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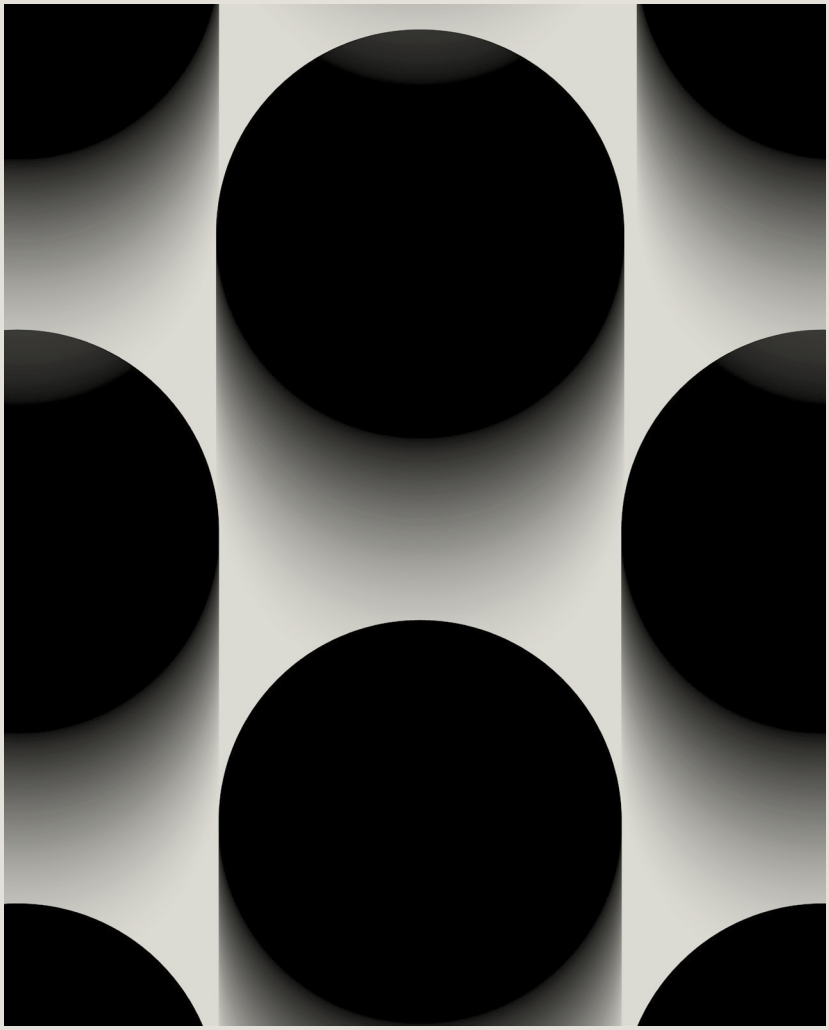

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Demographic change, labour rights & social security: *Challenges, choices & opportunities*

Gostujuće urednice | **Guest editors**
Sanja Stojković Zlatanović & Ljubinka Kovačević

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Radna prava omogućavaju pojedinicima obezbeđivanje sredstava za život dostojan čoveka, kao i priliku da, kroz rad, razvijaju svoju ličnost. Na stvaranje uslova za delotvorno ostvarivanje radnih prava utiču, između ostalog, i demografske pojave poput starenja stanovništva, nataliteta, migracija i obrazovne strukture stanovništva. Demografske pojave se, štaviše, danas svrstavaju u najvažnije činioce promena u svetu rada, „ruku pod ruku" s tehnološkim promenama, globalizacijom i klimatskim promenama (ILO 2017). Uvažavanje demografskih pojava prilikom pravnog uređivanja rada za drugog se, otud, pojavljuje kao preduslov za delotvorno ostvarivanje prava na rad i drugih radnih prava, posebno prava na pravičnu zaradu, dostojanstvo na radu i zaštitu od nezakonitog prestanka radnog odnosa, kao i kolektivnih radnih prava.

Recipročni uticaj postoji i između demografskih pojava i ostvarivanja prava na socijalnu sigurnost. Ovo, najpre, stoga što izgradnja i izmene sistema zaštite od socijalnih rizika pretpostavljaju produbljenu analizu karakteristika stanovništva koje će tu zaštitu uživati i finansirati (Dupeyroux et al. 2005). S druge strane, funkcionisanje sistema socijalne sigurnosti omogućava uvid u podatke od značaja za demografiju. Osim toga, slabljenje porodične solidarnosti naglašava nemoć privatne pomoći, kao nediferenciranog metoda zaštite od socijalnih rizika, dok neoliberalno snižavanje troškova za socijalnu zaštitu dodatno opterećuje žene porodičnim dužnostima kako prema deci, tako i prema odraslim licima zavisnim od tuđe nege i pomoći. Nadalje, starenje stanovništva i tendencija produženja životnog veka relativizuju aleatornost, kao obeležje socijalnog rizika starosti (Pieters 2019), te utiču na pravnu afirmaciju novih socijalnih rizika, poput zavisnosti od tuđe nege i pomoći, i siromaštva.

Demografija je, dakle, tesno povezana s uređivanjem radnih odnosa i zaštite od socijalnih rizika, a što se, najpre, vidi kroz prepoznavanje i zakonsko uobličavanje potrebe starijih radnika za posebnom radnopravnom zaštitom, kao i potrebe za stvaranjem uslova za implementaciju koncepcija aktivnog starenja i međugeneracijske solidarnosti. Delotvorno ostvarivanje radnih prava pretpostavlja, naime, sprečavanje ukrštene diskriminacije mladih, kao i starih radnika (Zilli 2023), očuvanje radne sposobnosti i motivisanosti starijih radnika za rad, te potrebu da se mladim radnicima omogući da steknu radno iskustvo i napreduju u profesionalnoj karijeri. S tim u vezi, poslednjih godina se afirmiše i koncepcija korporativne dužnosti pažnje u pogledu poštovanja i zaštite ljudskih prava radnika, između ostalog, i u vezi s uvažavanjem potreba koje imaju određene starosne grupe (Stojković Zlatanović i Jovanović 2023).

Solidarnost između aktivnih i pasivnih članova društva, pritom, čini sisteme socijalne sigurnosti posebno osetljivim na demografske promene. To, naročito, vredi za starenje stanovništva i pad stope fertiliteta, što je, zajedno s porastom stope nezaposlenosti, skopčano s više ozbiljnih socijalnih i ekonomskih posledica, počevši od opterećivanja

budućih generacija značajnim finansijskim teretima (Kasagi 2020). To bi, po nekim mišljenjima, umesto solidarnosti, moglo uzrokovati sukob među generacijama, naročito u kontekstu ekonomske, finasijske i društvene krize (Cadiou, Genet i Guérin 2002). No, nezavisno od utemeljenosti ovog predviđanja, može se konstatovati da demografske pojave presudno utiču na održivost sistema socijalne sigurnosti, posebno kada počivaju na međugeneracijskoj solidarnosti i primeni tehnike reparticije. Profesorka Univerziteta u Kadisu (Španija) dr Tais Gerero Padron (*Thais Guerrero Padrón*), otud, u svom članku kritički preispituje zaštitu samozaposlenih lica za slučaj starosti, pošavši od činjenice da u većini evropskih država mnoga samozaposlena lica ne mogu da ostvare pravo na starosnu penziju, dok je visina penzija lica koja su stekla ovo pravo redovno niža od prosečnih penzija lica koja su radila u radnom odnosu. Ovo, pre svega, zbog uplate doprinosa koji su, zbog neredovnosti, promenljivosti i skromne visine primanja samozaposlenih lica, niži od doprinosa koje duguju zaposleni i njihovi poslodavci. Navedeni problem postaje posebno ozbiljan ako imamo u vidu ekspanziju nestandardnih i pojavu novih oblika rada. Oni radnicima (frilenserima, platformskim radnicima, ekonomski zavisnim samozaposlenim radnicima, lažnim samozaposlenim licima i dr.) neretko ne omogućavaju redovna i dovoljna primanja, niti razvoj profesionalne karijere, a što uvećava rizike siromaštva i socijalne isključenosti u starosti. Autorka, stoga, razmatra zaštitu „vulnerabilnih" grupa samozaposlenih lica, i to u svetlu potrebe da se obezbedi održivost penzijskih sistema i da se unapredi (tj. pruži odgovarajuća) zaštita samozaposlenim licima, a što je u većem broju država članica Evropske unije (EU) nedavno dovelo do različitih zakonodavnih i strateških intervencija. Vispreno se zaključuje da bi, uz ove mere, države trebalo da identifikuju vidove samozapošljavanja koje bi u budućnosti trebalo podsticati, uz preusmeravanje ostalih kategorija samozaposlenih lica na zasnivanje (stabilnog) radnog odnosa. Isto vredi i za razvoj delotvornih programa celoživotnog učenja, te za unapređenje sindikalnog organizovanja samozaposlenih radnika.

Socijalnopravni položaj starijih osoba nalazi se i u fokusu istraživanja naučnog savetnika dr Hajrije Mujović i naučnog saradnika dr Ranka Sovilja iz Instituta društvenih nauka u Beogradu. Autori su analizirali izuzetno složeno pravno pitanje zdravstvene zaštite starijih osoba, s tim što iz njihovog članka nije izostalo ni sagledavanje odnosa medicinskog prava sa zdravstvenom politikom i drugim javnim politikama. U tom smislu, pravilno su identifikovane osnovne prepreke za delotvorno ostvarivanje prava starijih osoba na zdravstvenu zaštitu, posebno imajući u vidu kapacitete zdravstvenih sistema za pružanje kvalitetnih usluga ovim pacijentima i trend privatizacije pružanja zdravstvene zaštite. Osim toga, upozoreno je i na marginalizaciju starijih osoba, koja je paradoksalno prisutna u ovoj oblasti uprkos tendencijama starenja stanovništva i produženja životnog veka, kao i uprkos značaju koji pristup zdravstvenoj zaštiti ima za ovu kategoriju stanovništva (OIT 2013).

Pored radova posvećenih starijim osobama, tematskim brojem obuhvaćena su i dva rada koja se neposredno bave mladima i njihovim prelaskom iz sveta obrazovanja u svet rada. Mladi se, naime, suočavaju s nemalim teškoćama da pronađu i očuvaju zaposlenje, naročito zaposlenje koje odgovara njihovom obrazovanju, potrebama i interesovanjima. Pored nezaposlenosti, njihov položaj na

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tržištu rada često odlikuju i podzaposlenost, rad za zaradu koja ne obezbeđuje dostojan životni standard i rad „na crno". Negativna iskustva u vezi sa prelaskom mladih u svet rada, pritom, mogu imati za posledicu nesigurnost i socijalnu marginalizaciju ovih radnika u kasnijim fazama njihove profesionalne karijere, uključujući zapošljavanje na niskoplaćenim i drugim nekvalitetnim poslovima, a što neretko dovodi do siromaštva (ILO 2012). Na fragilnost položaja mladih prilikom stupanja u svet rada utiče više činilaca, uključujući neodgovarajuće obrazovanje i obuku, nepostojanje odgovarajućeg institucionalnog okvira koji bi ih usmeravao i podržavao prilikom izbora zanimanja i pronalaženja zaposlenja, te struktura tržišta rada koja otežava pronalaženje prvog zaposlenja (ILO 2012). Na to se nadovezuju i nedostatak iskustva i stereotipi o manjoj efikasnosti mladih u poređenju sa starijim radnicima, što poslodavce odvraća od zapošljavanja mladih, a mlade uvodi u začarani krug (Kovačević 2022).

Jedan od instrumenata koji mogu doprineti lakšoj integraciji i unapređenju položaja mladih na tržištu rada predstavljaju radne prakse, kojima je posvećen članak docentkinje Univerziteta u Miškolcu dr Bernadet Šolimoši Sekereš (*Bernadett Solymosi-Szekeres*). Autorka skreće pažnju na rizik zloupotrebe radnih praksi, posebno kada se one organizuju bez učešća i nadzora obrazovnih ustanova. To naročito podrazumeva rizik organizovanja prividnih radnih praksi, kao i obavljanje radnih praksi bez ili uz skromne naknade, što je praćeno i rizikom od radne eksploatacije. Ovi rizici prisutni su i u Mađarskoj, zbog čega su u članku detaljno razmotreni najvažniji radnopravni i socijalnopravni aspekti organizacije radnih praksi na otvorenom tržištu, kao i radnih praksi koje su deo aktivne politike tržišta rada, uz ocenu usklađenosti mađarskog prava s pravom EU u ovoj oblasti. Autorka zaključuje da je pravni okvir za obavljanje radnih praksi u Mađarskoj složen, komplikovan i nekonzistentan, zbog čega čini i više umesnih predloga *de lege ferenda* za njegovo unapređenje. Vrednost ovih predloga ne zaustavlja se, međutim, na granicama ove države, već neki od njih mogu poslužiti i drugim zakonodavcima kao inspiracija ili model prilikom uređivanja tako delikatnog pravnog pitanja kakve su radne prakse.

