

DIGITAL TRANSFORMATION OF LABOUR RELATIONS – THE FUTURE CHALLENGE

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Summary

In this paper, the author analyses the current changes that are taking place in the field of labour relations and labour law. The paper covers the previous experiences of digital transformation of labour relations that occurred in the pre-Covid era, on the one hand, as well as the impact of the Sars KOV 19 pandemic on this process today. The author in the paper pays special attention to the parallel digitalization process of the economy expressed through the so-called „the fourth economic revolution" and its impact on the transformation of labour relations in the region and Europe. The paper analyses the aspects of responsiveness of legal systems in Europe and the region of Southeast Europe in terms of acceptance or resistance to the digitalization of the economy and labour.

The paper lists the positive aspects of the current and future digital transformation of labour relations, which means for workers, employers, as well as future government labour policies. The negative aspects are also analysed, as possible future challenges that will inevitably bring the digitalization of labour relations, among which the author emphasizes the growth of unemployment, weakening trade union influence, resistance from employees and the aspect of safety and health at work.

Keywords: digital transformation, employment, digits, economy.

I. DIGITALIZATION AS A PROCESS

The process of digital transformation of production has started in the mid-1970s. The digitalization of production processes conditioned dynamic development of labour and variability within labour relations, in the last 40 years as never before in the history of labour. It seems that the fourth industrial revolution, which is reflected in the labour relations as digital in its intensity, transformative capacity and speed, surpasses the previous experiences of transformation of the economic systems and the world of labour. This means that in the coming decades, and throughout

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the XXI century, we are likely to witness a digital transformation of labour relations, which will occur as a consequence of the general digitalization of the economy, as well as of health, education and political processes.

Digitalization is a process that is strongly and deeply penetrated in and affects various spheres of everyday life, in the economy, climate change, labour relations, social media. As a process it seems to be unstoppable, having a strong transformative force.

The Covid 19 pandemic directly affects the acceleration of the digitalization process of the economy and the world of labour, as its transformation from traditional forms of employment and work to new flexible forms that have existed so far, but also completely new ones that are yet to emerge and develop.

The digitalization process of labour opens new opportunities for economic development, dynamization of labour markets, greater productivity, as well as a new window of opportunities for economies in crisis¹. But does the digital transformation of jobs open certain problems and challenges that mean job losses, marginalization of certain categories of employees who have difficulties in the implementation of digital work platforms, educational challenges based on the concept of "lifelong learning" and so on².

The advantages and disadvantages of the process of digital transformation of labour relations and labour in general, which is a reflection of DIGITS transformation of production and economy will be in the focus of future scientific debates in different regions and the world. That is already happening. These discussions in the professional and scientific audience open up the various aspects of the benefits and challenges that we will be facing. By placing the scientific discussion within the time limit of the next decade, I try to contribute to the challenges, advantages and expectations in the world of labour, viewed through the framework of digital transformation.

II. DIGITALISATION AND TRANSFORMATION OF LABOUR RELATIONS

The transformation of labour relations through digitalization and the development of technology was first reflected in the creation of new business models, through the creation of digital work platforms.³

Digital work platforms are a wide area of job opportunities that are constantly moving upwards. The flexibility offered by this type of work is becoming more and more attractive to a huge number of people, surpassing even those thoughts that work on this type of platform is dominant among the youth. There is a general opinion that workers in digital labour markets are generally younger than the general population. This is confirmed by a study conducted by COLLEEM, which concludes that workers on digital platforms are on average ten years younger than offline workers⁴. However, although the average age of internet workers and those working in the digital markets is lower than those who have never been involved in this type of work, they are still far from young people aged 22-27. On average, people who have made a profit through this type of work are usually in their mid-thirties.

¹ Roubini N., *Labor in the Digital Age (Part 1 and Part 2)*, Roubini Global Economics, January 2015, p. 21

² Degryse C., *Digitalization of the economy and its impact on the labour market*, Brussels, 2016, p.21.

