transparency, the importance of anti-discrimination, issues of portability and the ‘human in command’ approach, etc.).

In relation to the topic of *working tools*, the proper application of BYOD (Bring Your Own Device) policies points out in many ways the need for pragmatic solutions of labour law.

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<sup>35</sup> It is a Hungarian expression. It ensue from a figure in vet's schoolbooks illustrating a horse with symptoms of all the illnesses a horse can have.

Last but not least, in the field of *occupational health and safety*, it is clear that novel risks call for novel risk management and liability deployment solutions.

In the following paragraphs, I will confer digitalization's effects (ensued from platform work) on traditional employment. *Working time* – as we know it – does not exist at platform work, or at least it is mostly scheduled by workers themselves. Referring to Chapter VI.1 in the dissertation, I can state that working time increasingly seems to 'evaporate' in standard employment relationships too, since the issue of 'permanent availability' also arises here as it genuinely does in platform work. It is also proven by the fact that extent of employee time-sovereignty and self-sufficiency is increasing and work and private life increasingly merge into one another. It seems to me certain that the introduction of the 'right to disconnect' ultimately shows no new legal regulation ('there is nothing new under the Sun'). In fact, it is a matter of strengthening the effective, basic logic of working time regulation<sup>36</sup> and it is likely a kind of mere procedural measure. Creating a 'right to disconnect' regulation is, at the end of the day, seems nothing more than putting existing working time regulation on a new robe. This reformulation need is induced by technology's language and is a special way to enforce existing protective rules via innovative means. As a main rule, the period outside of working time should be considered as a rest period even in the lack of a specific 'right to disconnect'. But this novel right's *expressis verbis* creation still can be considered a significant achievement since it is perceived as a brand-new employee right, which is unparalleled and really rare nowadays.

*Employer's managerial prerogatives* (such as direction, control and sanction) seem to dissolve in the case of platform work as well since there is no easily identifiable single 'employer' in these constructions, as such. However, in a technical sense, a kind of strengthening of managerial prerogatives can also be observed. But platforms often tend to demonstrate the opposite by aiming to distribute many of these functions (for example to consumers or to algorithms). In my point of view, the fundamental transformation of this 'managerial triple' (such as direction, control and sanction) can be mainly traced back to the appearance<sup>37</sup> of

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<sup>36</sup> Comp. EU's case law. That period of time which is not working time will be considered as rest period; working time limitation, and so on.

<sup>37</sup> See also Eurofound: Automation, digitalisation and platforms: Implications for work and employment. Luxembourg: Publications Office of the European Union, 2018. [https://www.eurofound.europa.eu/sites/default/files/ef\\_publication/field\\_ef\\_document/ef18002en.pdf](https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef18002en.pdf) (2020. 12. 18.)

algorithmic management.<sup>38</sup> Algorithmic decision-making processes appear in platform work (as a basic logic of platforms), but also in traditional employment. In the first case as a ‘pattern builder’, in the second case as a sporadic phenomenon. During the course of traditional employment, the employer’s crucial functions can also ‘platformize’ and ‘algorithmize’. Due to these circumstances, the employment relationship’s inherently personal features<sup>39</sup> may be distorted to a great extent.

Going further to the issue of *working tools*, it is clear that platform workers provide those for themselves, those are their own properties. However, this logic appears in the case of traditional employment too, as Chapter IV.3 describes in my dissertation. My research in this area focuses on the regulatory trends and needs of BYOD. It seems to me appropriate to settle the issue by legislation with regard to the legal basis at least (whether is there an authorization to apply BYOD, and how<sup>40</sup> or not). Then the parties’ agreement (collective or individual) or a policy (internal regulation) seems to be proper to regulate specific and detailed rules (in line with labour law’ basic guarantees and principles).

