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NEW FORMS OF EMPLOYMENT AND THE RISK OF LABOR EXPLOITATION. Legal Aspects[**]

ABSTRACT: The development of technology and accelerated changes in the world of work have led to the emergence of new, specific forms of employment, which are seen as a response to the changed needs of employers and workers shaped by these circumstances. However, the distinctive features of these forms of employment, and the fact that in most countries around the world they remain legally unregulated, have resulted in workers engaged in them remaining largely "invisible" to legal systems, whereby they are not guaranteed even the minimum level of labor and social rights that should be available to all economically active individuals. Such a situation poses a serious risk to the enjoyment of the right to decent work and creates a favorable environment for the emergence of labor exploitation. In light of the growing importance of new forms of employment, these circumstances represent the key reasons that prompted the author to choose this topic. Accordingly, the paper analyzes the interconnection of new forms of employment, the labor-law position of workers engaged in them, and the

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increased risk of labor exploitation. Finally, the author seeks to concisely highlight the need to reconsider the existing boundaries of labor-law protection in light of new forms of employment, as well as to propose legal solutions that may contribute to overcoming the problems identified in this regard.

Keywords: new forms of employment, work based on information and communication technologies, online work, labor exploitation, decent work

NEW FORMS OF EMPLOYMENT

In today's rapidly changing business environment, employers are facing increased market pressure to remain competitive. Changes that have taken place in recent years in the field of technological development have created an imperative for employers to adopt an innovative approach to work organization, in order to both maintain business efficiency and to respond to workers' need for greater work flexibility, as imposed (but also enabled) by modern living conditions.

As a consequence of these circumstances, recent years have witnessed an expansion of non-standard (flexible) forms of employment, which include part-time work, home-based work, remote work, etc.[1]

However, although non-standard forms of employment are to some extent suitable for reconciling employees' interests in greater work flexibility with employers' aspirations to reduce operating costs, in the recent period, a further process of flexibilization has become evident through the emergence of new forms of employment.[2] These forms increasingly deviate from the standard employment relationship,[3] while their diversity gives rise to the need for their identification and legal regulation.

The reasons for the emergence of new forms of employment are manifold. First, the development of new information and communication technologies, particularly over the past several decades, has enabled the emergence of new ways of performing work tasks that until recently were unimaginable.

In addition, the need to maintain competitiveness and optimize business operations has compelled employers to continuously seek new models

[1] Jašarević, S. (2015). Nove forme rada u Evropskoj uniji i Srbiji. *Radno i socijalno pravo,* 1(3).

[2] Kovačević, LJ. (2021). *Zasnivanje radnog odnosa*. Belgrade: Faculty of Law, University of Belgrade, 90.

[3] Kovačević, LJ. (2021). *Pravna subordinacija u radnom odnosu i njene granice.* Belgrade: Faculty of Law, University of Belgrade, 121–122.

for reducing labor costs while at the same time increasing profits.[4] Since work performed within an employment relationship entails for employers a broad range of financial and other obligations arising from the labor-law protection afforded to employees, employers are constantly looking for new forms of engaging workers through which that burden could be reduced or avoided.

Workers themselves also play a role in the emergence of new forms of employment, since their need to reconcile work and family obligations favors greater flexibility in their relationships with employers and is one of the key factors behind workers' interest in entering into one of the new forms of employment.

Finally, vulnerable categories of workers, such as persons with disabilities and single parents, may be interested in working within one of the new forms of employment, both because finding standard employment is more difficult for them and because certain personal or family circumstances prevent them from working within a standard employment relationship. Unsatisfactory conditions in labor markets around the world compel workers to accept such engagements, since in a considerable number of cases, a worker is faced with a choice between accepting employment within one of the new forms and the complete absence of any work engagement.

Identification of New Forms of Employment

New forms of employment are highly diverse, which makes it difficult to determine their common features and, consequently, to identify and classify them. Although some of these forms involve the establishment of an employment relationship, most involve work performed outside such a relationship, on the basis of a contractual or even informal arrangement (as is the case, for example, with work through digital labor platforms, where the worker may have no direct contact whatsoever with the client, since the work is ordered and performed entirely through the platform).

The need to identify and classify new forms of employment was recognized at the level of the European Union, for which purpose the European Foundation for the Improvement of Living and Working Conditions (Eurofound) adopted, in 2015, a report entitled New Forms of Employment.