Uključivanjem mladih na tržište rada bavi se i dr Milica Kovač Orlandić, docentkinja Fakulteta pravnih nauka Univerziteta Donja Gorica, i to na primeru radnog angažovanja studenata. Posebna pažnja u ovom istraživanju posvećena je radnom angažovanju studenata bez zaključenja ugovora o radu, koje je praćeno rizicima „legislativne nesigurnosti", diskriminacije na radu, lažnog samozapošljavanja, rada „na crno" i radne eksploatacije. Ti rizici ostavljaju „ožiljke" na profesionalnoj karijeri ovih radnika, pre svega u vidu veće verovatnoće da će u budućnosti imati teškoće da pronađu i očuvaju dostojanstveno zaposlenje. Autorka, stoga, argumentovano ukazuje na važnije prednosti i nedostatke studentskog rada (uključujući i rad na osnovu posebnog ugovora o obavljanju studentskih poslova), uz formulisanje korisnih predloga za priznavanje određenog minimalnog kataloga radnih prava studenata, između ostalog i radi postizanja međugeneracijske solidarnosti.

Koncepcija međugeneracijske solidarnosti može se sagledavati, između ostalog, i u svetlu činjenice da mnoge starije osobe svojim neplaćenim radom u domaćinstvu doprinose boljem usklađivanju profesionalnih i porodičnih dužnosti mladih radnika, baš kao što mnogi mladi

radnici neguju starije članove porodice zavisne od tuđe nege i pomoći. Stoga se kao poseban izazov u savremenom svetu rada pojavljuje usklađivanje profesionalnih i porodičnih dužnosti radnika, a što predstavlja i značajan istraživački problem u pravnoj i drugim naukama. Identifikovane izazove treba sagledati i iz perspektive načela rodne ravnopravnosti, jer je radno pravo tradicionalno koncipirano po modelu radnika muškog pola zaposlenog na neodređeno vreme i s punim radnim vremenom, bez dovoljnog uvažavanja potreba koje žene imaju kao učesnice na tržištu rada. Premda je primena feminističkog metoda uticala na formalno unapređenje radnopravnog položaja žena, one se i dalje neretko suočavaju s teškoćama prilikom pronalaženja i očuvanja zaposlenja, kao i napredovanja u profesionalnoj karijeri, između ostalog i zbog nesrazmerno velike opterećenosti porodičnim dužnostima. Savremeno pravo i javne politike su, otud, usmerene prevashodno na osnaživanje žena, ali često uz neopravdano zanemarivanje negativnih stereotipa s kojima se suočavaju muškarci s porodičnim dužnostima, kao i uloge muškaraca za postizanje (i negovanje) rodne ravnopravnosti (Kovačević 2023). Ova tema okupira i vanrednu profesorku Fakulteta za radne odnose Univerziteta u Kadisu dr Mariju Izabel Ribes Moreno (*Mª Isabel Ribes Moreno*), čiji je članak posvećen radnopravnim pravilima o podeli porodičnih dužnosti, kao i mehanizmima koji omogućavaju delotvornu primenu ovih pravnih dostignuća u praksi. Taj istraživački problem je razmatran na primeru Španije i usklađivanja tamošnjeg zakonodavstva s pravom EU u ovoj oblasti. U tom smislu, autorka detaljno razmatra merodavne izvore prava i identifikuje probleme koji ometaju njihovu primenu u praksi, uz osmišljavanje dragocenih predloga za unapređenje pomirenja profesionalnog i porodičnog života radnika.

Utvrđivanju mesta, značaja i uloge prava na pomirenje profesionalnih s porodičnim dužnostima u sistemu prava EU, uz poseban osvrt na Direktivu 2019/1158, sve u kontekstu društvenih, ekonomskih i demografskih promena, naročito povećane participacije žena na tržištu rada, starenja stanovništva, kao i promena u strukturi porodice, posvećen je rad profesora Pravnog fakulteta „Justinijan Prvi" Univerziteta „Sveti Ćirilo i Metodije" u Skoplju dr Aleksandra Ristovskog i dr Todora Kalamatieva. Autori razmatraju promene uloga žena na tržištu rada i uloga muškaraca u porodičnom životu, primenjujući holistički pristup identifikaciji „roditeljskih prava", kao i prava negovatelja u oblasti radnih odnosa. Ovde se posebno ukazuje na pristup uređivanju ovih pitanja u pravu EU, počev od posebne zaštite materinstva, te utvrđivanja prava zaposlenih očeva u vezi s rođenjem deteta, preko prava na roditeljsko odsustvo pripadnika oba pola, do priznavanja prava na odsustvo radi nege bolesnog člana porodice. Naročita pažnja je, pritom, posvećena praksi Evropskog suda pravde (Suda pravde EU), koja doprinosi uvažavanju novih okolnosti od značaja za obezbeđivanje ravnoteže rada i porodičnog života radnika oba pola.

Demografiju i radna prava tesno povezuje i potreba za obezbeđivanjem odgovarajuće radnopravne i socijalnopravne zaštite migranata. Međunarodne migracije ne mogu se, naime, posmatrati samo u svetlu ekonomskih dobitaka i gubitaka zainteresovanih država, već ih prati i potreba pravne zaštite migranata i članova njihovih porodica. To vredi i za oblast zapošljavanja, jer se, u skladu s načelom teritorijalnosti, radno zakonodavstvo države porekla ne može

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primeniti na domaće radnike koji rade ili traže zaposlenje van državnih granica, dok se na teritoriji države prijema suočavaju s rizicima diskriminacije i radne eksploatacije. Time se za radnike koji su primljeni na teritoriju druge države uspostavlja niz različitih migrantskih statusa, od kojih su neki izrazito prekarni. Pristup radnika migranata određenim pravima zavisi, naime, od države iz koje dolaze, dužine njihovog boravka na teritoriji države prijema, vrste odobrenja za boravak ili dozvole za rad koje im država izdaje, a u nekim slučajevima i od zanimanja i radnopravnog statusa migranata (Fudge 2014; Špadina 2012). Na to upozorava i rad dr Maria Reljanovića, naučnog saradnika Instituta za uporedno pravo u Beogradu, koji je posvećen pravnom položaju radnika migranata u Republici Srbiji. Autor, naime, polazi od postavke da je postojeći pravni režim zapošljavanja stranaca u Republici Srbiji zasnovan na koncepciji samodovoljnog tržišta rada, gde se radnici migranti pojavljuju krajnje izuzetno, najvećma kao subjekti privremenih ili cirkularnih migracija. Budući da je poslednjih godina naglo porastao broj radnika migranata i da je u 2023. godini usledila zakonodavna intervencija koja treba da olakša njihov pristup srpskom tržitu rada, autor preispituje novousvojena zakonska rešenja kako iz ugla potreba Republike Srbije i poslodavaca koji posluju na njenoj teritoriji, tako i iz ugla radnika migranata i članova njihovih porodica – od potrebe da se spreči nelojalna konkurencija na tržištu, do potrebe da se zaštiti dostojanstvo radnika migranata i spreči radna eksploatacija. U tom smislu je ukazano na neophodnost da se, pored noveliranja pravnih propisa, preduzimaju i druge (pravne i vanpravne) mere usmerene na sistematsko stvaranje uslova za održivo prihvatanje većeg broja radnika migranata, kao i za njihovu dugoročnu integraciju na tržište rada, ali i u sve ostale sfere društva.

Pored članaka koji su fokusirani na pojedine kategorije radnika, tematski broj obuhvata i članke u kojima se analiziraju određeni radnopravni instituti, koji su, pritom, posebno osetljivi na demografske promene. Doktorand Univerziteta u Ljubljani i Univerziteta u Rijeci Andraž Bobovnik i vanredna profesorka Univerziteta u Ljubljani dr Valentina Franca su, tako, istraživali pitanje poželjnih načina uređivanja minimalne zarade u kontekstu starenja stanovništva, intenzivnih migracionih kretanja i pojave novih oblika rada u Republici Sloveniji. Njihovim člankom potcrtan je značaj minimalne zarade, kao osnovnog prava svih radnika, koje u ovoj državi, pored zaposlenih, uživaju i neke kategorije radnika s nestandardnim oblikom zaposlenja. Autori su nedvosmisleno pokazali da radno pravo treba da se prilagođava promenama u svetu rada, ali da to prilagođavanje ne sme imati za posledicu napuštanje ili ignorisanje osnovnih vrednosti koje se nalaze u srcu ove grane prava. To naročito uključuje vrednosti solidarnosti i socijalne pravde, koje su otelovljene, upravo, u tradicionalnim radnopravnim institutima kakva je i minimalna zarada. Istovremeno je kao poželjan način za određivanje minimalne zarade predložen socijalni dijalog, što je na fonu nedavno usvojene Direktive 2022/2041 o odgovarajućim minimalnim zaradama u Evropskoj uniji. Imajući u vidu nedavno stupanje ove direktive na snagu, članak profesorke France i doktoranda Bobovnika predstavlja lep doprinos razumevanju zaštite minimalne zarade i unapređenja kolektivnog pregovaranja u ovoj oblasti.

Budući da je radno pravo osetljivo, između ostalog, i na tehnološke promene, članak dr Helge Špadine, vanredne profesorke Pravnog fakulteta Univerziteta

J. J. Štrosmajera u Osijeku, posvećen je važnijim pravnim (i etičkim) nedoumicama koje prate uređivanje veštačke inteligencije u svetu rada. Premda bezmalo svi segmenti radnog odnosa – od zasnivanja do prestanka radnog odnosa – mogu biti automatizovani i digitalizovani (Bagari i Franca 2023), autorka usmerava pažnju ka korišćenju veštačke inteligencije u postupku zapošljavanja, posebno imajući u vidu činjenicu da korišćenje sistema veštačke inteligencije u svetu rada, samo po sebi, nije ni pozitivno ni negativno, već će uticaj zavisiti od vrste sistema veštačke inteligencije, načina njegove upotrebe i konteksta u kom se primenjuje, a što neizbežno uključuje i pravne (i etičke) norme u ovoj oblasti. U tom smislu, uočene su osnovne prednosti korišćenja veštačke inteligencije u postupku regrutovanja i izbora kandidata za zaposlenje: veća dostupnost poslova, naročito za određene marginalizovane grupe radnika; ekspeditivnost obrade prijava tražilaca zaposlenja; efikasno, kvalitetno i jeftino uparivanje tražilaca zaposlenja i odgovarajućih poslova; i rasterećenost zaposlenih u službama i agencijama za zapošljavanje. S druge strane, kao osnovni izazov primene veštačke inteligencije u postupku zapošljavanja kritički je preispitan rizik diskriminacije u slučaju (netransparentnog) algoritamskog odlučivanja o kandidatima za zaposlenje. Na tim osnovama artikulisani su korisni predlozi za obezbeđivanje inkluzivnog i prilagodljivog pravnog okvira, posebno imajući u vidu činjenicu da se veštačka inteligencija razvija prevashodno u komercijalne svrhe.

Upotreba veštačke inteligencije posebno pogoduje određenim kategorijama radnika, pre svega, zbog snižavanja potrebe za obavljanjem fizički zahtevnih radnih zadataka i ublažavanja rizika koji ugrožavaju bezbednost i zdravlje radnika (Tiraboschi 2019). Ipak, korišćenje veštačke inteligencije nije ograničeno samo na određene kategorije radnika, ni na određeni sektor, profesiju ili oblik rada. Iako je tako, posebno delikatna pravna pitanja u vezi sa upotrebom veštačke inteligencije pojavljuju se u pogledu rada posredstvom onlajn platformi. U tematski broj časopisa je, stoga, uključen i članak koji su napisali naučni saradnik Instituta ekonomskih nauka dr Valentina Vukmirović, asistent Fakulteta organizacionih nauka Univerziteta u Beogradu Željko Spasenić, i vanredni profesor ovog fakutleta dr Miloš Milosavljević. Istraživanje je zasnovano na bibliometrijskoj analizi naučnih članaka i studija o digitalnim radnim platformama, kao savremenim oblicima obavljanja ekonomske aktivnosti u tzv. gig odnosno platformskoj ekonomiji i *sui generis* formi privrednih subjekata koji deluju kao posrednici između pružalaca usluga i klijenata, a s ciljem ukazivanja na dinamiku objavljivanja naučnih radova i aktuelnost teme koja je granična za više povezanih društvenih nauka (nauke o upravljanju, ekonomije, prava, sociologije), ali i tehničkih nauka, s fokusom na *IT* sektor. Sa stanovišta nauke radnog prava, normativno uobličavanje platformskog rada zahteva sagledavanje i identifikaciju specifičnosti njegove pravne prirode, budući da je u pitanju forma radnog angažovanja koja je „na pola puta između standardnog podređenog rada za drugoga i nezavisnog rada u modelu samozapošljavanja" (Stojković Zlatanović i Ostojić 2021). S tim u vezi, autori sistematskim pregledom literature zaključuju da je većina radova u oblasti prava imala za cilj definisanje inovativnih pravnih mehanizama zaštite osnovnih radnih prava u uslovima ubrzanog razvoja digitalnih tehnologija.

