

## COLLECTIVE BARGAINING AS A FORM OF TRADE UNION INVOLVEMENT IN REGULATING WORKING CONDITIONS ON DIGITAL LABOUR PLATFORMS

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**Summary.** The article deals with the issue of trade unions' involvement in the issues of employment on Internet platforms. In the first section, there are general issues related to collective labour law and employment on the platform. The following section analyses the various forms of trade union involvement. The article contains the primary hypothesis that the critical condition for the regulation of fair and decent work on global Internet platforms is the activation of trade unions in the form of information activities and social dialogue in the form of collective bargaining.

**Key words:** Internet platforms, trade unions, algorithmic subordination, collective bargaining

The growing diversity of forms of work on the so-called Internet platforms is obviously connected with the question of the role of trade unions in the process of shaping the rules of employment in the so-called “gig economy.” To what extent does the real understanding of the right to freedom of association, the right to negotiate and the right to conduct collective disputes require changes or reinterpretation? Aside from traditional unionism, new ways for employees to organise themselves are emerging, in forms unknown until recently, inspired by experiences with the Internet and social networking applications. The dilemma concerns the subjective scope, subject matter and conditions of social dialogue, whose important element is the way of programming Internet platforms, i.e. the legal shape of the algorithmic code. There is no mainly developed trade union practice in this area. Therefore, it is worth considering current forms of involvement of trade union activists in the struggle for the improvement of working conditions on Internet platforms. Trade unions, and in particular, the negotiating method for shaping labour law, can play a vital role in this respect. It is worth considering further directions of trade union activities, taking into account the best practices in the world in the field of protection of rights of employees working on Internet platforms.

This article aims to analyse the most crucial trade union practices related to the shaping of employment conditions on Internet platforms, especially with the use of collective bargaining mechanisms. The multitude and diversity of online work platforms, their transnational nature and the difficulties arising from the standardisation of the employment conditions of those who work for them, raise the question of whether it is possible to apply the negotiating practice to the system of law-making with the involvement of the trade unions. Collective bargaining is about a new work environment with Artificial Intelligence (AI) and algorithmic management. There are many barriers and difficulties involved. Such is indeed the problems with defining the parties – participants in collective bargaining, the nature of normative agreements concluded through negotiations. The collective bargaining system, with the participation of the trade unions, becomes one of the underlying mechanisms of labour market regulation, in which algorithmic management occurs. The first part deals with general issues related to collective labour law and employment on the platform. The following section analyses the forms of trade union involvement. The article contains the primary hypothesis that the critical condition for the regulation of fair and decent work on global internet platforms is the activation of trade unions in the form of information activities and social dialogue in the form of collective bargaining.

## 1. NEW TECHNOLOGIES, PLATFORM WORK AND ALGORITHMIC MANAGEMENT AS LABOUR MARKET CHALLENGES

For years, the subject of the influence of modern technologies on the future shape of the labour market has been the subject of academic debates. Many researchers around the world have been asking questions about the perspectives and effects of the replacement of traditional jobs by artificial intelligence [Berg, Furrer, et al. 2018, 7]. When and on what scale will this process take place? It is difficult to identify the exact dates and extent of these events authoritatively. Most scientific statements share the conviction that this process is inevitable. In the literature on the subject, Frey and Osborne's research results are often quoted as proving that in the next several years, 47% of workers in the United States threaten to replace jobs with job substitution by automation [Frey and Osborne 2017]. In turn, according to J. Chang and P. Huynh, 56% of posts are at risk of automation over the next 20 years [Change and Huynh 2016].

A McKinsey Global Institute study found that while less than 5% of all occupations can be fully automated using technology, about 60% of all professions perform at least 30% of the component activities that can be automated [Bughin, Manyika, et al. 2017]. According to the OECD, an average of 9% of sites have a high risk of automation. A significant proportion of

jobs (50 to 70%) will not replace entirely, but a large percentage of jobs will be automated, changing the way they are performed [Arntz, Gregory, and Ulrich 2016]. According to the World Bank, two-thirds of jobs in developing countries are vulnerable to automation [The World Bank 2016]. The World Economic Forum report shows that by 2020, almost 50% of companies expect automation to lead to a full-time reduction in employment.<sup>1</sup> While the problem of automation in the work environment has been present in the scientific literature for quite a long time, a new thread, i.e., the issue of work done on various Internet platforms, is a unique and poorly researched phenomenon.