That document states that:

> "Societal and economic developments, such as the need for increased flexibility by both employers and workers, have resulted in the emergence of

[4] Kovačević, LJ. (2021). *Pravna subordinacija u radnom odnosu i njene granice.* Belgrade: Faculty of Law, University of Belgrade, 121–122.

new forms of employment across Europe. These have transformed the traditional one-to-one relationship between employer and employee."[5]

The report states that nine new forms of employment were identified, namely: employee sharing, job sharing, interim management, casual work, ICT-based mobile work, voucher-based work, portfolio work, crowd employment, and collaborative employment.

In 2020, Eurofound also published an updated report addressing the development of new forms of employment that had taken place after the publication of the first report. That document observed that, in the period between the adoption of the two reports, digitally enabled employment forms had taken precedence and had become the most widespread among the Member States.[6] Such a conclusion is unsurprising given the intensive technological development recorded in the period between the adoption of those two documents.

Moreover, in light of the circumstances that arose after the adoption of the updated report (such as the outbreak of the Covid-19 epidemic, which led to a sudden shift toward work performed through information and communication technologies in many sectors of business, as well as the further development of those technologies and the emergence of artificial intelligence), it is safe to assume that these forms of employment have acquired even greater significance today.

An important fact noted in that report is that, at the European level, there is no clear concept of new forms of employment, that they are not adequately regulated in the Member States of the European Union, and that those states have not even identified appropriate definitions of these forms of employment, which are a prerequisite for their regulation and for distinguishing them from existing forms of employment.[7]

THE LEGAL STATUS OF WORKERS IN NEW FORMS OF EMPLOYMENT

It has long been clear that the contractual parties to an employment relationship are characterized by legal inequality, which manifests itself from the

[5] European Foundation for the Improvement of Living and Working Conditions (Eurofound). (2015). *New forms of employment.* Luxembourg: Publications Office of the European Union, 1.

[6] European Foundation for the Improvement of Living and Working Conditions (Eurofound). (2020). *New forms of employment. 2020 update*. Luxembourg: Publications Office of the European Union, 5.

[7] *Ibid*., 53.

moment negotiations begin and continues for as long as the employment relationship exists. It is precisely in response to this circumstance that labor law emerged, with the aim of protecting the interests of the weaker party – the employee, and limiting the arbitrariness of the stronger party – the employer. Accordingly, protective labor legislation prescribes a minimum set of rights that employers are required to ensure for employees, such as the minimum wage, the right to daily and weekly rest, annual leave, paid leave in the event of incapacity for work, and many others. Through these guarantees, employers are limited in unilaterally imposing working conditions that exclusively serve their own interests.

By contrast, forms of work engagement that do not establish an employment relationship are characterized by a lower level of labor-law protection for workers, since legal systems do not recognize the same degree of inequality between the contracting parties in these types of relationships. Accordingly, the parties have considerably greater freedom in regulating their mutual rights and obligations, while the normative regulation of such relationships devotes insufficient attention to the labor-law status of persons engaged in this manner, and is most often limited to formal issues, such as the subject matter or duration of the engagement.

However, the assumption of equality between the contracting parties in relationships that do not establish an employment relationship does not always correspond to the actual state of affairs. On the contrary, it is increasingly common for such relationships to also display elements of inequality characteristic of employment relationships, thereby creating room for abuse due to the absence of statutory mechanisms for limiting it.

It is easy to conclude that an even greater problem arises with regard to new forms of employment, since they are most often neither regulated, even in general terms, nor recognized at all in national sources of law.

The lack of regulation of new forms of employment, in fact, leaves employers completely free to regulate working conditions exclusively in accordance with their own needs, which leads to an increasing erosion of the rights of workers, who are left with no real freedom to negotiate. Such a situation opens the door to a variety of abuses by employers, who may organize work engagements in a manner that enables them to maximize profit, even at the expense of workers' labor and social rights, as those workers are compelled by limited opportunities on the labor market to accept such conditions.

New Forms of Employment in the Domestic Legal System

In recent years, the Republic of Serbia has likewise seen a trend toward increased engagement of workers outside employment relationships. New forms of employment, as presented in the Eurofound Report, are not directly regulated by domestic legislation. However, the Serbian Labor Law recognizes several forms of engagement that do not establish an employment relationship and may be relevant here, since their superficial regulation by the legislature leaves ample room for relationships characteristic of some of the new forms of employment to be established through them.[8]

Without going into the specific forms of work engagement that do not establish an employment relationship, it may generally be concluded that the domestic Labor Law does not provide even a basic level of labor-law protection for persons engaged under any of them. On the contrary, the Law regulates only the most general issues, such as the form and duration of the contract, while it scarcely addresses the legal status of workers at all.