³ *The future of work in the digital economy*, ILO, September 2020, p 1.

⁴ <https://www.etui.org/node/31491>; *Digital labour in central and eastern Europe*, ETUI, 2019, pg 19; Piasna A and Drahokoupil J., *Digital labour in central and eastern Europe: evidence from the ETUI Internet and Platform Work Survey*, Brussels, working paper, 2019, p.19.

While diverse forms of employment offered on these platforms have the potential to provide decent work when appropriately regulated, they are often associated with increased instability and unpredictability in the career paths of workers. The adverse effects of these diverse forms of employment on the size and regularity of earnings throughout one's working life point to the need to address vulnerabilities and inequalities in the labour market through a comprehensive employment policy framework.

As a relatively new area that emerges, it remains largely legally unregulated. Digitalization itself raises a number of processes that are rapidly changing but remain in the shadows when it comes to their legal regulation. It seems as if they are two inversely proportional processes, the faster the labour relations change under the influence of digitalization, the more difficulties there are in changing the legal provisions and finding appropriate solutions.

While digital work platforms are diverse, workers working on these platforms are largely treated as self-employed workers. Many digital platform workers are victims of misclassification in employment⁵.

This problem has emerged as a central issue in a number of debates regarding the work of such platforms and we can say that it is rightly so. While workers' rights vary according to national labour law systems, they often include access to collective bargaining, extended social security provisions, and minimum wage and hour guarantees. In cases where workers are misclassified, they often lose access to and the protection of these key rights, which is often the result of their own and "calculated" risk⁶.

Wrong or inappropriate classification, unfortunately, is not the only problem that workers on such digital platforms face and will be facing. Another dilemma that arises is the question of what will these workers do in case of unemployment, i.e. when these workers who work on digital platforms will lose their jobs. Unemployment protection is one of the least accessible social protection schemes for the self-employed, which under the influence of digitalization of jobs is becoming an increasingly common category of employees. In thirteen EU member states, the self-employed do not have formal access to these benefits, they can join voluntarily six of them, and they are mandatorily included in seven of them. Furthermore, the approach often varies between categories of self-employed, and the self-employed person may only qualify for certain rights and benefits from the general employment system, or to be subject to exceptions.⁷

Digitalization itself raises a number of questions regarding the organization and systematization of the internal operating system. The benefits of digitalization and technology in the modernization of work processes, reducing occupational risks and increasing overall production are undeniable. But what is also indisputable is the economic effect that digitalization has globally, and which locally, at the employer level, is an additional burden. Namely, although the long-term benefits of digitalization are huge, in the short term they are large financial costs for the employers themselves. Mechanization, computerization, staff training are just some of the costs that are occurring.

⁵ Johnston H, Caia A, Silberman M, Ceremigna M, Hernandez D, Dumitrescu V, *Working on digital platforms*, Brussels, 2020, p.29.

⁶ Ibidem.

⁷ Spasova S, Ghailani D, Sabato S and Vanhercke B, Social protection of non-standard workers and the self-employed in the EU during the Covid-19 pandemic, Brussels, 2021, p.16; *Non-standard workers and the self-employed in the EU social protection during the Covid-19 pandemic*, ETUI, 2021, pg 16; <https://www.etui.org/publications/non-standard-workers-and-self-employed-eu>.

So, in parallel with investments aimed at digitalization and streamlining certain processes, workers need to be provided with a range of training programs to be able to learn new skills and to operate multiple machines at the same time, and all of this only increases the current costs of employers, who may not always be willing to take on that burden.

The industry in the future should undoubtedly include jobs that will be less manual and will involve human intelligence and knowledge, which in itself will lead to a large number of layoffs. Digitalization partially jeopardizes the need for certain jobs, which implies that there will be a need for retraining of workers in order to relocate them to other jobs, as well as involvement in other active new economic activities. Undoubtedly, this will mean that large financial resources will be needed for companies to keep pace with the 4th industrial revolution, but there is also a risk that new ways of work will be the reason for the increase in unemployment.

