Global Workplace Law & Policy

Collective labour rights for self-employed workers: A human-rights based approach of platform work

Harry (Charalampos) Stylogiannis (Institute for Labour Law – KU Leuven (Belgium)) · Wednesday, April 5th, 2023

The world of work is changing. In this context, the lines that divide self-employed and employed persons are becoming less and less discernible. This phenomenon has led to the numerical increase of dependent self-employed persons who find themselves in a comparable predicament to that of employees, where their weak negotiating position and economic dependency on their principals often make for a precarious situation. Self-employed persons are usually expected to be able to defend their interests in the market; hence, with only a few exceptions, they have generally been excluded from the ambit of protective labour law(s). Considering, nonetheless, the often weak bargaining position of many self-employed workers and their dependence upon their principals, such a treatment can be particularly problematic from a labour law perspective. The developments which take place in the context of platform work constitute an illustrative example of many of the challenges traced within modern workplaces.

The majority of platform businesses tend to ‘enlist’ casual workers and label them as independent contractors, even though the real nature of the job may indicate a disguised employment

relationship, often concealed behind a *façade*of organisational and economic independence.[1] The extensive reliance of platform businesses on freelance jobs, along with other issues related to labour protection, can also impose serious limitations to the meaningful exercise of fundamental collective labour rights, such as the rights to freedom of association and collective bargaining, which constitute a part of the constitutional order of many countries.[2] At the international level, the rights in question are enshrined in the 1998 ILO Declaration on Fundamental Principles and Rights at Work. The rights and principles contained in the Declaration, are considered to be universal; hence, they should be applicable to all workers, notwithstanding their employment status, in all ILO Member States, by the very fact of their membership and irrespective of ratification of the relevant conventions. Such rights, moreover, are also part of the 'universal list' of human rights, as they have been incorporated in a number of international human rights instruments, such as the European Convention on Human Rights (ECHR) and the European Social Charter (ESC). Their nature as human rights has also been confirmed by numerous judgments of international courts and national supreme courts.

Much of the restrictions (self-employed) platform workers are facing towards the effective exercise of their collective labour rights can be attributed to the very limitations of labour law's own framework, where rights and obligations are mostly secured via the existence of an employment relationship. Furthermore, collective labour rights can also be constrained, in occasions where platform workers' collective activities come into clash with competition law. In different instances, competition authorities, by adopting a rather strict approach, have been using their authority to obstruct to certain categories of workers, including platform workers, from concluding collective bargaining agreements on the ground that these are price-fixing agreements between undertakings; thus, they are capable of hindering fair competition and consumer's welfare. In addition to legal obstacles, practical hurdles can also constitute a threat towards platform workers' collective labour rights, even if they are considered employees. Among other reasons, as other workers in atypical jobs, they deal with frequent turnovers and limited attachment to a single workplace. As such, it is difficult for them to be approached by unions, or even to communicate between each other in order to organise their collective actions.

Against this background, it can be argued that a possible way forward towards the better protection of platform workers' collective labour rights can derive from the adoption of a human rights-based approach (HRBA) *vis-à-vis*labour protection.[3] Concretely, such an approach identifies workers, regardless of their employment status, as rights-holders entitled to rights derived from international human rights and labour rights treaties. A HRBA, moreover, does not intend to force the requalification of workers who find themselves in a 'grey' zone between employment and self-employment, including many platform workers. It rather seeks to provide a protection floor to all workers who, by exercising their rights to freedom of association and collective bargaining will be able to ameliorate their working conditions and produce adequate labour standards that will not depend on their employment status.

In light of this, a HRBA can generate several benefits. For example, this approach moves away from a strict dichotomy between employment and self-employment. The ILO's supervisory bodies have repeatedly pointed out that both Conventions No. 87 and 98, should apply to all workers, regardless of the existence of an employment relationship, which it is often non-existent.[4] In a similar vein, the broad personal scope of the right to collective bargaining has also been confirmed by the European Social Committee. The latter, in a case against Ireland, ruled that all workers should have the right to bargain collectively, including self-employed workers.[5] In this regard, a broad scope of application with respect to collective labour rights is also important for the field of

labour law as a whole, as the allocation of fundamental collective labour rights to those who need it the most can assist the field in maintaining its normative coherence and integrity. Moreover, a HRBA can be utilised to re-establish the relationship between labour and competition laws. The nature of collective labour rights as human rights should guide this interplay. A HRBA towards collective labour rights can also be used as a shield of protection for the enjoyment of other human rights at work, like discrimination-related entitlements. Finally, and not from a purely legal perspective, a HRBA and a human rights narrative, more in general, can be useful in attracting the support of non-traditional partners, like consumers and civil society organisations. Such actors, considering the dominant position of businesses, such as in the case of platform giants, can constitute significant allies in the attempts of unions to raise awareness regarding the poor working conditions often faced by platform workers.

That said, the effective application of a HRBA is still away from being guaranteed in practice. This is to say that even if someone was placing competition-related issues on the side, there are still challenges stemming from complexions within national systems of industrial relations. In many instances, existing legal apparatuses for collective bargaining seem outdated and do not match the realities within the new world of work and the increase of self-employed workers dependent upon their principals. High representation thresholds for unions' recognition, lack, or decline of multi-employer collective bargaining and the absence of statutory rights to compel employers to recognise collective agreements for self-employed workers, constitute only some of the impediments self-employed workers have to deal with when they attempt to exercise their right to bargain collectively.

All in all, it remains to be seen how national systems of industrial relations will attempt to address such challenges and if their responses will be in line with the requirements of international labour and human rights instruments.

_____

References

[1] De Stefano, V., Durri, I., Stylogiannis, C. and Wouters, M., 2021. *Platform work and the employment relationship* (No. 27). ILO Working Paper.

[2] Stylogiannis, C., 2023. Freedom of association and collective bargaining in the platform economy: A human rights?based approach and an over increasing mobilization of workers. 162 *International Labour Review* (*forthcoming*) https://doi.org/10.1111/ilr.12340.

[3] *Ibid*.

[4] Freedom of Association. Compilation of decisions of the Committee on Freedom of Association, *International Labour Office* – Geneva: ILO, 6th edition, 2018.

[5] *Irish Congress of Trade Unions v. Ireland, Complaint No. 123/2016.*

This entry was posted on Wednesday, April 5th, 2023 at 8:00 am and is filed under Collective Bargaining, EU, EU Law, human rights
You can follow any responses to this entry through the Comments (RSS) feed. You can leave a

response, or trackback from your own site.