There are several reasons why this form of work is difficult to describe. First, the platform acts as an employment intermediary, employer, and service provider. The relationship between the employees of the “micro-tasks” and the platform differs in many respects from the traditional relationship between the entities of the employment relationship internet platforms usually avoid typical labour law concepts. Instead of the idea of an employee, terms such as “self-employed persons,” “independent contractors,” “participants,” “self-employed” often appear. Rather than employers, platforms use words that describe the type of services they provide to their clients. Instead of employment contracts, complicated and non-transparent service contracts used, which are primarily reminiscent of adhesion contracts known to civil law. The degree of complexity of individual contractual terms does not differ much from the commonly used computer software licensing agreements. Platform workers are, therefore, deprived of the possibility to negotiate employment conditions and do not have an institutionalised representation of their collective rights and interests. The conclusion of an agreement boils down to accepting all the proposed terms and conditions or refusing employment [Berg, Furrer, et al. 2018; Kim 2014]. Secondly, algorithmic management is an essential tool for managing the entire work process on the Internet platform. Despite the multiplicity, diversity of forms, and scope of influence of Internet platforms, each of them has a common denominator. It is a specially designed algorithm that assigns, optimises, and evaluates how individualised service provider tasks perform [Aneesh 2009; Lee, Kusbit, et al. 2015]. In practice, it delivers a variety of management objectives, from the most straightforward and mundane to sophisticated analyses based on identifiable data. It is a characterisation of the fact that in real-time, it makes critical decisions concerning specific employees. Moreover, it can generate easy to filter criteria for employee selection, apply appropriate positive and negative incentives for greater work efficiency [Cherry 2016, 22]. Therefore, it allocates tasks, accelerates work processes, determines the time and length of breaks, monitors the quality of work, conducts employee rankings, and performs other functions of this type.

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<sup>1</sup> *The Future of Jobs Report 2018*, [http://www3.weforum.org/docs/WEF\\_Future\\_of\\_Jobs\\_2018.pdf](http://www3.weforum.org/docs/WEF_Future_of_Jobs_2018.pdf) [accessed: 10.10.2019].

The phenomenon of algorithmic management became the subject of first research by representatives of social and economic sciences. Scientific studies usually pay attention to the particular consequences of the functioning of this system. Although the internal structure of a software company may seem like a traditional bureaucratic structure, in fact, with limited demand for middle-level managers, it does rely on the so-called virtualisation of organisational space [Aneesh 2009, 345]. In the literature, this type of personnel management model is known as “automatic management” or “algocracy” [Cherry 2016; Aneesh 2009; Lee, Kusbit, et al. 2015; Danaher 2016; Li, Yu, and Zhou 2013; De Stefano 2018a]. One of the first scientific studies on algorithmic management in the working environment was a publication from 2015 [Lee, Kusbit, et al. 2015]. Not only did they thoroughly analyse the advantages and disadvantages of algorithmic management in terms of its impact on employees, but the results of their research marked new areas of scientific research within the broadly understood labour law. Over the past few years, an essential topic of research in the field of labour law refers to a multidisciplinary field of study focusing on the interaction between people (users) and computers (HCI – Human-Computer Interaction). HCI appeared in the 1980s with the development of personal computers and initially focused on improving the usability of desktop computers, but over time this field became increasingly important. Today, it covers many scientific disciplines, such as cognitive computing and ergonomics [Caroll 1992].

Assumpt for the development of scientific reflection on the treatment of algorithmic code as a legal category brought the article “Code Is Law. On Liberty in Cyberspace” published in Harvard Magazine by L. Lessig. According to the author, in the face of the growing number of autonomous decisions taken by computer programs, the “code” itself requires additional innovative forms of regulation [Lessig 2000]. In the literature on labour law, this has given rise to two major research currents. The first one concerns the prevention of various undesirable effects in the functioning of “code,” especially in the context of the observance of the principle of equal treatment and non-discrimination [Schubert and Hütt 2019]. The second topic deals with the issue of code as a subject of regulation in response to the need to guarantee adequate protection to those who provide work under new, non-standard forms of employment [De Stefano 2018b].