In addition, the Law does not extend the personal application of almost any right recognized to employees to persons who perform work outside the employment relationship, nor does it prescribe relevant restrictions on the rights of employers regarding the determination of working conditions. As a result, workers engaged in this regime in the Republic of Serbia remain without minimum guarantees of labor-law security, which makes them particularly vulnerable and exposed to the risk of abuse, and even the risk of labor exploitation.

On the other hand, the domestic Labor Law observes the employment relationship from a strictly formal point of view, exclusively through the existence of a concluded employment contract, while it defines an employee as "a natural person who is employed by an employer."[9] Such a normative solution makes it impossible, at least through the interpretation of the characteristics of the established relationship, to qualify it as an employment relationship even in cases where the essence of the relationship would require this. As a result, workers who are *de facto* employed remain without the possibility of legal recognition of their status, which prevents access to minimum labor and social guarantees.

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[8] Labor Law, *Official Gazette of the RS,* no. 4/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017 – Decision of the Constitutional Court, 113/2017, and 95/2018 – authentic interpretation, Arts. 197–202.

[9] Labor Law, *Official Gazette of the RS,* no. 4/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017 – Decision of the Constitutional Court, 113/2017, and 95/2018 – authentic interpretation, Arts. 5 and 30. Art. 30, para. 1, provdes: "An employment relationship is established by an employment contract."

In addition, the Law does not recognize other categories of workers to whom it would guarantee a certain higher level of labor and social rights, where the relationship in which they are engaged has features that bring it, to some extent, closer to an employment relationship, even though this approach is recognized in comparative law.

If this is viewed in the context of new forms of employment, it is evident that the existing statutory solutions do not provide adequate guarantees of labor rights for persons engaged in them, whether they perform work on the basis of contracts other than employment contracts or without any contract at all. On the other hand, the existing legal fiction of the existence of an employment relationship,[10] in the current state of affairs and in accordance with the narrow definitions of the concepts contained in the domestic Labor Law, cannot adequately extend labor-law protection to other categories of workers engaged in specific relationships of the kind characteristic of new forms of employment.

As a result of this manner of legislative (non-)regulation, the only possibility, under the current state of affairs, for extending labor-law protection to other categories of workers lies in the application of the principle of primacy of facts established in international labor law. This principle requires courts to decide whether a given relationship constitutes an employment relationship on the basis of the facts and the true intention of the contracting parties, rather than on the basis of the title or form of the contract concluded.[11]

However, bearing in mind the existing legislative solutions in our law, which view the employment relationship exclusively as the product of a concluded employment contract, while at the same time failing to establish the characteristics that should be assessed when determining the nature of a specific legal relationship, the question arises whether courts in our country could,

[10] *Ibid*. Art. 32: "The employment contract is concluded in writing before the employee starts working. If the employer does not conclude an employment contract with the employee in accordance with paragraph 1 of this Article, the employee shall be deemed to have established an employment relationship for an indefinite period as of the day they started working." It should be noted that the other provisions of the Labor Law make this fiction practically inapplicable to new forms of employment. Namely, the Labor Law does not define what is to be understood by the term "start to work," so it is unclear how this element should be interpreted with regard to new forms of employment. In addition, what qualities should this relationship have in order for it to be considered an employment relationship despite the absence of an employment contract? The Law gives no answers to these questions, and given the lack of precise definitions, as well as how the existing legal institutions are regulated, it can be concluded that this fiction is not adequate for application to new forms of employment.

[11] Kovačević, LJ. (2018). Radna eksploatacija – određenje pojma, razgraničenje od drugih sličnih pojava i njihov međusobni odnos, in: *Kaznena reakcija u Srbiji. Part VIII.* Belgrade: Faculty of Law, University of Belgrade, 240.

by applying this principle, arrive at adequate solutions at all.[12] An additional question that arises in this regard is whether reliance on case law would constitute an adequate means of resolving the problem described, given that case law is not a source of law in our legal system.