The unemployment as a phenomenon is interesting both from a sociological and from an economic point of view. Increasing unemployment will directly affect the macroeconomic policy, leaving many people at the expense of the state. That is why this digital transformation must take place gradually and in a controlled manner, taking into account all relevant factors.

On the other hand, technological innovations will also lead to positive supply-side effects, with long-term gains in efficiency and productivity. Transport and communication costs will be reduced, logistics and global supply chains will become more efficient, and trade costs will be reduced, and that will open up new markets and stimulate economic growth.

After all, there are currently a number of questions, especially regarding the emergence of a completely "digitalized" new labour market that is currently developing, where "side by side", millions of so-called "digital workers" around the world work. These digital platforms and their employees are a serious disruption to the organization of national labour markets, which have been established and regulated for many decades by their regulations, the existing social dialogue, as well as social rights funded by their social contributions and their taxes. Hence, it seems that in the unity of these contradictions, a new world of digital labour relations and the digitalization of labour, in general, is developing and forming. Hence, it seems that in the unity of these contradictions, a new world of digital labour relations and the digitalization of labour, in general, are developing and forming. The paradox that comes with digital working and in general the paradox in measuring the platform economy is that, although its operations generate a wealth of data, with all transactions being digitally recorded, one of the biggest unknowns is still the scale of platform work. Every gig mediated by online labour platforms leaves a digital trace containing information such as the nature of the task, the compensation provided, the number of hours worked or tasks completed, and the identity both of the requester or client and the worker⁸.

Insofar as access to the administrative records of one platform provides the precise number of workers on that particular platform, and usually allows the separation of registered users from active ones, it can serve as a basis for estimates of the size of the platform economy at a national level. Nevertheless, such estimates are extremely rough. A complete picture of the platform workforce would require information from all platforms and some indication on the scale of overlap; that is, how many workers are registered on more than one platform⁹.

All this seen through the prism of smaller economies and less developed countries raise the question of if the large digitally ready countries are not able to regulate and control the relations in the digital labour markets, how will the less developed countries succeed in that?

⁸ Piasna A, *Counting gigs. How can we measure the scale of online platform work?*, working paper, ETUI, 2020, p.6

⁹ Ibidem.

III. LEGISLATION v. DIGITALIZATION

The digitalization as a fast-moving trend that is slowly covering almost all segments of our lives directly affects the need to change the legal provisions. Labour law as a separate, extremely important part of law remains rigid for change. The current Labour Law in Macedonia was adopted in 2005¹⁰ and has been subject to numerous amendments over the years. That is why a new Labour Law has been drafted for many years, which should depreciate all the shortcomings of the previous legal solution. However, it seems that the new legal solutions will only partially respond to the new challenges that arise in terms of digitalization in labour relations.

On the other hand, it is indisputable that the European legislation does not have hard-law mechanisms which regulate digitalization issues. For instance, if we analyse the telework, we will see that there are no specific directives that focus on telework, although several directives and regulations address issues that are important for ensuring good working conditions for teleworkers¹¹. The main EU regulation addressing telework was introduced through the EU Framework Agreement on Telework (2002) This is an autonomous agreement between the European social partners (ETUC, UNICE, UEAPME and CEEP) that commits the affiliated national organizations to implement the agreement according to the 'procedures and practices specific to each Member State. This method of implementation is one of two options for the implementation of EU agreements negotiated by the European social partners provided in the Treaties. The other option entails that negotiated agreements are incorporated into EU directives, which must be transposed into national law. Unlike the second option, the first approach (where agreements are implemented according to the 'procedures and practices specific to each Member State) is not legally binding and so greater diversity is expected in its implementation and effectiveness, given the diversity of national industrial relations contexts¹².

The EU Working Time Directive (Directive 2003/88)¹³ includes provisions aimed at protecting the safety and health of workers (maximum of 48 working hours per week, etc.), including those performing telework. In addition, the Framework Directive on Safety and Health at Work (Council Directive 89/391/EEC)¹⁴, which aims to encourage improvements in the safety and health of workers in the workplace, does not specify the work location when it comes to the application of its provisions and, accordingly, also applies to teleworkers.