Konačno, tematski broj obuhvata i dva osvrta. U prvom je dr Valentina Vukmirović prikazala koncepciju i sadržaj

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međunarodne konferencije "*The Right to (Digital) Platform Work: Is Everybody Welcome on Board?*", dok je u drugom profesorka Filozofskog fakulteta Univerziteta u Beogradu dr Milana Ljubičić predstavila monografiju *Ukrštena diskriminacija žena i devojčica sa invaliditetom i instrumenti za njihovo osnaživanje*.

Tematski broj „Demografske promene, radna prava i socijalna sigurnost: Izazovi, izbori i mogućnosti", dakle, pruža uvid u rezultate istraživanja više važnih pitanja koja tesno povezuju demografiju, radna prava i sisteme socijalne sigurnosti. Ona su izučena iz perspektive različitih grana prava – radno pravo, socijalno pravo, međunarodno radno pravo, medicinsko pravo odnosno zdravstveno pravo, pravo osiguranja, kao i uključivanjem primene empirijskih metoda u društvenim naukama, uz analizu i ukazivanje na pravac razvoja uređivanja predmetnih pitanja u budućnosti, posebno u kontekstu digitalne i zelene tranzicije. Po pozivu za dostavljanje radova za ovaj tematski broj pristigli su i radovi koju su navedenu problematiku razmatrali sa stanovišta drugih društvenih nauka – ekonomije, sociologije, demografije, kao i antropologije, pri čemu su mnogi od ovih radova pozitvno ocenjeni i prihvaćeni za objavljivanje u narednim brojevima časopisa *Stanovništvo*. U tom smislu, izražavamo žaljenje što, zbog standarda u vezi sa obimom tematskog broja, nije bilo mogućnosti da svi ovi radovi budu zajedno objavljeni. Ipak, verujemo da će i na ovaj način čitaocima biti omogućeno pravilno i potpuno sagledavanje uticaja demografskih promena na svet rada i socijalnu sigurnost, i to iz ugla pravne i drugih društvenih nauka.

Uvaženi autori i autorke ponudili su teorijske i praktične uvide u vezi sa uticajem demografskih promena na svet rada i sisteme socijalne sigurnosti u kontekstu savremenih društvenih, političkih, ekonomskih i tehnoloških promena. Takođe, ukazano je i na važnije (pravne i druge) instrumente koji doprinose stvaranju uslova za delotvorno uživanje ekonomskih i socijalnih porava, i to u svim trima osnovnim fazama životnog ciklusa: fazi koja prethodi ulasku pojedinca na tržište rada, fazi profesionalne karijere, i fazi koja sledi po okončanju radnog veka (OIT 2013). Gostujuće urednice tematskog broja duguju najdublju zahvalnost svim autorima i autorkama za pokazani entuzijazam, za veliki trud i za sjajne radove kojima su obogatili ovu publikaciju. Kvalitetu objavljenih radova značajno su doprineli i ugledni recenzenti. Njihov veliki trud, kolegijalna predusretljivost i umesne i podsticajne sugestije bili su, malo je reći, dragoceni, na čemu im se i ovom prilikom najdublje zahvaljujemo. Najveću blagodarnost dugujemo uredniku časopisa *Stanovništvo* dr Vladimiru Nikitoviću na ukazanom poverenju i divnoj profesionalnoj prilici, kao i na nesebičnoj podršci i odličnim uslovima za rad koje nam je, zajedno sa svojim zamenikom dr Markom Galjakom, obezbedio prilikom osmišljavanja i pripreme ovog broja časopisa.

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LITERATURA

Bagari, S., & Franca, V. (2023). EU approach to the use of artificial intelligence in employment relationships. In D. B. Sarıipek & V. Franca (Eds), *Digital and green transition: New perspectives on work organization* (pp. 137–160). Bursa: DORA Basım-Yayın Dağıtım Ltd. Şti.

Cadiou, L., Genet, J., & Guérin, J.L. (2002). Évolutions démographiques et marché du travail: des liens complexes parfois contradictoires. *Économie et statistique*, 355–356, 139–156.

Dupeyroux, J. J., Borgetto, M., Lafore, R., & Ruellan, R. (2005). *Droit de la sécurité sociale* (15eme édition). Paris: Dalloz.

Fudge, J. (2014). Making claims for migrant workers: Human rights and citizenship. *Citizenship Studies*, 18 (1), 29–45. https://doi.org/10.1080/13621025.2014.865894

ILO (2017). *Inception report for the Global Commission on the Future of Work*. Geneva: International Labour Office. https://www.ilo.org/wcmsp5/groups/public/---dgreports/---cabinet/documents/publication/wcms_591502.pdf

ILO (2012). *The youth employment crisis: Time for action*. International Labour Conference, 101st Session. Geneva: International Labour Office. https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_175421.pdf

Kasagi, E. (2020). Solidarity across generations from the perspective of comparative law: Reconfiguration of different types of solidarity in the context of an aging society. In E. Kasagi (Ed.), *Solidarity across generations. Comparative law perspectives* (pp. 3–34). Cham: Springer Nature. https://doi.org/10.1007/978-3-030-50547-9_1

Kovačević, Lj. (2023). Gender perspective of development of labour law. In G. Carapezza Figlia, Lj. Kovačević & E. Kristoffersson (Eds.), *Gender perspectives in private law* (pp. 105–127). Cham: Springer Nature. https://doi.org/10.1007/978-3-031-14092-1_6

Kovačević, Lj. (2022). Pojam radne prakse i pravni položaj praktikanata – važnija radnopravna pitanja. U J. S. Perović Vujačić (Ed.), *Sudski postupak – pravda i pravičnost. Zbornik radova 35. susreta Kopaoničke škole prirodnog prava – Slobodan Perović. II tom* (pp. 585–634). Beograd: Kopaonička škola prirodnog prava – Slobodan Perović. https://kopaonikschool.org/wp-content/uploads/2023/04/TOM-II-ZA-SAJT.pdf

OIT (2013). *L'emploi et la protection sociale face à la nouvelle donne démographique*. Conférence internationale du Travail, 102e session. Genève: Bureau international du Travail.

Pieters, D. (2019). *Navigating social security options*. Cham: Palgrave Macmillan.

Stojković Zlatanović, S., & Jovanović, P. (2023). Workforce aging and decent work in the era of the digital economy – Towards a holistic public policy approach. *Stanovništvo*, 61(1), 53–68. https://doi.org/10.2298/STNV230220001S

Stojković Zlatanović, S., & Ostojić, I. (2021). Labour law status of platform workers – Between autonomy and subordination. In M. Reljanović (Ed.), *Regional law review* (pp. 269–281). Belgrade, Pécs & Osijek: Institute of Comparative Law. https://doi.org/10.18485/iup_rlrc.2021.2.ch16

Špadina, H. (2012). *Radne migracije državljana trećih država u EU: pravni okvir, problemi i perspektive*. Sveučilište J. J. Strossmayera u Osijeku. https://repozitorij.ds.unios.hr/islandora/object/dsos:13/datastream/PDF/download. Pristupljeno 10. oktobra 2023.

Tiraboschi, M. (2019). *Labour law and welfare systems in an era of demographic, technological, and environmental changes*. Newcastle upon Tyne: Cambridge Scholars Publishing.

Zilli, A. (2023). 'Non ho l'età': ageismo e gestione delle (diversità e) generazioni nel lavoro privato e pubblico. *Variazioni su Temi di Diritto del Lavoro*, 2, 327–342.

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Social protection of the self-employed in old age in the EU

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ABSTRACT

In most European Union (EU) Member States, self-employed individuals receive, on average, lower retirement pensions than employees. Furthermore, the number of self-employed pensioners is lower, and there is a significant proportion of self-employed workers in the EU who are not entitled to a retirement pension. The situation is even more delicate for the new self-employed, as their mode of labour market participation, career trajectory, and the income level they reach can potentially compromise their future pension prospects. This paper analyses the position of self-employed workers within national social security systems, with a particular focus on their methods of contribution and the consequential impact on their ability to access adequate retirement pensions as a form of replacement income, thus avoiding the risk of poverty and ensuring a decent standard of living in old age. In this area, the Member States and the EU interact within the framework of their respective competences, with the manifest aim of improving the social protection of self-employed workers in their senior years.

KEYWORDS

self-employed persons, social protection, contribution, old age pension system, European Pillar of Social Rights

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1 INTRODUCTION

Every national social security system has been shaped by political, economic, social, and cultural factors that collectively reflect the tradition, values, historical development, and society of the respective country. Since social security falls under the purview of each Member State, it is not unexpected to encounter differences among national systems, although they may share common elements.

The diversity of national social security systems within the EU, coupled with the heterogeneity of people working as self-employed, precludes the uniform treatment of social protection at the European level. Nevertheless, it is possible to discern features that are, to some degree, common to several Member States laws with regard to the social security of self-employed workers.

Overall, pensions are an essential component of social security, serving as a substitute income for wages or professional earnings, either temporarily or permanently. It is widely acknowledged that in most EU Member States, self-employed workers, when retiring at the same age and having completed an equivalent qualifying period as employees, receive lower old-age pensions. Moreover, the number of self-employed pensioners is lower, and there is a significant proportion of self-employed workers in the EU who are not entitled to a retirement pension. This holds true even in some public systems without differentiated protection in the area of contributory pensions for employees and self-employed workers (e.g., Finland). Largely, these differences can be attributed to variations in social security contribution regulations.

Frequently, comparisons are drawn between the contributions of the self-employed and those of employees and employers combined. In cases where the social contributions of the self-employed constitute a lower percentage than the joint contributions of salaried persons and employers, the debate arises as to whether it is appropriate to increase the social security contributions of the self-employed as a as a means of improving their protective coverage. This is the case in Belgium, where the contributions of self-employed workers are regressive and decrease as income increases.

This paper explores the motivations for these assertions, ultimately inquiring whether the retirement pension for the self-employed is adequate as a replacement income for the self-employed in EU countries. To address this question, we analyse the following points: Firstly, the composition of self-employed workers of today, considering not only the traditional practitioners but also emerging professionals (freelancers, crowd workers, economically dependent workers, among others). Secondly, the situation of the self-employed within national social security systems, with a special emphasis on their method of contributing to social security, since contributions emerge as the pivotal factor that ultimately determines the diminished protection they receive. Thirdly, the organisation of the pension system, whether structured around multiple pillars or with a public contributory system prevailing. We analyse the old-age pension arrangements for self-employed workers in both their public and supplementary dimensions. Finally, the paper presents the latest initiatives undertaken at the EU level to improve old-age social protection for self-employed individuals, as well as some initiatives carried out with this aim in several Member States.

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2 THE SELF-EMPLOYED IN THE EU TODAY

A distinctive feature of contemporary self-employment is the diversification of self-employed workers towards new employment types in line with certain behaviours and strategies within the current labour market, at least in the member countries of the EU.

The world of work has undergone substantial transformation in a very short time. The labour market has become globalised and highly competitive, fostering innovation and the adoption of new technologies across all stages of the production process (Gómez-Cano Alfaro, Bestratén Belloví and Gavilanes Pérez 2018). The economic and financial crisis of 2008 and the COVID-19 pandemic are two milestones of this evolving landscape that have caused job displacement and led to the widespread use of new technologies, with remarkable growth of teleworking. In this context, the heterogeneity of the self-employed is considerable, and the emergence of new professionals is not surprising, in some cases even blurring the line that traditionally separated employees from the self-employed.

Taking a global perspective, we contend that self-employed workers are deeply influenced by the economic development of the country in which they reside and the level of social protection it provides. Both factors can shape the figure of the self-employed in the fiscal and social security spheres. In fact, the proportion of self-employed individuals in the labour market is related to the economic cycle, decreasing in times of prosperity and increasing in times of crisis.

Presently, there are 32 million self-employed workers in the EU (constituting 14% of the total number of employees). They are present in all Member States, with the composition varying according to the type of self-employed worker, the sector of production, and the specific country. In an attempt to give an overview, we could classify them into three main groups (Vermeylen et al. 2017).

The first group encompasses half of the EU's self-employed population (16 million), including employers and traditional own-account workers. On one side, most employers employ multiple employees and enjoy financial security, even in case of sickness. On the other, traditional own-account workers usually do not employ any staff but have family helpers. Their activities are generally sustainable and not precarious. From the point of view of social protection, neither employers nor own-account workers pose significant problems since, in general, they enjoy economic solvency and independence.