In light of the above, one of the fortunate circumstances is that, despite their development worldwide and in neighboring countries, new forms of employment are still not represented to any significant extent in Serbia.[13] Nevertheless, the situation is somewhat different with regard to those new forms of employment that are performed with the aid of information and communication technologies, and especially their subtype – platform work, which has become increasingly popular in our country in recent years.[14] However, it should be noted that no comprehensive labor-market analysis has yet been conducted at the national level that would identify which of the new forms of employment are present and determine their prevalence with precision. Given the growing importance of these forms of employment worldwide, it is clear that this task should be given adequate attention in the near future.

[12] For reference, see: the judgment of the highest judicial instance in the Republic of Serbia, the Supreme Court (of Cassation), Rev2 963/2021, dated December 9, 2021. In this judgment, despite the successive conclusion of contracts for temporary and occasional work with the same employer over a period of seven years, the court, relying on the principle of primacy of facts, concluded that: "By concluding and performing such contracts with the plaintiff, the mutual intent of the contracting parties regarding her engagement outside an employment relationship was clearly expressed," and rejected the plaintiff's claim seeking a declaration of the existence of an employment relationship. In that judgment, the court's reasoning was highly unclear, stating: "Since the contract for temporary and occasional work is a special nominate contract establishing a contractual relationship between the employer and a given person, work engagement on the basis of such a contract cannot be considered an employment relationship..." Although this judgment concerns a contract regulated by the Labor Law, the concern it raises may be extended to new forms of employment, whose legal non-regulation further reinforces doubts as to whether case law in our country can serve as a factor capable of remedying the (potentially) inadequate labor-law status of persons engaged in new forms of employment.

[13] Jašarević, S. (2015). Nove forme rada u Evropskoj uniji i Srbiji. *Radno i socijalno pravo,* 1(3), 18.

[14] Ristić, A. (2024). Izazovi u postizanju pravde za radnike angažovane u novim formama rada. *Proceedings of the 37th Meeting of the Kopaonik School of Natural Law – Slobodan Perović*, IV/2024, 39.

LABOR EXPLOITATION IN THE CONTEXT OF NEW FORMS OF EMPLOYMENT

Labor exploitation is the antithesis of decent work. The concept of decent work as such was first set out in the Report of the Director-General of the ILO in 1999.[15] Decent work encompasses the ILO's four strategic objectives, namely: workers' rights, employment, social protection, and social dialogue.[16]

Decent work for all workers remains one of the priorities of labor law today, as confirmed in the ILO Decent Work Agenda and the 2030 Agenda for Sustainable Development, in which decent work is emphasized as one of the key factors for achieving the ILO's fundamental objectives.[17] The entire agenda is permeated by the idea of decent work for all, as a central aspect of all ILO policies and activities through 2030.

Today, however, workers living and working in developing countries face difficulties in accessing decent work, and these difficulties have been intensified by current changes in the world of work,[18] including the emergence of new forms of employment. These forms of employment were presented as the labor market's response to technological and broader socio-economic development, but in practice, they have become a means by which employers seek to increase competitiveness and reduce operating costs, primarily by avoiding the obligations imposed on them by the state when establishing employment relationships. This results in an increasingly pronounced departure from the guarantee of decent work, opening the way to labor exploitation.

This conclusion is also supported by the statements set out in the ILO report on decent work from 2019:

> "Technological progress, international trade, demographic shifts and environmental change are redefining production processes and labour markets both across and within countries. While these forces can open up new opportunities and contribute to the eradication of poverty around the world, there is a risk that, unless properly managed, they will make access to decent work even more elusive."[19]

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[15] Ghai, D. (2003). Decent Work: Concept and Indicators. *International Labour Review*, 142(2), 113.

[16] International Labor Organization (1999). *Report of the Director-General: Decent work*. Geneva: International Labor Office, 3.

[17] International Labor Organization (2015). *Decent work and the 2030 Agenda for sustainable development*. Available at: https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@europe/@ro-geneva/@ilo-lisbon/documents/event/wcms_667247.pdf.

[18] International Labor Organization (2019). *What works: Promoting pathways to decent work*. Geneva: International Labor Office, 2.

[19] International Labor Organization (2019). *Ibid.*, 15–16.