Finally, the novel but – in the case of platform work – typical *occupational health and safety* risks appear in employment relationships more and more often. It is the employers’ responsibility to provide a healthy and safe working environment. But question arises, how the employer could meet this basic requirement, for example, in the case of psychosocial risks. I am of the view that, in this context, another significant characteristic of the standard employment relationship is going through an elementary transformation thanks to the ‘attack’ of technological innovation. It is pragmatically the employer’s responsibility to provide the appropriate working conditions. Nowadays, when it becomes highly typical that work is increasingly independent from place, space and time, it seems like the power of providing for safe working environment and risk management would spiral out of the employer’s control. We are in a period of time when the substantiation of the – legally required – connection between the damage and the employment relationship is really difficult and when several occupational risks are hard to be separated from the spheres of private life. In this period of time, the logic of insurance seems to come into the forefront as a reasonable and justified solution to tackle the

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<sup>38</sup> See also the issue of roboboss. József Hajdú: A robot vezető (roboboss) és a munkajog (ember-gép v. gépember). Előadás a Future Law – A jövő joga konferencián, 2018. 09.27.

<sup>39</sup> Hugo Sinzheimer: *Über Grundgedanken und die Möglichkeit eines Einheitsarbeitsrechts in Deutschland* [in *Arbeitsrecht und Rechtssoziologie*]. Frankfurt am Main, 1922.

<sup>40</sup> Comp. Art. 51(1) of the Hungarian Labour Code.



mentioned problems (instead of culpability). Furthermore, the right to health and safety at work (similarly to collective rights, as discussed above) should be provided to all workers independently of their legal status.

By the passing of time, those parts of the law that govern our daily lives are either supplemented by new rules or we have to reinterpret existing rules to be applicable. Consequently, I state that digitalization is a highly specific and indeterminable phenomenon at this time which requires paradigm shift from legislators.<sup>41</sup> The principle of ‘experience first, then regulate’ prevails in all areas of law in general, which leads to the result in many cases that legal regulation lags behind practice. However, as history also proved, different economic systems require different regulatory approaches.<sup>42</sup> If technology is capable of innovation and development, certainly law is too.<sup>43</sup>

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<sup>41</sup> Zódi, Zsolt: *Platformok, robotok és a jog – Új szabályozási kihívások az információs társadalomban*. Gondolat, Budapest, 2018. 67.

<sup>42</sup> Sundararajan, Arun: *The Sharing Economy: The end of Employment and the Rise of Crowd-based Capitalism*. MTI Press, 2016. 146.

<sup>43</sup> Deakin, Simon: On Uber & Luddism <https://www.etui.org/content/download/23959/199231/file/uberruling-deakin-article.pdf> (2020. 05. 15.)

## 5. List of publications

### 5.1 Publications related to the dissertation

1. Rácz, I., A technológiai fejlődés munkaegészségügyre gyakorolt hatásai. In: Miskolczi, Bodnár Péter (szerk.): *XVII. Jogász Doktoranduszok Országos Szakmai Találkozója*, Jog és Állam 30. szám, Patrocinium Kiadó, 2020. 213-221.
2. Rácz, I., Algoritmizált menedzsment, azaz algoritmusok által vezérelt munkaszervezés. In: Miskolczi-Bodnár Péter (szerk.): *XVI. Jogász Doktoranduszok Szakmai Találkozója*, Jog és Állam 29. szám, Patrocinium Kiadó, 2020. 227-235.
3. Rácz, I., „Uber ítéletek” – Klasszifikációs kérdés új köntösben? *Pécsi Munkajogi Közlemények*, XII. évfolyam, I-II. szám, 2019. 75-87.
4. Rácz, I., A távmunkán túl – Munkavégzés az applikációk világában. In: Pál Lajos – Petrovics Zoltán (szerk.): *Visegrád 16.0 A XVI. Magyar Munkajogi Konferencia szerkesztett előadásai*, Wolters Kluwer, Budapest, 2019. 234-260.
5. Rácz, I., A munkaügyi kapcsolatok, a munkát végző személyek kollektív jogainak érvényesülése a digitalizáció korszakában. Rézler Gyula Alapítvány ösztöndíjának keretében készült kutatási zárótanulmány, Budapest, 2019.  
Elérhető: <https://drive.google.com/open?id=19SuVbnnXv1BZBEvQMuU3fHpIIQzTbhFl>
6. Rácz, I., Right to disconnect – Jog a kikapcsol(ód)áshoz. *Pro Futuro*, 8. Évf., 2018/4. szám, 50-66.
7. Rácz, I., A kollektív jogok érvényesülésének lehetőségei a platform-munkavégzés esetében. *Miskolci Jogi Szemle*, 13. Évf., 2018/2., 1. kötet. 143-158.
8. Rácz, I., Teljesítményértékelés – kiszervezve? In: Pál Lajos – Petrovics Zoltán (szerk.): *Visegrád 15.0.*, Wolters Kluwer, Budapest, 2018. 417-432.
9. Rácz, I., Algoritmizált teljesítményértékelés. *Infokommunikáció és Jog*, XV. évfolyam, 2018/1. 32-35.