The second group is comprised of people who became self-employed out of necessity. Most of them are former employees who were forced to become self-employed to get out of unemployment because they had no better job prospects. Typically, their businesses lack a physical site or an establishment. They are in a precarious situation, characterised by a low and/or irregular income, job insecurity, and unfavourable working conditions. More than half have no social security coverage in case of sickness. The so-called "economically dependent workers" predominate in this group. These individuals are primarily engaged in businesses or activities with low economic sustainability, and they depend financially on clients who provide them with their primary source of income.

Even more vulnerable are the "bogus self-employed," who work under the same conditions as wage-earners but are not classified as such.

Finally, the third group falls between the first two. It includes small-scale traders, restaurateurs, and farmers in the commerce and agriculture sectors. In general, they are economically independent, albeit financially insecure or irregular in the event of illness.

While we do not entirely exclude the genuine self-employed from this analysis, the worrying situation of those who have more recently become self-employed (found primarily in the second group mentioned) should be highlighted for two reasons. Firstly, the risk of poverty and social exclusion looms larger for these workers due to their economic instability and unsustainability, limited means and resources available to them to carry out their activity, their scarce or questionable training to perform multiple activities (in the case of "multi-services" workers), their income, control over their working conditions, and public records. Secondly, their social protection is considerably lower compared to that of traditional employees, a significant discrepancy considering their contributions. This leads us to analyse the situation of self-employed workers in terms of social security, according to the country and its economic development level or social protection index.

3 THE SELF-EMPLOYED IN SOCIAL SECURITY

The position of a self-employed worker in social security is influenced by general and objective variables, as well as elements of a subjective nature. By general and objective variables, we mean the degree of economic development of the country, the state of its labour market, and the level of social protection achieved. Elements of a subjective nature pertain to the professional training of the self-employed, their mode of participation in the labour market, and, notably, the level of professional income they earn and the way in which this income is considered in terms of social security and taxation.

Generally speaking, most national social security systems of Member States protect the self-employed, although the extent and nature of this protection vary. Apart from the peculiarities of each national system, it is noteworthy that social security was originally based on the profile of a full-time male employee with an indefinite contract, designated as the "head of household" (as exemplified in the case law of the Court of Justice on "*Directive 79/7/EEC*" on the principle of equal treatment for men and women in social security).

As modes of production, the labour market, and society itself evolved, social security protection gradually extended to other types of workers and forms of employment. The widespread presence of women in the labour market, the growing internal and external flexibility in the production system, the emergence of new non-standard contracts, the various forms of self-employment, and the evolution of family structures beyond the traditional family have gradually found their way into social security. This has been addressed by successive legal reforms of the personal and material scope of social security. These reforms have led social security to face new realities, which are essentially a manifestation of social evolution itself. Modernising social protection systems by improving the adequacy and coverage

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of social protection is key to preventing social exclusion.

This analysis focuses predominantly on the study of "contributory" social security systems, which, by offering protection linked to the professional status of the person, may establish distinct rules or regimes for self-employed workers and employees. Such distinctions are inconceivable within models of universal social protection, where certain benefits are extended to citizens based on the criterion of residence and in accordance with the economic capabilities of the State, subject to means testing or not. In these models, an individual's employment or professional situation is generally irrelevant.

3.1 ACCESS TO SOCIAL SECURITY AND THE EXTENT OF COVERAGE

The situation of self-employed workers in social security is often assessed or measured in comparison to or in contrast with the protection provided to employees. In general, and in an attempt to homogenise both groups, the rules designed for employees apply equally to the self-employed, obviating the peculiarities of self-employment in order to implement a specific social protection measure. This is detrimental to some categories of self-employed workers and can, at times, cause alarming situations due to the evident risk of poverty and social exclusion that may result.

In the worst-case scenario, the self-employed with irregular professional trajectories, and/or with low or fluctuating incomes, on which they contribute to social security, face the risk of exclusion from certain national social security systems. This happens when they do not reach a certain income threshold, a situation sometimes mitigated by allowing them to opt for voluntary inclusion in the social security system (e.g., in Romania).

The self-employed generally enjoy less social protection than employees, both in terms of the range of benefits available to them and the breadth of coverage. The benefits that are generally excluded from social security protection are unemployment, workplace accidents, and occupational injuries and diseases. Some countries, such as Germany, have gradually introduced these benefits over time, either on a mandatory or voluntary basis (Bäcker 2017).

Some national social security systems recognise the same benefits for employed and self-employed workers. However, this recognition is purely nominal because there are significant differences in eligibility requirements for the two groups, usually to the detriment of the self-employed. A typical case is sickness benefits (Sirovátka, Jahoda and Malý 2017; European Commission, Directorate-General for Employment, Social Affairs and Inclusion 2023).

Finally, in some Member States social security protection offered to the self-employed and employees is formally identical, but the former receive lower benefits (Kallomaa-Pua and Kangas 2017).

3.2 THE ISSUE OF CONTRIBUTION

Income levels, social security costs, and the taxes imposed on the self-employed all influence the way they contribute to social security, which in turn affects the amount of social benefits they are entitled to receive. The nature of self-employment means that their income is not fixed but uncertain and variable over time. Social Security must take this reality into account when formulating

contribution rules for the self-employed, ensuring that they are not excessively burdensome in view of the way self-employed individuals work and that they do not jeopardise the survival of their business activities.

There is no common or single reference contribution model for all Member States. National social security systems often offer self-employed workers the possibility of choosing the basis and/or rate of contribution from among several options or of applying for specific coverage. This discretion generally leads to the choice of the lowest level of protection, even to the detriment of a secure retirement pension (European Commission, Directorate-General for Economic and Financial Affairs 2018a).

In this analysis, we exclude self-employed people with a solid economic footing, assuming that they choose a contribution basis that will guarantee them adequate coverage within the statutory limits provided for self-employed workers. Therefore, the object of our analysis is the self-employed who, due to their form of work, receive low and/or irregular income. Likewise, we consider the self-employed who register fluctuations in their income, who may face penalties if their income falls below the estimated amount when regular contribution payments are required. They will probably choose the minimum contribution base or the lowest level allowed, so if they meet the required qualifying period, they will consequently receive low benefits.

In these cases, it is not uncommon for legislation to provide for exemption from the payment of contributions for self-employed workers with a high degree of income insecurity (as observed in Belgium). Similar measures may involve the exemption of self-employed persons from the obligation to contribute to the pension scheme when their income level does not reach a certain threshold or allowing them to make voluntary contributions. In summary, these measures are likely to result in a serious lack of social protection.

Romania might be an extreme example. The self-employed constitute 17% of the working population, yet only 10% receive a contributory retirement pension, which means that the majority of this group may rely on social assistance protection. Pension insurance is compulsory for those who exceed the minimum insurable threshold, equivalent to 35% of the average gross monthly salary at the national level. The applicable rate is 10.5%, unless they opt for the full rate of 15.8%. Self-employed workers with incomes below the minimum insurable threshold who have opted for protection must pay contributions based on this minimum amount. It places them at a disadvantage compared with part-time employees, who only pay contributions on their actual income. Even when the minimum threshold is reached, very few self-employed workers pay social security contributions due to the high contribution rates and the complexities involved in calculating the income assessment basis. In fact, the pension insurance contribution to be paid by a self-employed individual (€70 per month) constitutes a significant financial burden within the context of the country's economy (Spasova et al. 2017).

In Finland, self-employed people who start working must take out compulsory pension insurance with tax-deductible premiums to gain coverage under the social security system (Kallomaa-Pua and Kangas 2017). This insurance cannot be replaced by voluntary insurance and is contingent on the estimated annual

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income they will earn from their activity exceeding a certain threshold. However, if their income is below that reference, they can take out private pension insurance. If they declare lower incomes, albeit above the threshold, it will obviously have an impact on the amount of their benefits.

In a very different position is Slovakia, where there is some debate as to whether the contributions paid by the self-employed to pension insurance are adequate or, on the contrary, very high compared to those paid by employees. Self-employed workers are obligated to pay health, sickness, and pension insurance contributions if their declared gross income exceeds the statutory tax base (determined on the basis of the average annual salary of the previous year). Most of the Slovak self-employed pay contributions at the minimum rate, impacting the size of their pensions and raising questions about the provision of sufficient coverage. An amendment to the "*Social Insurance Act*" in January 2013 increased the minimum contribution base in an attempt to mitigate this situation. However, it is too early to assess the effects of the measure on the pension entitlements of the Slovak self-employed, though there is evidence of a short-term positive impact on other benefits such as health and sickness insurance.

The amount used as the basis for contribution calculation may be directly or indirectly related to the income derived from the self-employed worker's professional activities, whether or not it is taxed. It may also consist of a fixed amount established by law or the choice of a contribution base within a minimum and maximum limit. In any case, the use of the correct basis for contribution calculation, adjusted as much as possible to the net income earned by the self-employed person, will have a direct influence on the degree of protection. If the basis is very low, the level of benefits available will also be low. Conversely, if the base is very high, the resulting contribution will be very expensive for the self-employed worker, although it will improve the level of benefits.

In this regard, the Belgian system is exemplary, taking as a reference the self-employed person's income tax declaration and calculating the contributions based on their annual net income. The calculation is divided into two stages: in the first (provisional), the Social Insurance Fund determines the quota from the self-employed person's tax return from three years ago and suggests the corresponding quarterly payment. In the second stage (definitive), the Fund proposes that the self-employed worker regularise the contributions paid after having been duly informed by the tax authority of their definitive settlement (Guerrero Padrón 2016).

The deduction of professional expenses of self-employed workers may influence the calculation of the contribution and the consequent benefit amount, depending on the type of expenses considered and the way in which the deduction is made. In the Czech Republic, the pensions of self-employed persons are 38% lower than those of employees due to their lower premiums for pension insurance. Most self-employed workers choose to pay the lowest possible statutory premium, which obviously has an impact on the level of protection they will achieve, notwithstanding the guarantee of a minimum pension for those who have consistently contributed to the system at the minimum permitted level throughout their professional career (Sirovátka, Jahoda and Malý 2017).

In most EU Member States, the contribution rate for self-employed workers is close to or the same as that applied jointly to employees and employers. In Germany, for example, self-employed workers covered by public pension insurance bear the full contribution rate. As a peculiarity, during the first three years of self-employment, the contribution is reduced by 50%. Likewise, the self-employed who prove fluctuating income can choose to pay a lower or higher quota than the standard one (Bäcker 2017).

In contrast, some countries set a lower contribution rate for self-employed workers. This is the case in Belgium, where there is no contribution ceiling for employees, while self-employed professionals have their income capped at a specific threshold, beyond which the contribution rate is zero. Below this threshold, the applicable rate decreases (De Wispelaere and Pacolet 2017).

Romania presents a unique situation for economically dependent self-employed workers. When they exceed a certain income level, they are mandatorily enrolled in the pension insurance system, with the contribution obligation shared between them and their sole client, who takes on the employer's share of the contributions. Similarly, in Portugal, contracting entities are required to pay contributions for economically dependent self-employed workers (Schneider, Petrova and Becker 2021).

Spain has also adopted measures regarding contributions for the self-employed, including the establishment of a fixed contribution of €50 for the first year for new self-employed workers to facilitate their integration into the labour market ("*Law 6/2017*"). However, the most innovative reform is the new contribution system for the self-employed, which is based on net annual income earned from all their economic, business, or professional activities ("*Royal Decree-Law 13/2022,*" effective as of January 1, 2023). Other improvements apply to the calculation of the regulatory base in old-age pensions, such as the integration of contribution gaps into the calculation of the regulatory base to facilitate access to retirement pensions.

In summary, it is not surprising that there may be a certain lack of motivation to comply with the obligation to pay social security contributions, including conduct tending to under-contribute or avoid payment or equally serious practices of tax evasion. These behaviours in sum only underscore the low income levels of those self-employed workers. Perhaps compensating for the higher social security contributions with lower income tax could help combat or at least reduce the above-mentioned disincentive effect.

4 OLD-AGE PENSION FOR THE SELF-EMPLOYED

Old-age pension is an integral component of the social protection afforded to the self-employed across all EU Member States, where a wide array of approaches exists to structure this protection against the eventuality of retirement. The influence of the two classical models – inspired by Bismarck and Beveridge – on Member States' pension systems is generally evident, with none of the systems presenting as exclusively universal or contributory. Rather, they all combine elements of both models to a greater or lesser extent. Depending on the degree of influence, systems can be described as typically universal (e.g., Nordic countries), others as heavily contributory (e.g., Germany), and lastly, there is a wide range of hybrid social security systems (e.g., Spain).

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It is possible to identify certain common elements or features within the diversity of pension systems in the EU in order to provide a general overview of retirement protection for the self-employed.

Regardless of the varying levels of structural development that each system may have undergone, in general, there are two main levels of protection. Firstly, a basic public one, and secondly, a complementary and voluntary one, of professional or private origin, whose roots and improvement are not the same across all Member States, nor are they the same for self-employed workers (Schneider, Petrova and Becker 2021).