There is a conviction among labour law researchers that trade unions should play a vital role in the face of changes in the labour market determined by the development of technology. According to the OECD, the future shape of social dialogue in this area should be conducted in a constructive spirit, taking into account the need to ensure a balance between regulatory intervention and flexibility, in the sense of respect for workers’ rights and economic interests of employers (OECD Employment Outlook 2018).

## 2. THE “RIGHT TO DISCONNECT” AS AN EXAMPLE OF TRADE UNION INVOLVEMENT

In recent years, there have been several significant examples of the use of collective bargaining aimed at normalising workers’ rights, in which the subject of the dialogue was the way employers use new communication technologies. The collective agreements illustrate this concluded in Europe regulating the so-called “right of disconnection.” The essence of this new labour law institution is to guarantee the right of employees to rest in the form of limiting the possibility for employers to communicate with employees outside working hours. Thanks to the involvement of trade unions, as was the case in France, Italy and Germany, this issue has become the subject of pioneering legal regulations. Fundamental changes of this kind to the Labour Code took place in France. This reform was preceded, among others, by the conclusion of several collective agreements negotiated by the trade unions.<sup>2</sup> An example is an agreement in the nuclear energy company Areva, which relieves employees of the obligation to communicate with their employer outside regular working hours. Similar objectives were pursued in the Thales electronics sector or Réunica.<sup>3</sup> In 2016, the EL Khomeri law was adopted, which requires employers with at least 50 employees to enter into a social dialogue with the trade unions on this issue.<sup>4</sup> In Italian Act 2233-B of 2017, the right to disconnection applies in Art. 19 para. 1 and it assumes that the above matter should be the subject of regulation in an individual employment contract [Ludicone 2017].

These changes were preceded, among other things, by the conclusion of a collective agreement on the matter between Unicredit Bank and the trade union representation [Avogaro 2017]. Individual large companies, such as Volkswagen and Daimler in Germany and Axa in Spain, also introduced restrictions on the possibility of employees contacting employees after working hours. For this, it uses mechanisms that cut off the connection to the mailbox

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<sup>2</sup> The right of disconnection was also the subject of a ruling by the French Supreme Court on October 2, 2001 and February 17, 2004. Labor Chamber of the Court of Cassation, October 2, 2001 n°99-42.727; Labor Chamber of the Court of Cassation, February 17, 2004 n°01-45.889.

<sup>3</sup> *France: A Legal Right to Switch off from Work*, <https://www.eurofound.europa.eu/fr/publications/article/2014/france-a-legal-right-to-switch-off-from-work> [accessed: 10.10.2019].

<sup>4</sup> In particular, the Travail Act adds a para. 7 to Art. L. 2242-8 of the French Labour Code (“Code du Travail”), <https://www.cadrescdfd.fr/sites/default/files/inline-files-two/Guide%20de%20n%C3%A9gociation%20du%20droit%20de%20d%C3%A9connexion%20HD.pdf> [accessed: 14.10.2019]. Art. 55 in Chapter II ‘Adaptation of labour law to the digital age’ (Adaptation du droit du travail à l’ère du numérique) included a provision amending the French Labour Code to include the right of disconnection (le droit de la déconnexion). Art. 55 para. 1 amended Art. L. 2242-8 of the Labour Code by adding a para. 7.

in the evenings and weekends and even automatically deletes e-mails received during holidays. Servers at Volkswagen only send e-mails to employees at specific times (between 6 p.m. and 7 a.m.). In 2013, the German Ministry of Labour banned managers from contacting employees after hours for reasons of mental health protection. In 2014, Daimler car company introduced “holiday mail” software, which employees could use to delete incoming e-mails during the holidays automatically [Gibson 2014].

Previous issues related to the introduction of new technologies and digital processes generally have been solved through worker participation at a company level, information, consultation and agreements at a company level.

ETUC has published a report summarising the results of an online survey on fair digitalisation and employee participation. The report shows that agreements have more widely covered the right to be offline at the company level or above only in a limited number of countries, namely France, Italy and Denmark. In all other countries, this topic is still not very popular, with an average of more than 40% of respondents indicating that it was not included at all in the practice of employee participation [Voss and Riede 2018].