10. Rácz, I., A munka világának változása a digitalizáció korában. In: Koncz István – Szova Ilona (szerk.): *PEME XVI. PhD – Konferencia*, Professzorok az Európai Magyarországiért Egyesület, Budapest 2018. 241-250.
11. Rácz, I., Dare or Not Dare? Classification of Workers and Hungarian Labour Law. *Economia e Lavoro*, Fondazione Giacomo Brodolini, Rome, 2018/2. 53-62.
12. Kun, A. – Rácz, I., A Bring Your Own Device (BYOD)-policy jelensége – munkajogi nézőpontból. *Munkajog*, 2017/1. 40-44.
13. Rácz, I., A sharing economy munkajogi kihívásai, különös tekintettel az uberizált munkaerőre. In: Keserű Barna Arnold (szerk.): *Doktori Műhelytanulmányok 2017*, Széchenyi István Egyetem Állam- és Jogtudományi Doktori Iskola, Győr, 2017. 273-284.
14. Rácz, I., Az 'uberizált' munkaerő jelene és jövője. In: Bogárdi Dóra – Kocsis Gergő (szerk.): *Arsboni Jog és Innováció Tanulmánykötet*, Stádium Intézet Alapítvány, 2017. 6-17.
15. Rácz, I., A robotizáció hatása a munka világára. In: Miskolci Bodnár Péter (szerk.): *XII. Jogász Doktoranduszok Országos Szakmai Találkozója 2017*, Károli Gáspár Református Egyetem Állam- és Jogtudomány Kar, Patrocinium Kiadó, Budapest, 2018. 333-340.
16. Rácz, I., Munkavállaló vagy nem munkavállaló? A gig-economy főbb munkajogi dilemmái. *Pécsi Munkajogi Közlemények*, X. Évf., 2017/1. 82-97.
17. Rácz, I., Az élethosszig tartó tanulás finanszírozásának innovatív megoldásai, különös tekintettel az egyéni tanulási folyószámlák gondolatára. In: Kun Attila (szerk.): *Az egész életen át tartó tanulás (Lifelong learning) jogi keretei a munkavilágában, különös tekintettel a munkaviszonyra*, Patrocinium Kiadó, 2017. 56-76.
18. Rácz, I., A közösségi média és a munkajog keresztműzében, *Arsboni Cikkíró Pályázatra* készült publikáció, internetes megjelenéssel, 2017. Elérhető: <http://arsboni.hu/kozossegi-media-es-munkajog-keresztmuzeben-2/>

19. Rácz, I., A közösségi média használatának árnyoldalai a munkaviszonyban. In: Deres Petronella – Grad-Gyenge Anikó (szerk.): *Acta Iuvenum Caroliensia VII.* Károli Gáspár Református Egyetem Állam- és Jogtudományi Kar, Budapest, 2015. 279-305.

20. Rácz, I., A közösségi média használatának árnyoldalai. *Pécsi Munkajogi Közlemények*, 8. Évf., 2015/1-2. 186.

21. Rácz, I., A közösségi média használatának árnyoldalai a munkaviszonyban. In: Király Andrea (szerk.): *A XXXII. Országos Tudományos Diákköri Konferencia Állam- és Jogtudományi Szekciójában nevezett pályamunkák összefoglalói.* Nemzeti Közszolgálati Egyetem Közigazgatás-tudományi Kar, Budapest, 2015. 253.

## *5.2 Other relevant publications*

1. Rácz, I., „Más kép? – Másképp az egyenlő bánásmód szabályozásáról” című Vitaklub beszámolója. *Munkajog*, 2020/1. 75-78.

2. Kiss, B. – Kun, A. – Rácz, I., *A felelős vállalati magatartás egyes aspektusai – A szociális párbeszéd és az alternatív vitarendezés szerepe a CSR tekintetében.* HVG-Orac Kft, Budapest 2018.