More recently, the Transparent and Predictable Working Conditions Directive (Directive (EU) 2019/1152)¹⁵ has indirectly addressed some of the challenges associated with the protection of teleworkers. This directive requires that provisions be made in relation to the place of work and that work patterns be clarified in the employment contract. This ensures more predictable working time patterns for workers, which could have a positive impact on work-life balance.

¹⁰ Закон за работни односи („Службен весник на Република Македонија" бр. 62/2005 – и понатамошните измени); <https://www.mtsp.gov.mk/content/pdf/zakoni/ZRO%20Precisten%2074-15.pdf>

¹¹ Sanz de Miguel P, Caprile M and Arasanz J *Regulating telework in the post-Covid-19 Europe*, Luxembourg, 2021, p.4

¹² Op.cit. p. 5

¹³ Directive 2003/88/EC of the European Parliament and the Council of the European Union of 4 November 2003 concerning certain aspects of the organisation of working time (OJ L 299, 18.11.2003)

¹⁴ Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (OJ L 183, 29.6.1989)

¹⁵ Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union (OJ L 186, 11.7.2019)

Worth mentioning is the Work-Life Balance Directive (Directive (EU) 2019/1158)¹⁶, which includes telework as one of the flexible working arrangements to which working parents and carers are entitled. However, this directive does not deal with the potentially negative impact of telework.

Finally, it is worth mentioning a recent legislative initiative from the European Parliament in January 2021¹⁷, which calls on the Commission to propose a law aimed at recognising the right to disconnect. This law should also establish minimum requirements for remote working and clarify working conditions, hours and rest periods. The legislative initiative was passed with 472 votes in favour, 126 against and 83 abstentions.

The Commission in its Communication “A Digital Single Market Strategy for Europe” and in its Communication “EU e-Government Action Plan 2016-2020: Accelerating the digital transformation of government”, stressed the role of public administrations in helping businesses to easily start their activities, operate online and expand across borders. The EU e-Government Action Plan specifically recognised the importance of improving the use of digital tools when complying with company law-related requirements. Furthermore, in the “Tallinn Declaration on e-Government” of 6 October 2017, Member States made a strong call to step up efforts for the provision of efficient, user-centric electronic procedures in the Union.¹⁸

However, despite the lack of rigid mechanisms that regulate labour relations issues, the European directives provide a normative framework that can follow the trend of digitalisation in labour relations. The fast pace of change leaves no room for the adoption of acts that can specifically define such issues, and that is why they are largely regulated through soft - law. What is missing is the hearing of our legislator regarding the digitalization of labour. The Law on Labour Relations itself must contain at least a framework regarding the new forms of work, the work on online platforms, the flexible working hours.

The new legal solution needs to contain active digital flexibility because only in this way it can respond to the challenges that digitalization brings in labour relations. European countries are following the trend of change with the adoption of the appropriate legislation, it is indisputable that the trend of digitalization is already present in the Republic of N. Macedonia, so the lack of an appropriate legal framework containing these aspects will open a number of problems, for which we cannot afford to wait another 10 years to be implemented in a new legal solution.

The European Community law contains many regulations governing the new employment relationships, and the smaller countries, especially those aspiring to join the European Union, must keep up with the progress at the same pace. The absence of proper regulations and acts can pave the way for numerous irregularities. In parallel, Europe insists on having a more secure and digitally open market, where European values will be in the centre.

IV. INFLUENCE OF COVID 19 ON THE DIGITALIZATION PROCESS

Digitalisation greatly changes the way we work, both in terms of the workplace and in terms of working hours. On the other hand, the Covid 19 pandemic served as an accelerator that accelerated

¹⁶ Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU (OJ L 188, 12.7.2019).

¹⁷ European Parliament resolution of 21 January 2021 with recommendations to the Commission on the right to disconnect (2019/2181(INL)).