The above examples of trade union involvement seem to support the general idea that trade unions are relatively inflexible in addressing new challenges in those areas of workers’ rights where new technologies are available. On the one hand, ETUC studies have shown that trade unions and workers’ representatives are aware of the business and workers’ opportunities offered by new technologies and new digital business models. Trade unions across Europe also recognise and point to the risks associated with digitisation [Voss and Riede 2018]. The ETUC survey showed that trade unions also need to adapt more than 95% of respondents agreed that trade unions should be more active in their campaigns on digitisation and the future of work. Approximately 95% of respondents believe that digital communication, including interactive websites, digital platforms and other forms of electronic communication, needs to be used on a larger scale [ibidem].

### 3. ALGORITHMIC NEGOTIATIONS

The digital process needs to be actively shaped. There is a need for solutions and good practices that reconcile economic and social interests and are fair to all employees. Without reconciling interests, digitisation can create (economic) opportunities for a narrow group, increasing social inequalities and increasing the burden and risk for the majority of workers. Worker participation and substantial trade union involvement are key to a fair digitisation process. The same is true for algorithmic management as part of employment on internet platforms.

There are also first examples of “algorithmic negotiations” conducted by trade unions and employers. In July 2018, the Danish trade union 3F and Hilfr.dk, a platform providing cleaning services, concluded a historic collective agreement for the employees of the platform. With this world’s first collective agreement, domestic cleaners previously classified as self-employed (self-employed) are considered to be workers. The recognition of employee status requires at least 100 hours of work unless they resign in writing and wish to remain self-employed. According to the negotiated agreement, a single employer’s contract of employment should specify the minimum hourly rate, redundancy protection, data protection rights and a shift work system. Also, Hilfr’s decision to remove a worker from the web platform involves the relevant information procedure for the person concerned, stating the reasons [Hale 2018]. In Austria, the trade union for transport and services announced in April 2017 the establishment of a works council (Betriebsrat) for Foodory couriers. In April 2018, the agreement to establish a European Works Council for Delivery Hero, a well-known online delivery platform (Delivery Hero owns Foodora), was signed. It contains a provision for the presence of workers’ representatives on the supervisory board [Prassl 2018a]. A Bologna Local Collective Agreement was signed in May 2018 with the Sgnam-MyMenu Food Supply Platform (later joined by Domino’s Pizza Italia).<sup>5</sup>

The regulation sets a fixed hourly rate in line with the minimum wage in the sector – 1 aid down in a collective agreement for the industry – and includes remuneration for overtime, holidays, bad weather and bicycle maintenance, accident and sickness insurance. It also guarantees trade union rights platforms for employees, including freedom of association and the right to strike [Pieter de Groen, et al. 2018]. Of particular interest is the example of the collective agreement concluded in February 2019 between the British courier company Hermes and the trade union GMB. Like the Danish collective agreement, Hermes’ couriers can choose the form of employment. When they give up self-employment, they receive several labour rights such as the right to a minimum wage and holiday pay, the right to breaks and protection against discrimination.<sup>6</sup> The courier company Hermes has decided to enter into negotiations with the trade unions as a result of a lost court case to recognise employees and thus to grant workers’ rights to previously self-employed couriers.<sup>7</sup> This judgment corresponds to other similar decisions in UK labour

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<sup>5</sup> Comune Bologna, *Carta Dei Diritti Fondamentali Del Lavoro Digitale Nel Contesto Urbano*, 2017.

<sup>6</sup> *Hermes to Offer Gig Economy Drivers Better Rights under Union Deal*, <https://www.theguardian.com/business/2019/feb/04/hermes-to-offer-gig-economy-drivers-better-rights-under-union-deal> [accessed: 10.10.2019].

<sup>7</sup> *Ms E Leyland and Others v Hermes Parcelnet Ltd: 1800575/2017 and Others – Preliminary*, <https://www.leighday.co.uk/LeighDay/media/LeighDay/documents/Employment/1800575-17-Hermes-PH-Judgment.pdf> [accessed: 10.10.2019].

courts, such as Addison Lee,<sup>8</sup> City Sprint,<sup>9</sup> Excel<sup>10</sup> and eCourier.<sup>11</sup> In all these trials, judges have ruled that workers should be legally classified as “workers” with the right to minimum wages and holiday pay. The United Kingdom has also passed a loud judgment in the Uber BV v Aslam case, upholding the decision of the Employment Appeals Tribunal that Uber drivers are workers entitled to minimum wages and paid leave. Although the recognition of Uber drivers is likely to be the subject of a ruling by the UK Supreme Court, this ruling is an essential point of reference for other such decisions in other countries.<sup>12</sup>