3. Rácz, I., A tanulmányi szerződés. In: Kun Attila (szerk.): *Az egész életen át tartó tanulás (Lifelong learning) jogi keretei a munka világában, különös tekintettel a munkaviszonyra,* Patrocinium Kiadó, 2017. 110-144.

4. Rácz, I., A kollektív szerződések átalakuló szerepe. In: Deres Petronella (szerk.): *Acta Iuvenum Caroliensia V.* Károli Gáspár Református Egyetem Állam- és Jogtudományi Kar, Budapest, 2014. 206-216.

## **6. List of presentations related to the research project**

1. Reshaping Work Conference, Novi Sad, Szerbia, 2020. február 27-28.

Előadás: Platform work in Hungary

2. XVII. Jogász Doktoranduszok Országos Szakmai Találkozója, Budapest, 2020. január 17.

Előadás: A technológiai fejlődés munkaegészségügyre gyakorolt hatásai

3. XVI. Magyar Munkajogi Konferencia, Visegrád, 2019. október 8-10.

Előadás: A távmunkán túl – Munkavégzés az applikációk világában

4. 30 éves a sztrájk törvény c. konferencia, Budapest, 2019. szeptember 26.

Előadás: Sztrájk és digitalizáció

5. 12th Seminar for young researchers on European Labour Law and Social Law, Strasbourg, Franciaország, 2019. május 16-19.

Előadás: Platform work's difficulties – Hungarian perspective

6. XV. Magyar Munkajogi Konferencia, Visegrád, 2018. október 9-11.

Előadás: Teljesítményértékelés – kiszervezve?

7. A munka világának jövője – kihívások a termelőiparban – szakszervezeti válaszok, Budapest, 2018. november 26.

Panelbeszélgetés moderálása

8. Professzorok az Európai Magyarországért Egyesület – XVI. Nemzetközi Tudományos Konferencia, 2018. április 11.

Előadás: A munka világának átalakulása a digitalizáció korában

9. SZTE ÁJK DI Konferencia – Jog és Kultúra, 2018. április 20.

Előadás: A „munkavállalók” kollektív jogainak érvényesülése a digitalizáció korában

10. A Magyar Munkajogi Társaság II. Konferenciája, PPKE-JÁK, 2018. június 7.

Előadás: A munkavégzéssel kapcsolatos fogyasztói értékelések – diszkriminálhat-e egy algoritmus?

11. Doktorandusz Konferencia, KRE-ÁJK, 2018. június 9.

Előadás: Digitalizálódó munka – digitalizálódó munkajog?

12. 11th Seminar for young researchers on European Labour Law and Social Law, Warsaw, Poland, 2018. május 10-13.

Előadás: Rating systems as performance indicators in the field of platform work

13. XII. Jogász Doktoranduszok Országos Szakmai Találkozója, Budapest, 2017. december 2.

Előadás: A robotizáció hatása a munka világára

14. Jogalkotás és jogalkalmazás a XXI. század Európájában, DOSZ Doktorandusz Konferencia, 2017. március 17.

Előadás: Az elektronikus dokumentumok munkajogi dilemmái

15. SZTE ÁJK DI Konferencia – Jog határok nélkül, 2017. március 24.

Előadás: A BYOD kérdésköre, azaz a saját eszközök munkahelyi használatának munkajogi dilemmái

16. Nemzeti és nemzetközi lifelong learning konferencia – Felsőoktatás, életen át tartó tanulás és az ENSZ fenntartható fejlesztési célok megvalósítása, Budapest, 2017. április 21.

Előadás: „Az egész életen át tartó tanulás (life long learning) jogi keretei a munka világában, különös tekintettel a munkaviszonyra" című, készülő tanulmánykötet bemutatása

17. „A munka digitalizációja és robotizációja — A szakszervezetek új kihívásai”, Budapest, 2017. május 5.

Előadás: A sharing economy és az „uberizált” munkaerő főbb munkajogi kihívásai

18. ArsBoni & Backer McKenzie szervezésében: Jog és Innováció Konferencia, Budapest, 2017. május 27.

Előadás: Az 'uberizált' munkaerő jelene és jövője

19. PhD konferencia, Győr, 2016. december 16.

Előadás: A sharing economy munkajogi kihívásai – Különös tekintettel az „uberizált”  
munkaerőre