4.1 THE PUBLIC OLD-AGE PENSION SYSTEM

The public level or the first pillar of protection offered by all national pension systems is mainly organised in two ways: one based on criteria of a universal nature and the other based on occupational requirements.

4.1.1 UNIVERSAL (NON-CONTRIBUTORY) PUBLIC PENSION

Non-contributory public retirement pensions are typically available to all citizens of the country and are normally financed by the State through taxation. Their purpose is essentially to guarantee a minimum income to combat or avoid the risk of poverty, and they are based on basic pensions, either flat rate or means-tested.

The Netherlands recognises a flat-rate state pension for those who have worked (including the self-employed) or have resided in the country, conditional on reaching retirement age (65). It is financed through a specific income tax contribution (pay-as-you-go system). The right to the basic state pension does not require a minimum qualifying period. The full pension is obtained after 50 years of residence/work, with a 2% reduction for each missing year. The pension amount is calculated based on the minimum wage, which results in low pensions that require supplementation from the second and third pillars. When a full pension is not reached and there is no other income, there is supplementary income support to ensure the level of income set by the government (Camós Victoria, García de Cortázar and Suárez Corujo 2017).

In Denmark, the public component of the pension system is essential for protecting the self-employed. It encompasses two pensions. Firstly, there is a basic and universal pension, financed through general taxation, with the amount depending on the number of years of residency in the country. It consists of both a fixed and means-tested portion. Secondly, there is a supplementary labour market pension financed by employers and employees. This pension is voluntary for the self-employed, and its amount depends on the contributions paid, which are, in turn, based on the hours worked.

In a similar but distinct position is Sweden, where the non-contributory pension plays a secondary role by acting as a supplement to another main contributory pension. Indeed, the public pension system focuses on the latter, which consists of a basic part financed through earnings-related contributions under the pay-as-you-go financial system and a supplementary part based on an individual capitalisation system. The complementary non-contributory pension is financed through taxes and acts as a minimum guarantee when resources are lacking.

In the aforementioned systems, the public level, organised around basic pensions, is complemented by the extensive development of supplementary pension schemes, at least for employees. Without this necessary improvement, the overall pension of the retired person would be incomplete and lower. This is particularly the case for self-employed workers, as discussed in more detail below.

4.1.2 CONTRIBUTORY PUBLIC PENSION

Contributory protection linked to the career and contributions of both self-employed and employees is common to many EU Member States. It is generally based on a pay-as-you-go financial system and acts as a replacement income, allowing workers to maintain a certain level of income when they retire. On average, the contributory pension for the self-employed in most EU countries is lower than that received by employees. This discrepancy can be attributed to differences in contribution forms and amounts, as discussed in the following sections.

Some pension systems offer protection predominantly via a single public contributory pension, supplemented by limited non-contributory protection, which comes into play when the requirements of the contributory scheme are not met. Occupational pension schemes and individual savings plans play a very secondary or residual role in these systems. This is the case in Italy and Spain, where basic levels of public contributory and non-contributory protection prevail and where authorities have tried unsuccessfully to improve them through private alternatives or special tax treatment.

Otherwise, in France, the peculiarity is that the compulsory public scheme integrates two pension benefits: a basic one and a larger supplementary one, provided for in the compulsory supplementary pension schemes for various categories of self-employed persons (traders, craftsmen, farmers, and liberal professionals). Both are protection mechanisms financed through income-related contributions and operate on a pay-as-you-go basis (Camós Victoria, García de Cortázar and Suárez Corujo 2017).

Contributory protection for the self-employed is compulsory in most Member States, although this does not prevent certain particularities and differences in the level of protection afforded to the self-employed and employees, as well as differences in treatment among self-employed workers themselves depending on their specific category and economic sector.

Firstly, some Member States exclude from the public pension system self-employed workers whose income is below a given threshold, although voluntary protection is occasionally allowed to avoid gaps in contributions (e.g., Bulgaria, Finland). Otherwise, in Romania, most self-employed workers are not protected by the old-age pension because their earnings fall below the minimum income threshold required for public insurance. In Belgium, self-employed persons in secondary occupations are excluded from the old-age pension scheme for the self-employed.

Secondly, the protection of self-employed workers through pension insurance is not always compulsory. In Germany, there is no universal pension system comparable to pension systems of Nordic countries. Instead, the compulsory public system in Germany relies on contributory pensions financed through contributions and operates on a pay-as-

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you-go basis, protecting the vast majority of employees with some exceptions (marginal workers). Complementary private protection, such as individual savings plans, exists, but there are no occupational pension schemes covering self-employed workers.

Thirdly, some countries do not extend certain types of retirement benefits, available to employees, to the self-employed. This is currently the case in Spain with regards to partial retirement (since there is no regulatory development) and early retirement.

Fourthly, the provision of very limited basic state pensions restricts protection for those individuals, such as the self-employed, who cannot access supplementary occupational pensions. The UK, where the self-employed are very numerous in the labour market, offers only a modest basic state pension to this group, denying them access to any supplementary state pension, unlike their employed counterparts. Similarly, in Ireland, the public pension is characterised by very low amounts that are only sufficient to prevent extreme poverty. A distinction is made between a compulsory contributory state pension with stricter eligibility requirements for the self-employed, such as the qualifying period or contribution base, which follows a pay-as-you-go financial system (although the State intervenes in the financing if the amount collected is insufficient) and a non-contributory assistance pension, financed by the State and based on non-contributory requirements (age, income below a certain threshold).

Fifth, a major issue is the transferability of social protection rights when moving from one employment status to another, for example, from employment to self-employment or unemployment, or when combining employment and self-employment or starting or closing a business. Often, contributions made under one employment status are not recognised when transitioning to a different one, resulting in the loss of social protection rights.

Finally, there may be differences among self-employed workers in the same country with regards to access to a retirement pension. In Italy, 18 special funds (*Casse Professionali*) manage pensions for liberal professions, while the National Institute of Social Security (*INPS*) oversees pensions for other self-employed (Jessoula, Pavolini and Strati 2017). In Austria, bar associations are the only chambers of liberal professions that have made use of the possibility of opting out of the mandatory pension plan for self-employed workers; therefore, insurance for attorneys is organised in a separate pension scheme, and there is also a special statutory old-age pension scheme for notaries (Schneider, Petrova and Becker 2021).

4.2 SUPPLEMENTARY PROTECTION: OCCUPATIONAL PENSIONS AND PRIVATE FUNDS

The public retirement pension is not always adequate or sufficient to maintain the level of income the pensioner had while working. This has justified the use of supplementary pension techniques at the company level, typically promoted through collective bargaining, as well as at an individual level, based on personal savings and with more favourable tax treatment to encourage their use by public authorities.

Complementary protection is usually voluntary, private, and capital-funded. It consists of what in some pension systems are called the second and third pillars, i.e., occupational and private pension schemes, respectively. As might be

expected, the importance of occupational and individual supplementary pension schemes varies among Member States. This type of provision is particularly relevant in Member States whose pension systems are designed as an integrated set of insurance schemes, in which the basic public pension must necessarily be completed by supplementary occupational and/or individual pensions.

Occupational pension schemes can be organised at the firm, sector, or occupational level, and even by groups of companies. The business origin explains the widespread impact on employees who are potentially covered by occupational pension schemes originating in collective bargaining. However, this is not the case for self-employed workers, who are often excluded from second-pillar protection, as seen in Denmark and Germany. In the United Kingdom, for example, considering its low basic state pension, the development of private supplementary protection would be fully justified. However, pension schemes managed through collective bargaining or agreed upon with employers do not extend to the self-employed, leaving them to rely on supplementary protection through individual schemes based on their own savings capacity.

Nevertheless, there are some exceptions to this blanket exclusion. For example, in Sweden, the self-employed have the possibility to opt for occupational pension plans for industry and commerce, as well as those for manual workers in the private sector (both plans are compulsory for employees in their corresponding sectors).

In the Netherlands, the second pillar of pension protection plays a major role in the overall pension system and is almost compulsory for employees. Although the second pillar does not cover most of the self-employed, they are allowed to promote their own pension funds, as liberal professionals do (Camós Victoria, García de Cortázar and Suárez Corujo 2017). Despite the absence of legal restrictions, the high cost of this type of coverage is in practice a major barrier for the Dutch self-employed, and therefore has very limited influence on those with lower incomes.

Spain has recently incorporated employment pension plans for the self-employed into its legislation in a determined attempt to strengthen the pension rights of the self-employed, complementing the protection of the public system. The so-called "simplified occupational pension plans" can be promoted by associations of self-employed workers, in which the participants are exclusively self-employed workers ("*Law 12/2022*").

Notwithstanding these exceptions, the widespread exclusion of self-employed workers from occupational pension schemes can only be compensated for through independent savings or the purchase of private insurance, unless specific protection instruments comparable to those of the second pillar are made available.

Indeed, individual pension plans based on personal savings represent an alternative for improving the future public pension of the self-employed. For instance, in Belgium, where the third pension pillar is made up of personal retirement savings and life insurance schemes, almost half of the self-employed are covered by a supplementary pension (De Wispelaere and Pacolet 2017).

The utilisation of this mechanism varies highly among Member States, with the likelihood of taking out this type of insurance depending largely on

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a person's financial capacity. Although private pension schemes can theoretically help increase or maintain income levels in retirement, they are a difficult or unlikely alternative for self-employed workers who choose to contribute on the minimum permitted basis and do not take out voluntary coverage. Likewise, it represents a significant financial burden for many self-employed people, possibly due to income limitations and the costs associated with their professional activities.

In Germany and the Czech Republic, third-pillar measures have seen limited success as far as the average self-employed person who lacks the conditions necessary to accumulate capital is concerned. In these cases, the public contributory pension becomes an inadequate or insufficient protection, unable to replace the professional income lost in retirement. The situation is different in southern European countries, such as Italy and Spain, where the application of occupational or individual pension schemes is lower or virtually nonexistent.

However, some countries are taking steps to promote private savings among the self-employed through tax deductions. In Sweden, for example, the self-employed are allowed to deduct a portion of their private pension savings. In Norway, tax allowances are offered to the self-employed in connection with supplementary retirement savings, albeit on less favourable terms than those for employees (Nelson et al. 2017).

At present, complementary protection measures have not seen the desired level of development, implementation, and success. The protection of the self-employed continues to focus almost exclusively on the public contributory pension.

4.3 THE OLD-AGE PENSION AS A REPLACEMENT INCOME FOR THE SELF-EMPLOYED

The adequacy of a pension can be measured based on at least three parameters: its amount as a replacement income, its duration, and its ability to prevent and mitigate the risk of poverty and exclusion (European Commission, Directorate-General for Economic and Financial Affairs 2018a). Given the reflections in the preceding paragraphs, it is questionable whether the old-age pension can reasonably replace the loss of labour income of self-employed workers (especially the most vulnerable) when they reach retirement age and for the duration of this situation, enabling them to avoid the risk of poverty and maintain a decent standard of living.

Compared to ordinary employees with permanent full-time contracts, the self-employed receive lower than average retirement pensions. Additionally, there is a lower proportion of self-employed pensioners relative to the total number of retirees. However, the most worrying aspect of the whole situation is the high proportion of self-employed people at the EU level who do not generate pension rights (Spasova et al. 2017).

The way the pension system is organised is also relevant. Systems with multiple pillars, on the one hand, conceive pension as the sum of a basic public pension (universal or contributory, depending on the case) and a supplementary pension of occupational origin, as well as, where appropriate, a third one derived from the individual pension plan. On the other hand, there are systems with a predominance of public contributory pensions and little or no development of supplementary pension mechanisms. These systems

clearly reinforce the public pension, but this does not prevent its total amount from falling to minimum levels as a result of the worker's professional career and contribution effort.

Both types of systems apply to employees, but not absolutely to self-employed workers because they are generally excluded from the additional protection offered by occupational pension schemes established through collective bargaining. Therefore, if we rule out the supplementary occupational pension and consider that, in many cases, it's challenging for self-employed workers to improve their retirement income through individual pension plans due to their low savings capacity, in the end, the state pension often forms the core of protection for the self-employed in old age.

In addition to the way in which the pension system is organised, the conditions of access to the old-age pension and the calculation of this benefit influence the situation of self-employed workers. In general, these regulations have been formulated with conventional employees in mind and have gradually been extended to cover the self-employed, without taking into account their specific characteristics and needs, which are substantially different from those of regular employees.

5 NATIONAL POLICIES IN THE FRAMEWORK OF THE EUROPEAN PILLAR OF SOCIAL RIGHTS

To delve deeper into the issue, it is imperative to take into account the policies and activities adopted by Member States to improve and strengthen their pension systems and, in particular, the situation of the self-employed in these systems. For decades, Member States have grappled with questions surrounding the sustainability of pension systems and the challenges posed by ageing populations. They have also sought to improve the social protection of the self-employed in the realm of pensions.