#### 4. TRADE UNION ACTIVITY CASE STUDIES

It is worth noting here several other lawsuits in the USA and Canada in which union activists were directly or indirectly involved. In Canada, the *Heller v Uber Technologies Inc.* judgment,<sup>13</sup> which, if confirmed by the Supreme Court, may lead to Uber drivers being considered “employees” instead of “contractors,” is of significant importance; Uber will be required to update its employment contracts to reflect the labour laws in force in each province and territory in accordance with the Employment Standards Act.<sup>14</sup> In the US, in *O’Connor v Uber Techs.*, the Court, in support of its order dismissing the defendant’s application for an expedited ruling, argued among other things that “it is likely that many factors in the employee/independent contractor test appear to be outdated in this new, modern context. On the other hand, other factors that are likely to reflect the current economic reality, such as – (such as the share of revenue generated and shared by each party, their relative bargaining power and the range of alternatives available to each party) are not

<sup>8</sup> Addison Lee Ltd v Lange & Ors UKEAT/0037/18/BA.

<sup>9</sup> Dewhurst v Citysprint UK Ltd ET/220512/2016.

<sup>10</sup> Mr A Boxer v Excel Group Services Ltd (in liquidation): 3200365/2016.

<sup>11</sup> In 2017, following the launch of legal action by the IWGB, the company admitted that its courier Demille Flanore was a worker, entitled to employment rights, and promised to launch a review into whether its other couriers should be classified as workers. However, following the review, which excluded the participation of the IWGB or any independent worker voice, the vast majority of the couriers on similar or the same contract as Demille Flanore remain unlawfully classified as independent contractors. The few that were moved to worker contracts were unfairly penalised with a pay cut. The union is now demanding that company classify all its couriers as workers, that it pay them at least the London Living Wage after expenses and that it enter into a collective bargaining agreement with the IWGB. The IWGB is the UK’s union for precarious workers. It has led campaigns and launched strategic legal action against employers such as Uber, Deliveroo, CitySprint and the University of London.

<sup>12</sup> See <https://www.judiciary.uk/wp-content/uploads/2018/12/uber-bv-ors-v-aslam-ors-judgment-19.12.18.pdf> [accessed: 10.06.2019].

<sup>13</sup> *Heller v. Uber Technologies Inc.*, 2019 ONCA 1, <http://ontariojustice.ca/class-actions/heller-v-uber-technologies-inc-2019-onca-1/> [accessed: 19.09.2019].

<sup>14</sup> Employment Standards Act, 2000, SO 2000, chapter 41.



explicitly covered by the [current] test’).” Can be used to monitor certain aspects of the driver’s behaviour continuously. This level of monitoring, where drivers are potentially observed at all times, probably gives Uber a great deal of control over the “way and means” of drivers’ actions. The practice of continually obsessing the drivers gives Uber overwhelming control over the way they perform their work.<sup>15</sup> Many months of research into the working environment of Uber’s drivers indicate a far-reaching form of employee subordination based on algorithmic work logistics. It aims to shape the behaviour of drivers, exercise constant supervision and implement the assumed efficiency policy.

All the cases, as mentioned above, point to a clear trend towards judicial recognition of employees employed on Internet platforms as forms of employment. It should be noted, however, that the cited examples concern only one of the types of Internet platforms, which provide so-called local services such as courier services, transport, food delivery, small repair services and other similar. The examples mentioned above do not refer to any other type of Internet platforms. A separate category is global online platforms employing workers worldwide in crowdworking.

Crowdworking is a relatively new concept used to describe the work of a particular type of work that is the result of crowdsourcing, or a kind of economic model of Crowd economy.<sup>16</sup> Crowdsourcing is a business practice based on appealing to the collective intelligence of employees (the so-called crowd work) in solving everyday business problems using dedicated technology platforms. Due to rapid technological development, a dynamic and effective system involving employees, customers and platform owners is now in place. The term crowdworking was first used in J. Howe’s article “The Rise of Crowdsourcing,” in *Wired* magazine [Howe 2006] and then described in his book “Crowdsourcing: Why the Power of the Crowd Is Driving the Future of Business” [Howe 2009]. According to the author, it is a specific act of taking up a job by a designated agent (employee, freelancer or a separate company) and entrusting it to an unspecified, usually large group of people through the form of open recruitment, which usually takes place via the Internet. The most common forms of work in crowdworking are: data collection, categorising tasks, creating artificial traffic on websites and correct assessment, moderation of website content, transcription, creation of new content or corrections, editing or translating existing materials on the web and others similar.