¹⁸ Directive (EU) 2019/1151 of the EU Parliament and the Council of 20 June 2019, amending Directive (EU) 2017/1132 as regards the use of digital tools and processes in company law

change on a large scale¹⁹. If we look empirically, during 2020 so many more changes have happened in terms of job digitalization and employment than there have been in the last 20 years. A huge number of professions for which it was unthinkable that they would do their work online in front of a computer or from their homes as a result of the pandemic has become a reality. All this has contributed to opening a number of issues in terms of organizing working hours, daily breaks, means of work, as well as safety and health at work. Especially in developing economies, such as in Southeast Europe, this way of working was far from conceivable until the pandemic, with workers and employers finding themselves in a maze of lack of legal regulations governing the current conditions²⁰.

Until now, the labour inspection has always been able to come to the workplace and to control and supervise the work, as well as to identify possible omissions in the work. However, in the conditions of the pandemic, the operational capacity of the labour inspectorate was greatly reduced and the access to the "new" jobs which were located in the homes of the employees, was limited. Here we are primarily speaking of work at home, which took place de facto during working hours when the employee was supposed to be at work in the premises of the employer. Questions were raised such as whether the labour inspection should supervise the worker's home, what about the inviolability of the home as a constitutionally guaranteed right, whether the inspectors' visit has a legal basis to be conducted, and so on? These are just some of the many issues that must undoubtedly be opened in public debate for discussion and closed through new flexible legal solutions, primarily implemented through labour laws if we want to keep up with digitalization. In addition, laws regarding workplace harassment are very strict in terms of what constitutes harassment or mobbing in the workplace. Hence, possible problems arise when harassment occurs while the employee is working from home, in online meetings, over the phone, by the employer or other employees, and how to ensure adequate protection of the worker in pandemic conditions at work, most often from home.

The labour reality set in this way gave us a different framework for looking at and understanding of the problems in labour relations and the way they have been solved so far. The pandemic-influenced digitalisation process will not only play a huge role in the way new businesses operate and develop, but will also completely reshape the legal framework that exists in many legislations. Faced with the challenge of the pandemic, many countries started to move rapidly toward the Fourth Industrial Revolution. In this decade there will be a great transformation of labour relations and in general of labour that we have known so far. The pandemic is the "trigger" of this process, but it seems to have been a key factor, and at the same time an element of the digital transformation of labour relations in Europe and in the world.

V. DIGITALIZATION AND THE TRADE UNIONS

In any sector, organizing workers is difficult, and history has shown that successful union campaigns require patience, perseverance and effort. Within the economics of digital platforms, organizing workers comes with a number of special challenges. Access to workers working online is more difficult, and thus the possibility of organizing them less. Working on digital platforms is

¹⁹ Jovevski L., *The future of labour rights in covid 19 context*, Law review, Faculty Justinijanus Primus, Skopje, 2021, p.2.

²⁰ Op.cit. p.5.

in principle an individual way of working, so trade unionism is not something that this type of employee pay attention to²¹.

However, the collective organization in the unions and the union leadership is actively trying to change the conditions under which these people work and that is of great importance. New ways of working and digitalization can in some cases lead to violations of workers' rights. In a situation where workers' rights are violated, the best defence is always the union. If workers on digital platforms are not unionized, they are automatically put at a disadvantage compared to other types of workers. Mutual assistance between workers and the union involves sharing information and developing strategies on how to better cope with current conditions. Mutual assistance, usually through legal support, may include services such as career advice and access to business and trade-specific tools. Trade unions that traditionally try to protect the rights of their members, through the so-called mutual assistance are especially needed in conditions when there is a transformation of labour relations and can help workers in concrete ways²².

Trade unions have a particularly important role to play in supporting workers on digital platforms. As institutions with strong political ties and financial support, they can support workers in any legal disputes, for example in employment misconduct lawsuits, which can be extremely lengthy and difficult, or in discrimination lawsuits, but also terms of occupational safety and health. This approach and this way of understanding the future role of trade unions in the digital labour transformation leaves much room for improving the working conditions of this type of workers as well as for improving current and finding new ways to organize them²³.