The Concept of Labor Exploitation

Exploitation, in the broadest sense of the word, is linked to unfair economic exchange at its core. Many authors throughout history have addressed the question of what makes an exchange fair, and the roots of the answer to this question can be traced to Aristotle, who argued that a just exchange will embody a kind of reciprocity such that the values of the goods exchanged are proportional.[20]

The most influential theory of exploitation originates from Karl Marx and rests on the position that workers in a capitalist society are exploited by the very fact that they are forced to sell their labor to the employer for less than the value of the commodities produced by their labor.[21]

According to that theory, exploitation in a capitalist society exists whenever labor is performed, and if this view were accepted, the right to work would be equated with the right to be exploited.[22] For that reason, less extreme theories of exploitation have been developed, such as the one according to which exploitation is viewed as taking advantage of another person's vulnerable position for the purpose of making a profit.[23]

This conception of exploitation rests on three basic elements: a) the worker's vulnerable position arising from the existing laws; b) the exploitation of the worker's vulnerable position, consisting of the violation of labor rights or other human rights; and c) the aim of making a profit.[24]

A worker's vulnerable position may arise from various circumstances, such as economic circumstances (poverty or other economic hardship), social, cultural, or other circumstances.[25]

This definition of labor exploitation raises the question of the extent to which labor rights must be violated in order for labor exploitation to be said to exist. Here too, as might be expected, there is still no generally accepted answer, but it is clear that the working conditions in question must deviate significantly (sufficiently) from adequate working conditions.[26]

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[20] Zalta, E., Nodelman, U. (2001). *Stanford Encyclopedia of Philosophy*. Available at: https://plato.stanford.edu/entries/exploitation/#PreMarxAccoExplUnjuTrad.

[21] *Ibid.*

[22] Mantouvalou, V. (2015). The Right to Non-Exploitative Work. *The Right to Work – Legal and Philosophical Perspectives*. Oxford: Hart Publishing, 9.

[23] *Ibid.*

[24] *Ibid.*

[25] Kovačević, LJ. (2018). Radna eksploatacija – određenje pojma, razgraničenje od drugih sličnih pojava i njihov međusobni odnos, in: *Kaznena reakcija u Srbiji. Part VIII.* Belgrade: Faculty of Law, University of Belgrade, 233.

[26] There are authors who believe that labor exploitation can be viewed through a "continuum" encompassing every violation of labor rights situated between the positive

Although there is no single model for identifying victims of labor exploitation, it is clear that it is necessary to establish indicators based on which the existence of labor exploitation could be determined in specific cases, which, at present, remains a rarity in the legal systems of European countries.[27]

In order to facilitate this task, the ILO and the European Commission (EC) published in 2009 a list of indicators of trafficking in human beings for the purpose of labor exploitation. Although this document is not legally binding, the list has been widely accepted among countries as an aid in national practices for identifying labor exploitation.[28]

According to that document, labor exploitation refers to working conditions that deviate substantially from standard working conditions, especially with regard to employment conditions, salary, working hours, leave entitlements, health and safety standards, and dignity at work.[29] Labor exploitation exists where at least one of the listed inadequate working conditions is present in combination with the abuse of the worker's vulnerable position or state of need.

Labor Exploitation and New Forms of Employment

In light of the above-mentioned characteristics of labor exploitation, the particular features of new forms of employment, and the conclusions regarding the legal status of the persons engaged in them, it can be concluded that such persons are particularly exposed to the risk of treatment that may have the characteristics of labor exploitation.

Nevertheless, in this context, it is necessary to take into account the differences that exist between particular forms of employment, since, due to their diversity, the identified risks will not be equally present in each of them.

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end of the continuum – decent work, and the negative end of the continuum and the most serious forms of labor exploitation, such as forced labor. However, even the authors who advocate the theory of a continuum of labor exploitation acknowledge that such and similar approaches cannot replace a definition of labor exploitation, which, despite attempts to establish or identify its elements, does not exist in international legal sources or in the literature. See: Skrivankova, K. (2010). *Between decent work and forced labour: Examining the continuum of exploitation*. York: The Joseph Rowntree Foundation, 18.

[27] Corbanese, V., Rosas, G. (2020). *Protection and assistance of victims of labour exploitation. A comparative analysis*. Rome: International Labor Organization, 11.

[28] *Ibid.*

[29] *Ibid.*, 12; see also: International Labor Organization. (2009). *Results from a Delphi survey implemented by the ILO and the European Commission, Operational indicators of trafficking for labor exploitation.* Available at: https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_105023.pdf.

Generally speaking, the subtypes of new forms of employment – zero-hours contracts and platform work, have been identified as the forms of employment with the greatest risk of labor exploitation.