There are numerous examples showing a widespread concern in European comparative law regarding the social security status of the self-employed, especially in those aspects that hinder access to and enjoyment of an adequate retirement pension. Although actions vary depending on the specific national social security system in place and its specific problems concerning old-age pensions, the influence of EU policy can be discerned. One such point of reference is the European Pillar of Social Rights.

The European Pillar of Social Rights, established in 2017, aims to enhance living and working conditions within the EU through 20 key principles and rights. In terms of social protection, Principle 12 states that "*self-employed workers are entitled to adequate social protection*." In addition, Principle 15 stipulates that "*retired workers and the self-employed are entitled to a pension commensurate with their contributions and guaranteeing an adequate income*." This social pillar serves as a benchmark for monitoring the performance of EU Member States' employment and social policies and incorporates a new approach to overarching social priorities across all social policies.

In Belgium, for example, the 2015 pension reform raised the statutory retirement age across the three main public old-age pension schemes (employees, self-employed, and civil servants) from 65 for men and women to 66 in 2025 and 67 in 2030. A career of 45 years is still required to obtain a full

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pension (European Commission, Directorate-General for Economic and Financial Affairs 2020). Since 2016, Belgium has equalised the amount of the minimum pension for employees and self-employed persons. This important measure is part of a broader policy aimed at harmonising the protection levels for these two groups, each covered by a different pension scheme. The goal is to improve the purchasing power of the self-employed. At present, the challenge lies in addressing contributions. To correct the imbalance between the two, it will probably be necessary to increase the contributions of the self-employed and improve their benefit levels, abandoning the regressive system mentioned above. Another topic of active political debate is how to encourage the use of the second and third pillars by the self-employed.

In Italy, the primary challenges revolve around the first pillar and its management by *INPS* and the *Casse Professionali*. The undertaken reforms aim at progressive harmonisation. Although universal coverage is guaranteed, differences persist in access and calculation of the retirement pension to the detriment of the self-employed (Jessoula, Pavolini and Strati 2017) and also regarding early retirement (European Commission, Directorate-General for Economic and Financial Affairs 2020).

In Denmark, the government unsuccessfully proposed in 2015 establishing a compulsory savings pension for people without sufficient resources, including the self-employed, by applying a progressive percentage to their working income. The aim was to address the problem of inadequate retirement pensions for people not covered by the second pillar of protection and who are reluctant to participate in individual savings plans, which leaves them only with a reduced public pension (Kvist 2017).

Pension adequacy is currently a major issue in Slovakia, where pension regulations and raising the retirement age are under discussion. While the rules are the same for both employees and the self-employed, differences arise in relation to the expected levels of old-age pensions and, consequently, pension adequacy (European Commission, Directorate-General for Economic and Financial Affairs 2018b). It is noteworthy that self-employed workers in this country contribute at a rate of 18% of the assessment base, while employees contribute at a rate of 4%.

In Greece, contribution regulations have seen improvement. Since 2017, pension funds have been consolidated into one entity, with uniform rules for contributions and access to benefits for all employees and self-employed workers. Currently, the calculation of the contribution base for the self-employed is based on the net income declared for tax purposes in the previous year.

Germany faces the challenge of making pension insurance compulsory for the entire working population. The debate focuses on the potential compulsory incorporation of self-employed workers who lack other public protection, revising their contribution rules, the immediate economic effects of potential new contributions to the pension insurance fund, and inevitably, the long-term cost of protective action (Bäcker 2017).

Lastly, in Lithuania and Romania, measures have been implemented to improve legal and effective access to retirement for previously excluded categories, and to mandate protection for the self-employed (European Commission, Directorate-General for Economic and Financial Affairs 2018a).

6 RECOMMENDATIONS ON ACCESS TO SOCIAL PROTECTION

As can be seen from the discussion above, improving the social protection of the self-employed remains an ongoing task involving collaboration between Member States and EU institutions. In line with Principles 12 and 15 of the European Pillar of Social Rights and guided by the concern to address the issue of the adequacy of pensions, the Council adopted the "*Recommendation on access to social protection*" (2019), which encourages Member States to take the necessary measures to improve social protection for the self-employed.

The Recommendation does not limit the autonomy of the Member States in the establishment and management of their national social protection systems, nor does it affect the maintenance of the level of social protection achieved by each system. This document applies to employees and the self-employed, including people transitioning from one status to the other or having dual status. It recognises that different rules may apply to workers and self-employed persons. Within this framework, Member States are recommended to ensure the principles of formal and effective coverage, adequacy, and transparency, which will serve as guiding markers for Member States as they navigate the implementation of social protection for self-employed workers in their respective social security systems.

Therefore, the Council Recommendation summarises the actions that Member States may undertake in their social security systems to improve the social protection of the self-employed, while also charting a path for the future. In this regard, the exceptional measures adopted during the COVID-19 pandemic to improve the protection of vulnerable groups (unemployed, non-standard workers, and the self-employed) serve as inspirational models, as acknowledged by the European Commission in the European Pillar of Social Rights Action Plan (2021). In any case, the idiosyncrasies of each national system will determine the actions that must be adopted and the opportune moment for their implementation.

A 2023 European Commission report on the implementation of the aforementioned 2019 Council *"Recommendation on access to social protection for workers and the self-employed"* confirmed that many self-employed workers still contend with significant gaps in social protection coverage. This report also sheds light on the ongoing debates within Member States. Some national reforms focus on adapting social protection systems to the changing nature of work and on better protecting self-employed workers. However, there are still countries in which self-employed workers do not have sufficient access to the branches of social protection more closely linked to the labour market. The improvements in this field are not uniform across Member States, nor are they always addressed within different branches of social protection. Rather, they are influenced by the distinctive weaknesses and priorities of each national system. Nevertheless, challenges will persist as long as the self-employed continue to face a higher risk of monetary poverty than standard workers. Notably, at least half of the Member States have taken or announced measures to guarantee adequate retirement pensions for the self-employed. However, the impact of these measures can only be evaluated over the medium to long term.

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7 CONCLUSION

Self-employed workers are deeply influenced by the degree of economic development and the level of social protection achieved by their country of residence. Both factors can shape the status of the self-employed worker in the realms of taxation and social security. While this analysis does not exclude traditional self-employed categories such as traders, farmers, fishermen, liberal professionals, and craftsmen, it does underscore the particular concern surrounding a newer class of self-employed individuals we have termed "vulnerable". The risks of poverty and social exclusion loom larger for them, and they experience lower levels of social protection compared to employees, especially with regard to retirement protection.

With some exceptions, the concept of supplementary protection through occupational pension schemes for the self-employed is generally rejected. Their ability to take out private savings insurance is also uncertain. Attention therefore necessarily turns to public contributory systems, where the professional activities of the self-employed and their contributory history directly influence the extent of their pension benefits. An incomplete and precarious career trajectory is likely to influence future pension accessibility and the level of coverage. In this context, achieving a retirement pension that meets the necessary standards to be considered an adequate replacement income for lost occupational earnings and preventing and alleviating the risk of poverty becomes challenging.

Numerous reforms within national social security systems have sought to extend protection to all self-employed workers by integrating them into the social security system or even creating specific protection schemes. Measures have also been taken to change the way the contribution base is calculated, to harmonise the applicable rates or to review access conditions for benefits—in short, to improve coverage levels. The issue is delicate, and without proper preliminary studies, future pensioners could find themselves with access to meagre minimum benefits, unless they are duly compensated through universal social protection. This could lead to a generation of pensioners in dire need.

In this generalised debate, public authorities may need to determine which types of self-employed workers should be encouraged and supported due to their contributions to stability and growth. Similarly, there is a need to identify those who should be discouraged or transitioned into wage labour, but with guarantees of stability. It would be prudent to also consider actions in the field of lifelong learning to foster stability and economic progress, as well as instruments of trade union representation to promote their protection.

In any case, the reform process has not yet been completed, and it will continue to influence the political agenda of both Member States and the EU in the years to come.

REFERENCES

Bäcker, G. (2017). ESPN Thematic report on Access to social protection of people working as self-employed or non-standard contracts, Germany 2017. European Social Policy Network. https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=7993&furtherPubs=yes

Camós Victoria, I., García de Cortázar, C., & Suárez Corujo, B. (2017). *La reforma de los sistemas de pensiones en Europa, Los sistemas de pensiones de Países Bajos, Dinamarca, Suecia, Reino Unido, Italia, Francia y Alemania vistos desde España, Murcia, España, Laborum*. España.

De Wispelaere, F., & Pacolet, J. (2017). ESPN Thematic report on Access to social protection of people working as self-employed or non-standard contracts, Belgium 2017. European Social Policy Network. https://ec.europa.eu/social/BlobServlet?docId=17685&langId=en

European Commission, Directorate-General for Employment, Social Affairs and Inclusion (2018a). *The 2018 pension adequacy report: current and future income adequacy in old age in the EU. Volume I.* Publications Office. https://data.europa.eu/doi/10.2767/406275

European Commission, Directorate-General for Employment, Social Affairs and Inclusion (2018b). *The 2018 pension adequacy report: current and future income adequacy in old age in the EU. Volume II, Country profiles.* Publications Office. https://data.europa.eu/doi/10.2767/653851

European Commission, Directorate-General for Economic and Financial Affairs (2020). The 2021 Ageing Report, Underlying Assumptions and Projection Methodologies. Luxembourg: Publications Office of the European Union (Institutional Paper Nº 142, November 2020). https://mrosp.gov.hr/UserDocsImages/dokumenti/Uprava%20za%20mirovinski%20sustav/The%202021.%20ageing%20report.pdf

European Commission, Directorate-General for Employment, Social Affairs and Inclusion (2023). Your Social Security Rights in Slovakia. Luxembourg: Publications Office of the European Union. https://ec.europa.eu/social/BlobServlet?docId=13773&langId=en

European Commission (2023). *Report on the implementation of the Council Recommendation on access to social protection for workers and the self-employed*. EUR-Lex. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52023DC0043&qid=1676473347749

Gómez-Cano Alfaro, M., Bestratén Belloví, M., & Gavilanes Pérez, C. (2018). Revolución 4.0: El futuro está presente. Instituto Nacional de Seguridad, Salud y Bienestar en el Trabajo (Nº 94: 6–17). https://www.insst.es/documents/94886/175994/Número%2094%20%28versión%20pdf%29.pdf

Guerrero Padrón, T. (2016). Régimen comparativo del sistema cotizatorio de los trabajadores autóno-mos españoles y belgas. Paper presented at *Las fronteras del Derecho del Trabajo en el marco comparado europeo: autónomos y becarios – XXVI Congreso Nacional de Derecho del Trabajo* y *de la Seguridad Social*, Córdoba, España (CD attached).

Jessoula, M., Pavolini, E., & Strati, F. (2017). ESPN Thematic report on Access to social protection of people working as self-employed or non-standard contracts, Italy 2017. European Commission: European Social Policy Network (Thematic report). https://ec.europa.eu/social/BlobServlet?docId=17700&langId=en

Kallomaa-Pua, L., & Kangas, O. (2017). ESPN Thematic report on Access to social protection of people working as self-employed or non-standard contracts, Finland 2017. European Commission: European Social Policy Network (Thematic report). https://ec.europa.eu/social/BlobServlet?docId=17693&langId=en

Kvist, J. (2017). ESPN Thematic report on Access to social protection of people working as self-employed or non-standard contracts, Denmark 2017. European Commission: European Social Policy Network (Thematic report).