In contrast to the presented trade union activity within the mentioned local Internet platforms, in the case of global platforms, we observe a large impasse. The trade union’s low involvement in employee matters shows a relatively

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<sup>15</sup> *O’Connor et Al v. Uber Technologies, Inc. et Al*, No. 3:2013cv03826 – Document 395 (N.D. Cal. 2015), <https://law.justia.com/cases/federal/district-courts/california/candce/3:2013cv03826/269290/395/> [accessed: 14.10.2019].

<sup>16</sup> Crowd economy, how often is the economy in the GIG model/economy of sharing.

small number of court proceedings for recognition of employee rights. In the case of employment on crowdworking platforms, the case of *Otey v. Crowdfunder* deserves attention.<sup>17</sup> The subject matter of the collective action was to determine whether employees employed on the Crowdfunder platform are subject to the US Fair Labor Standards Act.<sup>18</sup> This federal law provides for three basic areas of worker protection: minimum wages, maximum working hours and child labour laws.<sup>19</sup> The main difficulty of interpretation lies in an attempt to answer the question of whether a form of employment is an employee's employment or whether the person providing the work is an independent contractor. Each time an attempt is made to answer such a question, it is necessary to carry out multi-factor tests, the main element of which is the determination of the existence of employee subordination. The most common elements of the test are 1) the level of control that the employer retains over the employee; 2) the possibility of making a profit or loss maintained by the employee in the company; 3) the amount of capital investment that the employee makes in the process; 4) the level of skills necessary to perform work; 5) whether performance of work is an integral part of the company's activity; and 6) the permanence of the relationship between the employee and the employer.<sup>20</sup> Although there has been a steady increase in "employee testing" jurisprudence over the last few decades, in recent years, there have been significant difficulties in interpreting US court jurisprudence concerning the technology sector. In this case, the court conditionally granted a class action (*Seiner* 2017) to allow other workers to join the claim. This case was settled amicably, and the platform must pay over half a million dollars in arrears.

The California Supreme Court in *Dynamex Operations West, Inc. v. Superior Court* gave a legal answer to a question on the method of classifying employed persons who are treated as "independent contractors" by employers. The *Dynamex* case concerned delivery drivers serving a nationwide mail and document delivery company. The subject of the dispute was the California wage law, which imposes obligations regarding minimum wages, overtime pay, and respect for the right to meal and rest breaks. The Supreme Court proposed the "ABC" test, which replaced the previous 11-point test established in 1989 (the so-called *Borello* test).<sup>21</sup> It provides an appropriate way to identify work in a form to which California labour laws do not apply. A person

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<sup>17</sup> *Otey et Al v. Crowdfunder, Inc. et Al, No. 3:2012cv05524–Document 167 (N.D. Cal. 2013)*, <https://law.justia.com/cases/federal/district-courts/california/candce/3:2012cv05524/260287/167/> [accessed: 19.09.2019].

<sup>18</sup> The Fair Labor Standards Act of 1938 29 U.S.C.

<sup>19</sup> The Fair Labor Standards Act of 1938 29 U.S.C. 29 U.S.C., para. 206, 207, 212.

<sup>20</sup> The Fair Labor Standards Act of 1938 29 U.S.C. 29 U.S.C., para. 203(g).

<sup>21</sup> *Dynamex Operations West, Inc. v. Superior*, <https://law.justia.com/cases/california/supreme-court/2018/s222732.html> [accessed: 19.09.2019].

carrying out work can therefore be considered an “independent contractor” if he fulfils a total of three conditions:

(A) the person carrying out the work is not subject to both formal (contractual subordination) and actual managerial control by the principal;

(B) the person employed performs work which is outside the normal scope of the business of the user undertaking;

(C) the person employed habitually carries out independent commercial, professional or business activities of the same nature as those carried out for the benefit of the employing entity.