As some authors observe, zero-hours contracts are characterized by a high degree of insecurity and precariousness,[30] while others note that every version of a zero-hours contract, even one within an employment relationship, leads to the labor exploitation of workers.[31]

On the other hand, relationships established in connection with platform work are said to be among the most complex new forms of employment, bearing in mind the tripartite relationship established between the digital labor platform, the worker, and the client.[32] This situation is further complicated by the cross-border dimension that is present in a large number of platform work arrangements,[33] as well as by the fact that, in certain types of this form of employment, platforms condition cooperation on the worker first registering as an entrepreneur and entering into a business cooperation agreement, which adds yet another layer of complexity to the issue.

As a result of these specific features, platform workers face numerous challenges concerning working conditions,[34] including non-payment for work performed or services rendered, non-transparent and disadvantageous working conditions, as well as limited access to judicial protection, many of which are not characteristic of other forms of employment.[35]

[30] Deakin, S. (2014). New forms of employment: Implications for EU law – The law as it stands. *7th annual legal seminar Report. New forms of employment and EU law, European Labor Law network,* 1.

[31] Reljanović, M. (2019). Ugovori sa nultim radnim vremenom. *Foreign Legal Life, 63(3),* 39.

[32] Ristić, A. (2023). Radnopravni položaj platformskih radnika – analiza stanja i perspektive uređenja. *Law and Economy*, 61(2), 567.

[33] Kilhoffer, Z., Lenaerts, K., Hauben, H., Lhernould, J., Robin-Olivier, S. (2020). *Study to gather evidence on the working conditions of platform workers*. Luxembourg: Publications Office of the European Union, 228.

[34] Heeks, R. (2017). *Decent work and the digital gig economy: a developing country perspective on employment impacts and standards in online outsourcing, crowdwork, etc*. Manchester: Center for Development Informatics Global Development Institute, 9.

[35] Kilhoffer, Z., Lenaerts, K., Hauben, H., Lhernould, J., Robin-Olivier, S. (2020). *Op. cit.,* 228–229.

APPROACHES TO EXTENDING LABOR-LAW PROTECTION IN LIGHT OF NEW FORMS OF EMPLOYMENT AND THE RISK OF LABOR EXPLOITATION

Given that the existing legal solutions guarantee the broadest scope of labor-law protection to persons who perform work within an employment relationship, it has been observed that employers resort to forms of work engagement that do not establish an employment relationship, even where they do not reflect the true nature of the relationship. The reason for this lies in employers' tendency to avoid the obligation to provide the labor and social rights which workers would be entitled to if the relationship were formally characterized as an employment relationship.

This problem has become all the more evident with the emergence of new forms of employment, since their informality and diversity, as well as the fact that in most countries they have still neither been identified nor regulated by law, make it possible for them to be performed on the basis of various nominate or innominate contracts, or even without the establishment of any contractual relationship at all.

In light of new forms of employment, as previously shown, employers are free to choose the form of relationship that suits them, even where it does not correspond to the essence of the relationship, which the current statutory solutions allow.[36] This can lead to situations in which workers do not enjoy the labor-law protection that they would be entitled to if the relationship in which they are engaged were given a form corresponding to the true essence of the relationship with the employer.

For this purpose, the already mentioned principle of primacy of facts is useful, as it gives priority to the true intention of the contracting parties rather than to the form given to the relationship. However, bearing in mind the characteristics of new forms of employment, which involve the establishment of highly specific relationships, it is justified to ask whether this approach could produce satisfactory and fair results in every individual case.

Namely, in those countries whose statutory solutions tie labor rights exclusively to the category of employees, such as ours, this principle would provide protection only to those workers determined to be in an employment relationship. In that sense, a worker engaged in a new form of employment would remain completely deprived of labor and social rights if the application

[36] A particular difficulty in this regard is presented by situations in which the work displays the characteristics of an employment relationship, but the worker is engaged on the basis of a contract for self-employed work. See: Kovačević, LJ. (2015). Personalno područje primene radnog zakonodavstva – (ne)pouzdanost kriterijuma za kvalifikaciju subjekata radnopravne zaštite. *Matica Srpska Journal of Social Sciences,* 152(3), 511.

of this approach led the court to conclude that no employment relationship exists, even though the worker's legal status would still, in essence, not correspond to the relationship in which they are formally placed. Such a situation does not appear fair.