VI. THE FUTURE IS NOW - CONCLUSION

Viewed from a broader perspective, the Fourth Industrial Revolution represents the future of labour and labour relations. Modernization and digitalization will undoubtedly bring about a number of changes in various segments of life, and accordingly in labour relations. Labour law is a right to life, so it is very important what approach and what active labour policies will be implemented in the future at national, but also at European and international levels.

It seems that nowhere is it more likely to feel the turn of the Fourth Industrial Revolution than in the workplace. As with previous industrial revolutions, the Fourth Industrial Revolution will have a profound effect on people's lives since artificial intelligence and increased automation will wipe out many kinds of jobs. At the same time, completely new job categories are emerging.

Computers and automation will merge in a completely new way, with a variety of robotics remotely connected to computer systems equipped with machine learning algorithms that can learn and control robotics with very little human input.

As the Fourth Industrial Revolution shapes the future of business, businesses must prepare their people for the new world to come. This often means an increased focus on continuous learning, improvement in new types of jobs and a commitment to diversity. Businesses will need to ensure that they have the right skill mix between their workforce in order to keep up with the changing technology. Artificial intelligence and digitalization will affect the types of skills that companies

²¹ Johnston H, Caia A, Silberman M, Ceremigna M, Hernandez D, Dumitrescu V, op.cit. p.41; https://www.etui.org/sites/default/files/2021-02/Working%20on%20digital%20labour%20platforms-A%20trade%20union%20guide%20for%20trainers%20on%20crowd-%2C%20app-%20and%20platform-based%20work_2021.pdf;

²² Ibidem, p. 43.

²³ Ibid.

will need in the future. Workers will more than likely need to refine their skills and knowledge, not just once, but multiple times throughout their careers.

As the Fourth Industrial Revolution brings us great opportunities and challenges, it is up to all of us to work together to ensure that it benefits everyone. People have to be proactive in shaping this technology and disrupting the "normal". This requires global cooperation and a common view of how technology is reshaping our economic, social, cultural, and individual lives.

Given the fact that companies are at the forefront of the Fourth Industrial Revolution, they are the ones driving both innovation and social disruption. In this context, they must also play a key role in providing and meeting the needs of all stakeholders, and not just the shareholders.

That is why for this whole digitalization and transformation process to be implemented without major difficulties, greater involvement of trade unions is needed. Only by strengthening the social dialogue between the relevant parties will it be possible to ensure equal involvement of both employers and workers in the process of adapting and managing new forms of work.

In the process of digitalization, no employee should be left out, and the change itself, especially in the technological sense, makes people sceptical and that is why greater inclusion of employees in decision-making is needed. The 4th industrial revolution should not be to detriment of the employees but on the contrary. Therefore, the experience we have gained from the first industrial revolution to the present day undoubtedly confirms the fact that nations and organizations must embrace new technology or risk falling behind new trends.

The tectonic shifts that are underway and that are yet to follow need to be supported by appropriate, effective and flexible legal solutions that will suit the needs of the new time, but still where the centre of labour is man, not formality and worship of material prosperity. This has been a core value in European legal acts so far (*acquis communitare*), but caution is needed in the future to maintain and upgrade the already existing freedoms and rights that are part of the 4th generation of achievements. This, especially since within the pandemic we observe a retrograde process, which results in reduction and restriction of basic labour, as well as human freedoms, and we will take the freedom to say that it is unnecessary and at the expense of derogating European values inclined through the acts of Council of Europe and the EU.

Of course, in the end, it is important to keep in mind that the Fourth Industrial Revolution involves a complete systemic change in many sectors and aspects of human life. By recognizing the risks, whether threats to cybersecurity, massive disinformation through digital media, potential unemployment or increased social income inequality, we can take appropriate steps to align common human values with our technological advances and ensure that the benefits of digitalisation will primarily benefit all human beings.

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