Nelson, K., Palme, J., Burman, S., & Eneroth, M. (2017). ESPN Thematic report on Access to social protection of people working as self-employed or non-standard contracts, Sweden 2017. European Commission: European Social Policy Network (Thematic report). https://ec.europa.eu/social/BlobServlet?docId=17713&langId=en

Schneider, S. M., Petrova, T., & Becker, U. (Eds.) (2021). *Pension Maps: Visualising the Institutional Structure of Old Age Security in Europe and Beyond*. Max Planck Institute for Social Law and Social Policy. https://www.mpisoc.mpg.de/en/social-law/research/research-projects/pension-maps/

Sirovátka, T., Jahoda, R., & Malý, I. (2017). ESPN Thematic report on Access to social protection of people working as self-employed or non-standard contracts, Czech Republic 2017. European Commission: European Social Policy Network (Thematic report). https://ec.europa.eu/social/BlobServlet?docId=17689&langId=en

Spasova, S., Bouget, D., Ghailani, D., & Vanhercke, B. (2017). *Access to social protection for people working on non-standard contracts and as self-employed in Europe. A study of national policies 2017*. Publications Office. https://data.europa.eu/doi/10.2767/700791

Vermeylen, G., Wilkens, M., Biletta, I., Fromm, A., Parent-Thirion, A., & Rodriguez Contreras, R. (2017). Exploring self-employment in Europe. Eurofound: Publications Office of the European Union Luxembourg (Research Report). https://www.eurofound.europa.eu/publications/report/2017/exploring-self-employment-in-the-european-union

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Socijalna sigurnost samozaposlenih lica u EU za slučaj starosti

SAŽETAK

U većini država članica Evropske unije (EU) samozaposlena lica ostvaruju, u proseku, niže starosne penzije u odnosu na ona lica koja su uživala radnopravni status zaposlenih tokom radnog veka. Osim toga, ukupan broj korisnika penzije koji su radili u svojstvu samozaposlenih lica je niži, dok postoji znatan broj samozaposlenih radnika u EU koji nemaju pravo na starosnu penziju. Naime, situacija je još delikatnija za nova samozaposlena lica, budući da način njihovog učešća na tržištu rada, kretanje u karijeri, i visina primanja koja ostvaruju mogu ugroziti izglede za ostvarivanje penzije u budućnosti. U radu se analizira položaj samozaposlenih radnika u okvirima nacionalnih sistema socijalne sigurnosti, sa fokusom na metode uplaćivanja doprinosa i posledični uticaj ovih okolnosti na mogućnost njihovog pristupa odgovarajućim starosnim penzijama kao obliku zamenskog primanja, uz izbegavanje rizika od siromaštva i obezbeđivanje dostojanstvenog životnog standarda u starosti. Posebna pažnja posvećena je javnopolitičkim i normativnim inicijativama preduzetim na nivou Evropske unije, kao i u odabranim državama članicama koje imaju za cilj unapređenje statusa samozaposlenih lica kao korisnika prava na starosnu penziju. Države članice i EU deluju u ovoj oblasti u okviru svojih nadležnosti, a u cilju unapređenja socijalnopravne zaštite samozaposlenih lica u starijim godinama života.

KLJUČNE REČI

samozaposlena lica, socijalna sigurnost, doprinosi, sistem starosnih penzija, Evropski stub socijalnih prava

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Society and the health of the elderly – a perspective from medical and health law

Hajrija Mujović [1] **Ranko Sovilj** [1]

ABSTRACT

This paper delves into the healthcare provisions for the elderly, characterised by different legal sources, the intermingling of cross-sectoral issues, and, in general, the need for a special position and special protection of the elderly within society. By applying the normative, comparative, and axiological methods, we attempt to elucidate the position of the elderly, primarily focusing on care services. The paper commences by scrutinising legal regulations governing healthcare that refer to the position of the elderly. The question arises whether there is an organised service in terms of structure and personnel, and whether there are specialised institutions and communication services catering to the specific needs of the elderly. According to the type and extent of services, healthcare and eldercare necessitate special considerations and impose distinctive requirements. This includes services not only related to severe illnesses and terminal conditions but also rehabilitation, spa treatment, etc. Given that the right to healthcare derives from the right to health insurance, which can be either public or private, a dedicated section of the paper will explore the participation of private health insurance funds in providing health services to the elderly. Consequently, the aim of this research is to highlight the vulnerability of the elderly population, which necessitates legal protection facilitated through cross-sectoral cooperation.

KEYWORDS

health, elderly population, healthcare, health insurance, service development

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Društvo i zdravlje starijih osoba – Pogled iz ugla medicinskog i zdravstvenog prava

SAŽETAK

Ovaj rad se bavi zdravstvenom zaštitom populacije starih, koju karakterišu različiti pravni izvori, prožimanje intersektorskih pitanja i uopšte potreba utvrđivanja posebnog položaja i dodatnih mehanizama zaštite starih u društvu. Primenom normativnog, komparativnog i aksiološkog metoda, autori nastoje da definišu položaj starih, prvenstveno se fokusirajući na usluge nege i zbrinjavanja. U radu se, najpre, polazi od razmatranja zakonskih propisa iz oblasti zdravstvene zaštite koji se odnose na položaj starijih osoba. S tim u vezi, postavlja se pitanje da li organizaciono i kadrovski postoji izgrađena služba, da li postoje specijalizovane ustanove i službe komunikacije koje ciljano pomažu starijima? Prema vrsti i obimu usluga, zdravstvena zaštita starijih osoba nosi svoje osobenosti i nameće posebne zahteve. Svakako da tu ulaze usluge vezane za najteža oboljenja i terminalna stanja, ali i rehabilitacije, usluge banjskog lečenja i sl. Kako pravo na zdravstvenu zaštitu derivira iz prava na zdravstveno osiguranje koje može biti javno i privatno, poseban segment rada odnosi se na učešće privatnih fondova zdravstvenog osiguranja u pružanju zdravstvenih usluga starim osobama. Stoga je cilj predmetnog istraživanja ukazivanje na ranjivost starije populacije koja implicira neophodnu pravnu zaštitu kroz intersektorsku saradnju.

KLJUČNE REČI

zdravlje, populacija starijih, zdravstvene službe, zdravstveno osiguranje, razvoj usluga

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1 UVOD

Razmatranje različitih pitanja koja se tiču populacije starih osoba[1] sa stanovišta ljudskih prava obuhvata u osnovi pravo na dostojanstven život, te pravnu i socijalnu zaštitu. To u prvom redu zahteva sagledavanje položaja starih u sistemu različitih usluga socijalne, zdravstvene i gerontološke zaštite. Ukazuje se naročito na granična pitanja koje deli više pravnih disciplina, na primer socijalno i medicinsko pravo, i koja ponekad ostaju neprimećena. Pažnju zavređuje razmatranje ne samo statusnih pitanja, već i analiza diskriminatorske prakse prema starijim licima. Rešenja za neke od problema i dalje su zakonski nejasno i neprecizno formulisana. Teorijska i praktična pitanja koja se otvaraju su značajna za zakonodavstvo Srbije, jer pomažu pravovremeno uočavanje problema i ukazuju na pravce njihovog rešavanja, što je važno i za kvalitet domaćih propisa kojih sada u pogledu mnogih pitanja nema ili su fragmentarni i nedorečeni, ili su deo opštih formulacija zbog čega su neprepoznatljivi. Zato se uvek naglašava potreba unapređenja pravnog okvira i intersektorskog pristupa u praksi.

U medicinskom pristupu prisutne su različite specijalnosti, gde se populacija starih sve više upućuje u njima posebno namenjene službe. Takav primer predstavlja oblast gerijatrije, koja se odnosi na lečenje starih i „predstavlja medicinsku disciplinu koja sintetizuje sva medicinska znanja iz oblasti prevencije, dijagnostike, terapije i rehabilitacije starih" (Baer et al. 2016: 206–217; Zakon o zdravstvenoj zaštiti iz 2019. godine [ZZZ] 2023: čl. 84).

Na bolje razumevanje statusa populacije starih uticala su nesumnjivo i iskustva iz vremena pandemije kovida 19. Ona su dovela do potrebe da se preispitaju preduzete mere i politike prema starijim osobama, uključujući načine i trendove starenja stanovništva, kao i podršku koja se pruža u međugeneracijskoj solidarnosti. Naime, smatra se da je starijim osobama tokom pandemije bilo na više načina uskraćeno pravo na zdravlje (Bajeux, Corvol i Somme 2021: 1–12). Neke starije osobe nisu mogle da pristupe lečenju koje im je bilo potrebno. Takođe, u određenim situacijama starije osobe nisu imale pristup testiranju na virus, dok one koje su imale simptome nisu u pojedinim slučajevima primljene u zdravstveni centar kome su se obratile. Oni koji su se nalazili u domovima za stare nisu bili primljeni u bolnicu. Nekima je uskraćeno pravo da, pošto su informisani, izraze želju da se prema njima postupa na određeni način, kao što je naredba „ne reanimirati" ili druge izjave pacijenata date unapred. Usled toga se dešavalo da su postupci sa kojima se pacijenti nisu prethodno saglasili uključivani u plan nege bez njihovog pristanka ili kao rezultat neprimerenog uticaja. Određeni problem bio je i to što stariji nisu imali pristup zdravstvenim ili drugim informacijama. Za neke procedure predviđene su gornje starosne granice kako bi se osobe u poznoj starosti isključile iz pristupa oskudnim medicinskim resursima u protokolima trijaže, kao i iz učešća u kliničkim istraživanjima (Bajeux, Corvol i Somme 2021: 1–16).

[1] Naslov ovog rada usvaja izraz „starija osoba", ali je jednako u upotrebi i izraz „stara osoba". To odražava konsultovanu literaturu. Treba reći da, pravno gledano, reč *stariji* može biti u velikoj meri neodređena i povlači za sobom pitanje u odnosu na koga stariji? U kategoriji starijih tako mogu ući i mlade osobe koje su starije od drugih mladih osoba. Ukazuje se da je sam pojam stare osobe relativan, da nema unifikovane definicije i da je potrebno slediti širu pravnu definiciju iz razloga šire pravne zaštite i povezanosti sa strateškim dokumentima u drugim oblastima života i rada koji usvajaju određenu terminologiju.

2 IZVORI MEĐUNARODNOG PRAVA I UPOREDNOPRAVNA REŠENJA ODABRANIH DRŽAVA

Status starijih osoba i definicija njihovog starosnog doba utvrđen je u brojnim dokumentima i regulatornim aktima, što pokazuje relevantnost izvora koji se kreću od nacionalnih do međunarodnih. U literaturi se, ako je reč o zdravlju populacije, polazi od odrednica Svetske zdravstvene organizacije. Prihvata se klasifikacija dokumenta UN-a da se najpoznije životno doba deli na raniju starost (65–74 godina), srednju starost (75–84 godina) i duboku starost (85 i više godina) (United Nations Principles for Older Persons Resolution 46 1991). Beleži se da je 2015. godine Svetska zdravstvena organizacija pri Ujedinjenim nacijama službeno revidirala ove starosne standarde. Prema novoj starosnoj klasifikaciji mladi su od 25 do 44 godine, srednja dob je od 44 do 60 godina, starija od 60 do 75 godina, senilna dob od 75 do 90 godina, a dugovečni su nakon navršenih 90 godina. Ovaj međunarodni standard je ustanovljen na objektivnim zakonitostima fiziologije i psihologije čovekovog razvoja tokom čitavog života, brzog rasta u mladosti, nesmetanog razvoja u zreloj dobi, kao i nakon toga postepenog starenja ljudskog organizma (Dyussenbayev 2017: 258–263). Poseban značaj za zdravstveni status starijih osoba predstavlja i donošenje Konvencije Ujedinjenih nacija o pravima osoba sa invaliditetom (United Nations Convention on the Rights of Persons with Disabilities 2006; Zakon o potvrđivanju Konvencije o pravima osoba sa invaliditetom 2009), koja pored osnovne odredbe o zaštiti zdravlja predviđa i pravo na samostalan život i uključenje u zajednicu. Ova prava, zajedno sa pravom na samoodređenje te dostojanstvenim tretmanom, treba da budu vodeći principi za kreiranje dugoročnih usluga nege, uključujući i rezidencijalne ustanove, gde se procenjuje da većina korisnika ima neki oblik invaliditeta i potrebu za nekim oblikom zdravstvene zaštite. U pravnoj literaturi se razmatra odnos implementacije ove Konvencije i nacionalnog zdravstvenog zakonodavstva država (Szmukler, Daw i Callard 2014: 245).

Imajući u vidu značaj starih osoba u savremenom društvu, Regionalni komitet za Evropu Svetske zdravstvene organizacije formulisao je to kao jedan od ciljeva u okviru strategije „21 cilj za XXI vek" (WHO 1999). Ističe se da strategije stvaranja sigurnih zajednica i podržavajućih zdravstvenih i socijalnih politika i službi mogu pomoći starim osobama. U skladu sa odredbom Povelje o osnovnim pravima Evropske unije (Charter of Fundamental Rights of the EU: čl. 25)[2] kojom se prepoznaju i poštuju prava starijih osoba „da vode dostojanstven i nezavisan život i da učestvuju u društvenom i kulturnom životu", usvojena je Rezolucija o dostojanstvu i autonomiji u nezi starih osoba (Protection of vulnerable adults 2017). Države imaju obavezu da omoguće starijim licima da ostanu punopravni članovi društva što je duže moguće. To uključuje omogućavanje samostalnog života u poznatom okruženju dokle god žele i mogu, prilagođavanjem smeštaja zdravstvenom stanju i pružanjem zdravstvene zaštite i usluga koje su im neophodne. Za starije osobe koje žive u rezidencijalnim ustanovama, države moraju garantovati odgovarajuću podršku uz poštovanje privatnosti i učešće u donošenju odluka

[2] Videti s tim u vezi *Zakon o potvrđivanju Konvencije o zaštiti ljudskih prava i dostojanstva ljudskog bića u pogledu primene u biologiji i medicini: Konvencija o ljudskim pravima i biomedicine* (2010).