This judgment proved to be particularly unfavourable for Internet platforms such as Uber and Lyft. The workers employed there received an extremely important legal argument encouraging them to file wage claims (minimum wage), other work-related benefits, unemployment insurance cover, paid sick leave, or paid family leave. A further consequence of this ruling was the adoption on September 11, 2019 of California’s Assembly Bill 5 (or AB5), which is a landmark in regulating employment issues.<sup>22</sup>

The Assembly Bill 5 Act is the first regulation of this type in the USA, which normatively attempted to regulate the working conditions of employees working on Internet platforms. Several vital initiatives in the European Union address the socio-economic changes caused by the AI. The European Parliament presented an interesting position on this matter in its Resolution of 2017 containing recommendations to the European Commission on civil law regulations concerning robotics.<sup>23</sup> The recommendations for the European Commission include a proposal to create a new category of legal personality for the most advanced machines – the electronic legal entity. Giving legal personality to such machines would solve the issue of civil liability for damage in the most dubious cases. Concerning liability for damage caused by works, two options are proposed: “strict liability (no-fault) or a risk management approach (liability of a person who has been able to minimise the risk).” Responsibility, according to the resolution, should be proportionate to the actual level of instructions given to the robot and the degree of autonomy of the robot. This liability regime could be complemented by a compulsory insurance scheme for robot users and a compensation fund that would pay compensation if none of the insurance policies covering the risk. From this fund, which would be paid for by the manufacturer, owner, user or trainer, compensation would be paid to those who have suffered damage as a result of the operation of the machine. The European Parliament is, therefore, proposing directions for leg-

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<sup>22</sup> *AB-5 Worker Status: Employees and Independent Contractors*, [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201920200AB5](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB5) [accessed: 15.12.2019].

<sup>23</sup> *European Parliament Resolution of 16 February 2017 with Recommendations to the Commission on Civil Law Rules on Robotics (2015/2103(INL))*, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52017IP0051> [accessed: 10.10.2019].

islative changes that will both build limited legal autonomy for robots and, at the same time, stimulate economic development.

On the trade union level, legal solutions aimed at giving legal entity to AI seem to be unacceptable. The subjective character of work, which is expressed by the principle of the primacy of man over artificial intelligence, is based on the fundamental assumption that in the process of automatic decision making based on algorithms it is necessary to provide safeguards and the possibility of control and verification by man. The development of robotics-related technology should be based primarily on complementing and not replacing human capabilities. In the development of robots and AI, it is essential to ensure that man always has control over intelligent machines.

## 5. OTHER FORMS OF INVOLVEMENT

However, returning to the issue of trade union involvement, it is worth noting the exciting project of the German metalworkers' union (IG Metall) and several other trade union organisations to set up an information website – <http://faircrowd.work>. The platform provides detailed information on working conditions on selected global internet platforms. Particularly interesting are the reports on the evaluation of working conditions on the platforms made from the perspective of employees and trade unions. There are more and more examples of pioneering trade union initiatives for platform workers. For example, in Great Britain, the trade union IWGB<sup>24</sup> takes action to defend employees of the courier and logo industry, including the so-called self-employed within the Deliveroo and UberEats platforms. Unionen, Sweden, has developed a certification scheme for each platform based on fair and socially sustainable working conditions. In the USA, The Teamsters 117 in Seattle and the New York Taxi Workers Alliance take initiatives to defend the rights of workers employed by Uber, Lyft and other “transport companies.”

Worthy of note is also the initiative of the UNI Global Union, a global trade union federation that represents more than 20 million employees in more than 150 different countries. Concerning the AI working environment, ten axiological rules are proposed which are essential in the process of collective bargaining and other forms of trade union involvement. This specific global convention on ethical artificial intelligence postulates above all the former AI systems was transparent. As a result, in the collective bargaining process, employees have the right to demand transparency of decisions and the results of artificial intelligence systems. AI systems in the working environment should be subject to continuous collective consultation. The second principle is that AI systems should be equipped with an “ethical black box.” It will be

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<sup>24</sup> Independent Workers Union of Great Britain.

a catalogue of data collected to ensure greater transparency and control of AI systems. Therefore, it should contain data and information on the ethical conditions embedded in the AI system. The following principles underline the need to maintain proper human control over the design and implementation processes of AI, to reduce the risk of discrimination, to share the wealth resulting from AI, or to establish a global governance mechanism for a workable and ethical AI affair. UNI Global Union calls for a global convention on ethical AI that will help counteract the unintended negative consequences of AI while emphasising its benefits for workers and society.<sup>25</sup>