The problem described is the result of the fact that many legal systems, including ours, do not provide for exceptions by which certain guarantees of labor-law protection would also be extended to persons who are not formally in an employment relationship, where their labor-law status is inconsistent with the essence of the relationship in which they are engaged. This shortcoming creates legal uncertainty and opens the door to abuse of the rights of workers performing work within new, unregulated forms of employment, highlighting the need for the systematic regulation of these issues.

Although domestic case law includes judgments in which relationships established in one of the forms of employment performed outside an employment relationship (such as contracts for temporary and occasional work) have been successfully classified as employment relationships,[37] which may inspire a certain degree of optimism, such a conclusion should be approached with caution. This is primarily because, as shown earlier in the text, the case law itself is not uniform on this issue (given that, despite the existence of several elements indicating an employment relationship, in certain judgments the courts nevertheless gave precedence to the form of the relationship rather than to its substance).[38]

On the other hand, concern arises precisely from the most important characteristics of new forms of employment, namely, how heterogeneous and specific they are in relation to the employment relationship. By contrast, in the case of contracts for temporary and occasional work, the relationships often do not display a comparable degree of specificity and frequently contain elements characteristic of an employment relationship (such as performing work on the employer's premises, the existence of subordination, and integration into the employer's work organization), which may at first glance indicate the existence of a disguised employment relationship.

In addition, given that case law in our legal system does not constitute a formal source of law, the above judgments must be viewed in light of the specific factual circumstances of each individual case. Therefore, based on the limited number of decisions relating to a particular form of engagement,

[37] See: Judgment of the Supreme Court (of Cassation) Rev2 835/2017, dated April 20, 2017; Judgment of the Appellate Court in Belgrade Gž1 3132/2022, dated October 6, 2022.

[38] See: Judgment of the Supreme Court (of Cassation), Rev2 963/2021, dated December 9, 2021.

it cannot be reliably concluded that courts would reason in the same way in cases concerning new forms of employment.

Based on the above, the regulation of new forms of employment in statutory texts ultimately appears to be the most precise solution.[39] In this way, the issue of ensuring an appropriate level of labor-law protection for workers engaged in these forms of employment would be regulated in accordance with the specific features of each individual form, while taking into account the particular risks of abuse inherent in each of them.

However, since this task may be highly complex in view of the diversity of new forms of employment and the positions in which workers may find themselves, countries could, at this stage, also accept certain "intermediate" solutions, such as defining a separate concept of "worker."

This concept, distinct from that of employee, could encompass a broader category of persons performing work, including workers engaged in new forms of employment, while the law would prescribe a certain minimum of labor and social rights guaranteed to all persons falling within that category.

One of the solutions known in comparative law, the application of which could be useful for workers in new forms of employment, is the solution under which, in addition to employees and self-employed persons, an "intermediate category" of workers has been introduced, situated between employees and self-employed persons[40] and guaranteed by the legislature an adequate level of labor-law protection. Specifically, in countries where this concept exists, such as Germany, Spain, and other European countries, this category of workers is guaranteed a minimum level of protection with regard to working conditions, social security rights, or protection against unjustified termination of the engagement, to an extent greater than that recognized to self-employed persons, but less than that guaranteed to employees.[41] Although the scope and content of these rights vary, this approach establishes a minimum set of rights that must be guaranteed, based on the recognition of the fact that, in new forms of employment, despite formal contractual autonomy, there is often a degree of economic dependence or factual integration of the worker into the business organization of the client that does not justify the complete exclusion of such persons from the sphere of labor-law protection.

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[39] International Labor Organization. (2020). *Promoting employment and decent work in a changing landscape*. Geneva: International Labor Office, 13.

[40] Risak, M. (2018). *Fair working conditions for platform workers: possible regulatory approaches at the EU level.* Berlin: Friedrich-Ebert-Stiftung, 10.

[41] Kilhoffer, Z., Lenaerts, K., Hauben, H., Lhernould, J., Robin-Olivier, S. (2020). *Study to gather evidence on the working conditions of platform workers*. Luxembourg: Publications Office of the European Union, 107.

In one of the ways described above, workers in new forms of employment would be guaranteed a certain level of labor and social rights regardless of the qualification of the relationship itself, thereby avoiding the risk of reliance on case law and, ultimately, preventing employers from increasing profits at the expense of workers' rights below any minimum threshold of decent work, which the current state of legal non-regulation allows.