## CONCLUSION

Trade unions, as in the past, can continue to play a crucial role in shaping working conditions within the so-called “gig economy.” Collective bargaining can be a much more effective tool for regulating workers’ rights than national legislative reforms. The specific features of global Internet platforms, which usually extend their influence beyond the influence of national legislation, determine this. Numerous research studies on working conditions on online platforms often lead researchers to seemingly surprising conclusions on the known and profoundly described in literature tensions between work and capital. Professor Matt Finkin of the University of Illinois was one of the first to point out the close similarities between the giant economy and historical forms of work organisation [Finkin 2016]. Jeremias Prasl has recently put forward similar theses in his monograph “Human as a Service.” According to the author, the giant economy is only the most recent (and perhaps the most extreme) example of labour market practices that have existed for centuries, with low-skilled tasks instead of complex jobs, powerful intermediaries controlling a large workforce, and hybrid arrangements between the open market and closed hierarchies, replacing traditional binary employment contracts [Prasl 2018b]. The social dialogue undertaken by the trade unions is a proven form of balancing the necessary space for the development of new high-tech economies with the challenge of providing adequate protection for workers. Its most active form is undoubtedly collective bargaining. In the case of Internet platforms, algorithmic code is increasingly becoming the subject of negotiations.

In world literature, this subject matter is new, and the number of researches published is relatively small. Undoubtedly, however, observing the logic of technological development in the work environment, this type of perspective is becoming more and more transparent. The question is whether trade unions

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<sup>25</sup> *Top 10 Principles for Ethical Artificial Intelligence*, [www.uniglobalunion.org](http://www.uniglobalunion.org) [accessed: 10.10.2019].

will be able to undertake such a dialogue and whether they will be able to break through the increasingly numerous barriers related to their functioning in the world of the gig economy. As it turns out, there is no shortage of challenges. Apart from the problem of the declining number of trade unions in individual countries, the question arises as to what constitutes the fundamental foundation of labour law. Is there room for social solidarity in an exceedingly distinctive form of providing work via Internet platforms? How to organise workers, regardless of their status? How to engage in collective action where there is no traditional employer-employee relationship. Digital work processes, using work on the platform, give cause for concern due to the emergence of non-standard forms of employment. The growing diversity of legal structures and the diversity of workers within the gigantic economy have a visible impact on the dimension of collective employment relationships. The proper understanding of freedom of association may need to be changed. Workers' rights to organise and bargain collectively should be recognised, regardless of their employment status. The axiology behind this means that fundamental human rights stipulate that also self-employed workers should enjoy the right to freedom of association and collective bargaining. This fundamental principle, which is indicated by the ILO Committee on Freedom of Association, has not yet been entirely accepted in the world of the Internet and the platform economy. The trade unions undoubtedly face a significant challenge and, despite many intellectual attempts to replace the traditional trade union movement with other, alternative forms of representation of collective labour interests, the observations on employment on the platform quite clearly show that there is no serious alternative to the idea of the trade union movement.

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NEGOCJACJE ZBIOROWE JAKO FORMA ZAANGAŻOWANIA ZWIĄZKÓW  
ZAWODOWYCH W REGULACJĘ WARUNKÓW ZATRUDNIENIA  
NA PLATFORMACH INTERNETOWYCH

**Streszczenie.** Artykuł podejmuje problematykę zaangażowania związków zawodowych w kwestie zatrudnienia na platformach internetowych. W pierwszej części poruszono zagadnienia ogólne związane ze zbiorowym prawem pracy i zatrudnieniem na platformie. W dalszej części podjęto analizie poszczególne formy zaangażowania związków zawodowych. W artykule zawarto główną hipotezę, że kluczowym warunkiem regulacji sprawiedliwej i godnej pracy na globalnych platformach internetowych jest aktywizacja związków zawodowych w postaci podejmowania działań informacyjnych i podejmowanie dialogu społecznego w postaci rokowań zbiorowych.

**Słowa kluczowe:** platformy internetowe, związki zawodowe, podporządkowanie algorytmiczne, rokowania zbiorowe

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