To that end, legislators may also rely on the activities of the ILO and the EU, which in recent years have devoted significant attention to these issues. Thus, at the EU level, the Directive on Transparent and Predictable Working Conditions (2019/1152) was adopted, which

> "...seeks to avoid a race to the bottom in standards applying to new forms of work which would lead to inequality in the protection of workers."[42]

The Directive does not limit its personal scope of application to persons in an employment relationship; rather, its provisions apply to all persons who may be considered workers on the basis of the case law of the Court of Justice, through which criteria for determining that status have been established.[43]

In this way, it is possible for the obligations prescribed by the Directive to apply also to workers engaged in new forms of employment, provided that they satisfy those criteria. However, the Directive lays down only obligations to inform workers about working conditions and does not prescribe the conditions themselves that must be guaranteed, so its significance remains extremely limited with regard to new forms of employment and the avoidance of the risk of labor exploitation.

However, the established principle of extending the application of the Directive, as well as the defined criteria for worker status, may be useful as guidelines for the future regulation at the national level of the issue of the labor-law status of these persons.

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[42] International Labor Organization. (2022). Protecting Workers in New Forms of Employment. Available at: https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_845714.pdf, 6.

[43] European Parliament, Council of the European Union. *Directive 2019/1152 of the European Parliament and of the Council of 20 June 2019 on Transparent and Predictable Working Conditions in the European Union*, Luxembourg, 2019. Art. 1, para. 2, and point 8 of the Preamble. See also: Kovačević, Lj. (2020). Predvidivost uslova rada kao pretpostavka delotvornog ostvarivanja radnih prava: osvrt na Direktivu (EU) 2019/1152. *Collected Papers of the Faculty of Law in Novi Sad, 54(4)*, 1347.

FINAL CONSIDERATIONS

Based on the above, it is possible to conclude that new forms of employment, due to their shared characteristics, carry an increased risk of labor exploitation of the persons engaged in them. For that reason, it is necessary to begin addressing the unresolved issues as soon as possible, in order to minimize and prevent the negative consequences of the current state of legal non-regulation in this field.

Since these are forms of employment that are still developing, the first step toward that goal lies in their identification, so that it may become possible to determine the best approach to their regulation. Regarding this issue, it is clear that countries and the international community face a complex task that will require the commitment of adequate resources in order to arrive at appropriate solutions.

Bearing in mind the specific features of the relationships established in connection with new forms of employment, it is in any event necessary to prescribe a minimum of labor and social rights that must be guaranteed to all workers, regardless of the form of employment in which they are engaged.

The need for such an approach stems from the fact that new forms of employment are constantly changing and adapting to global changes, and that new forms of employment beyond those identified so far are emerging, which is a trend that will certainly continue in the future. Accordingly, it may be assumed that the detailed regulation of only the forms of employment currently in existence would, if some new and different forms were to emerge in the near future, once again lead to the problems we face today.

For that reason, a certain "mixed" approach could be considered. Under such an approach, on the one hand, attention would be devoted to the detailed regulation of the currently existing new forms of employment, while, on the other hand, a solution would be established under which all workers performing work of certain characteristics would be guaranteed a certain minimum level of labor-law protection.

Rules on the minimum level of labor-law protection for all workers would, at the same time, serve as a "temporary measure" to reduce the risk of labor exploitation of workers engaged in new forms of employment until the complex task of their individual regulation has been completed.

As far as the Republic of Serbia is concerned, it is clear that the current state of non-regulation of new forms of employment allows employers, with minimal risk, to engage workers under working conditions that can often be characterized as undignified.

Such practice is permitted because the legal regulations in our country do not require employers to provide workers with most of the labor rights

guaranteed to employees, while case law does not show significant capacity to correct this situation through the application of existing legal institutions. At the same time, conditions on the labor market are such that workers increasingly see the acceptance of inadequate working conditions as the only way to find work.

Although new forms of employment in our country (except for some, such as platform work) may still not be as widespread as in neighboring countries, their significant growth may be expected in the future in line with global labor trends. The consequence of this development will be an increase in the number of workers whose labor-law status will be affected by the current state of legal non-regulation, which points to the need for systemic interventions.

All of the above indicates that, in our country as well, this issue should be given adequate attention in the near future, taking into account the experience and solutions emerging from international and comparative legal practice.

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