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koje se tiču njihovih životnih uslova. Novija dokumenta, usvojena sa namerom da se sagleda postojeće stanje, govore o tome da treba premostiti probleme u odnosima između sistema zdravstvene i sistema socijalne zaštite, tako što će dijalog o politici i mehanizmi koordinacije biti institucionalizovani. Time bi se pokazala dužna briga za ljude tokom čitavog života u punom obimu dostupnih vidova zdravstvene zaštite, bilo da je reč o zaraznim ili nezaraznim bolestima (WHO 2021).

Ako se pogledaju uporednopravna rešenja, nacionalna zakonodavstva imaju različit pristup, ali ih sve karakteriše razvoj zaštite populacije starih. U većini država ne postoje zakoni koji se posebno odnose na starije osobe, već se odredbe o njihovoj posebnoj zaštiti integrišu u opšte propise, naročito propise o zabrani diskriminacije i o pravima i obavezama u okviru sistema socijalne zaštite.

Anglosaksonski pravni sistem, kakav je na primer u SAD, sadrži zakonska rešenja još iz prošlosti. Naime, Zakon o starijim Amerikancima, iz 1965. godine, pretrpeo je u međuvremenu brojne izmene i dopune (Older Americans Act (OAA) Reauthorization Act 2016). Posebnom glavom se u skladu sa važećom praksom osigurava prevencija bolesti i promocija zdravlja. Programi koji se po zakonu finansiraju trebalo bi da budu deo medicine zasnovane na dokazima. Naglašava se važnost oralnog zdravlja kao bitne komponente zdravlja starijih osoba. U okviru kućne nege uređuje se pomoć starijim pojedincima i njihovim porodicama u odabiru usluga u kući i zajednici, s posebnim fokusom na to da pružaoci usluga mogu proceniti na koje načine i kako štite zdravlje, sigurnost, blagostanje i prava starijih osoba. Ažuriraju se i pojašnjavaju odrednice mentalnog zdravlja, što uključuje i brigu za sprečavanje zloupotreba supstanci i prevencije samoubistava. U kontekstu zdravlja starih definisane su i usluge podrške. Finansiranje usluga podrške može se koristiti za zbrinjavanje hroničnih stanja, kao i usluge prevencije padova. Zdravstveni skrining uključuje pregled mentalnog i bihevioralnog zdravlja i skrining za prevenciju padova kako bi se otkrile ili sprečile bolesti i povrede koje se najčešće javljaju kod starijih osoba. Takođe se uključuju informacije i tehnička pomoć državama, regionalnim agencijama za stare i pružaocima usluga u obavljanju transportnih usluga, kao i onih u prekograničnoj zaštiti (Older Americans Act (OAA) Reauthorization Act 2016).

Francusko pravo je poznato po tome što je nakon pandemije kovida 19, septembra 2020. godine usvojilo plan („*le Ségur de la santé*") sprovođenja zdravstvene reforme koja se tiče zaštite starijih osoba (Bajeux, Corvol i Somme 2021: 1–12). Osim mera za povećanje broja zdravstvenih radnika i povećanje plata, naglašen je razvoj integrisanog privatno-javnog i medicinsko-socijalnog zbrinjavanja starijih osoba. Predložene mere predviđale su u to vreme izolaciju, dežurstva bolničkih lekara u staračkim domovima, direktan prijem starijih osoba u najbližu bolnicu kako bi se izbegao neopravdani prijem u hitne službe. Predviđa se, takođe, raspoređivanje specijalizovanih mobilnih timova u domove za stare, kao i veći broj noćnih dežurstava za medicinske sestre u domovima. Ove aktivnosti su se povezale sa promenama u protekloj deceniji, u smislu koncepta integrisane zaštite. Najčešće su programi bili nedovoljno implementirani i/ili nejasno formulisani posebno na kliničkom nivou, zbog postojanja visokog nivoa fragmentacije

upravljanja, uprkos stvaranju regionalnih zdravstvenih agencija pre više godina. Kriza izazvana pandemijom kovida 19 je samo produbila fragmentaciju. Štaviše, i dalje nedostaju podaci o uticaju ovih programa na lična iskustva i položaj starijih osoba usled propusta rada službi, prvenstveno neprimerene koordinacije službi zdravstvene i socijalne zaštite. Shodno tome, zaključilo se da treba raditi na poboljšanju kulture profesionalne saradnje. Predloženi model integrisane nege, takođe, podrazumeva nacionalni nivo upravljanja.

Ako se učini osvrt na zakonodavstvo Nemačke, uočava se da su u periodu od 2015. do 2017. godine implementirana tri zakona o unapređenju dugotrajne nege za stare (European Commission 2017). Pojašnjava se zakonska definicija dugotrajne nege. Instrumenti za procenu individualnih potreba za negom obezbeđuju grupisanje u pet novih razreda nege, koji omogućavaju veće beneficije nego pre. Fizička, mentalna i psihološka ograničenja su uzeta u obzir po novom instrumentu procene. Time su, na primer, osobe s demencijom dobile znatno veće šanse da pristupe sistemu i dobiju veće beneficije. Novo stepenovanje potreba omogućava olakšan pristup dugotrajnoj nezi za veći broj pacijenata – korisnika. Implementacija zakonskih rešenja fokusira se na neka od ključnih pitanja: 1) definicija i procena individualnih potreba za negom; 2) osnaživanje dugotrajne nege kod kuće i u zajednici putem lokalnih saveta i struktura podrške; 3) nove vrste stanovanja uz podršku; 4) bolja koordinacija između zdravstvenih i socijalnih službi (European Commission 2017).

3 POLOŽAJ STARIJE POPULACIJE U PRAVU SRBIJE

Kada je reč o pravu Srbije, u osnovi zaštite starijih osoba stoje ustavne garancije i određena zakonska rešenja. Ustav Srbije proklamuje da svako ima pravo na zaštitu svog fizičkog i psihičkog zdravlja (Satarić 2015: 30–36). Saglasno osnovnim propisima u zdravstvenom zakonodavstvu Srbije, a pre svega iz oblasti zdravstvene zaštite i zdravstvenog osiguranja, populacija starih osoba uživa posebnu zaštitu kada su to osobe starije od 65 godina, što je izričita zakonska formulacija (ZZZ 2023: čl. 11, st. 2, tač. 4; Zakon o zdravstvenom osiguranju iz 2019. godine [ZZO] 2023: čl. 11, st. 1, tač. 24). U tom pogledu, pravo Srbije je osobeno, budući da većina inostranih zakona za odrasle ne specifikuje starosne granice, već se svaka osoba posmatra za sebe u konkretnim životnim uslovima i okolnostima. Deo pozitivnog zdravstvenog zakonodavstva predstavlja i društvena briga za zdravlje svih pojedinaca i grupa kojom su obuhvaćene i osobe starije od 65 godina života. Njome se obezbeđuje zdravstvena zaštita „grupacijama stanovništva koje su izložene povećanom riziku oboljevanja, zdravstvene zaštite u vezi sa sprečavanjem, suzbijanjem, ranim otkrivanjem i lečenjem bolesti i stanja od većeg javnozdravstvenog značaja". Obezbeđuje se i zdravstvena zaštita socijalno ugroženog stanovništva, pod jednakim uslovima na teritoriji Srbije. Principi sadržani u Zakonu o zdravstvenoj zaštiti odnose se na pristup zdravstvenim službama, pravičnost, sveobuhvatnost, kontinuitet u tretmanu lica, kvalitet usluga i efikasnost rada u zdravstvu (ZZO 2023: čl. 19–24). Zakon usvaja načelo poštovanja ljudskih prava i vrednosti u zdravstvenoj zaštiti (ZZO 2023: čl. 20). Ostvarenje ovog načela

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„podrazumeva obezbeđivanje najvišeg mogućeg standarda ljudskih prava i vrednosti u pružanju zdravstvene zaštite, pre svega, prava na život, nepovredivost fizičkog i psihičkog integriteta i neprikosnovenost ljudskog dostojanstva, obezbeđivanje ravnopravnosti polova i rodnu ravnopravnost, uvažavanje moralnih, kulturnih, religijskih i filozofskih ubeđenja građana, kao i zabranu kloniranja ljudskih bića. Stari imaju pravo na najviši mogući standard zdravlja i zdravstvene zaštite".

Propisi iz zdravstvenog osiguranja su u svemu usklađeni i takođe upućuju na poseban status starijih od 65 godina života, kao osiguranih lica kojima se obezbeđuju prava iz obaveznog zdravstvenog osiguranja. Na isti način se u određenim slučajevima štite korisnici penzije koji su pravo na penziju ostvarili u skladu sa propisima o penzijskom i invalidskom osiguranju (ZZO 2023: čl. 11, st. 1, tač. 24 i čl. 16). Značajane za oblast zaštite zdravlja su i odredbe Zakona o javnom zdravlju (2016: čl. 2), koje su između ostalog usmerene na osetljive društvene grupe u dostizanju zdravlja u javnozdravstvenim politikama, što znači usmerenost na socijalno-ekonomske determinante zdravlja i smanjenje nejednakosti u zdravlju. Propis koji je opšteg karaktera i primenjuje se jednako na populaciju starih u oblasti zdravlja predstavlja i Zakon o pravima pacijenata iz 2013. godine (2019). Odredbe ovog Zakona oblikovane su po uzoru na inostrane modele i Evropsku povelju o pravima pacijenata. Za status starih osoba od značaja su rešenja Zakona o socijalnoj zaštiti iz 2011. godine (2022: čl. 41, 59 i 60), koji sadrži upućujuću odredbu o zdravstvenoj zaštiti u domovima za smeštaj starih osoba i drugih korisnika, pri čemu se bliže propisuje poštovanje važećih standarda zaštite i nege, kao i pružanje usluga u okvirima socijalno-zdravstvenih ustanova.

4 OSOBENOSTI PRAKSE U ZAŠTITI ZDRAVLJA STARIJIH OSOBA

Pravna pitanja koja u vezi sa ljudskim zdravljem pogađaju starije osobe na određeni način su opšta pitanja zaštite zdravlja, ali donekle se i razlikuju najčešće u smislu potenciranja nekih zdravstvenih problema usled godina života. Zajednička su pravila o informisanju i pristanku, pristupu medicinskoj dokumentaciji, privatnosti i poverljivosti, a više su naglašene razlike u službama rehabilitacije, dugotrajne nege i čuvanja u ustanovama za smeštaj, kao što su domovi za stare. U literaturi se iznose neki podaci kada je u pitanju zdravstvena zaštita starih u Srbiji. Tako, istraživanje koje je sproveo Institut za javno zdravlje Srbije imalo je za cilj da se sagleda ostvarivanje zdravstvene zaštite starih osoba. Naime, stare osobe najčešće koriste „usluge doma zdravlja i to usluge merenja krvnog pritiska, zatim određivanje šećera i masnoće u krvi, te hemoglobina i analize urina. Pri tome, nema razlike po polu i uzrastu starih osoba. Kod lekara nikad nije bilo samo 1,6% starije populacije, i to znatno više osoba muškog pola, iz gradskih naselja i najsiromašnijih starih osoba. Usluge u sektoru privatne zdravstvene zaštite stare osobe su ređe koristile, a najviše su koristili usluge stomatologa (34,9%) i lekara opšte medicine (17,4%). Usluge lekara u privatnoj praksi koristili su jer smatraju da pružaju kvalitetniju uslugu, te nema čekanja" (Obradović i dr. 2009: 65–73).

U jednom od radova prezentovani su nalazi istraživanja na manjem uzorku o kvalitetu zdravstvene zaštite starih u Vojvodini. U predmetnom istraživanju konstatovano je da su starije osobe višeg stepena obrazovanja i imovinski bolje situirane češće posećivale lekare opšte prakse i bile spremne da izdvoje

dodatna sredstva iz sopstvenih prihoda za vanbolničku zdravstvenu zaštitu i multimorbiditet. S druge strane, među hospitalizovanim pacijentima češće su bili pripadnici muškog pola, obično nižeg stepena obrazovanja, kao i ispitanici koji su ocenili svoje zdravstveno stanje kao loše ili veoma loše. Istraživanje je ustanovilo da postoje izražene nejednakosti u pružanju zdravstvenih usluga starijim osobama, koje je potrebno smanjiti sveobuhvatnim javnozdravstvenim politikama i intervencijama (Čanković 2017: 178).

Slučajevi iz prakse isto tako referišu na konkretne situacije gde je u pitanju ostvarenje zakonom uređenih prava pacijenata uopšte, kao što su: „pravo na dostupnost zdravstvene zaštite, na informacije, na preventivne mere, na bezbednost pacijenta, na obaveštenje, na slobodan izbor, na drugo stručno mišljenje, na privatnost i poverljivost, na pristanak, na uvid u medicinsku dokumentaciju, na poverljivost podataka o zdravstvenom stanju pacijenta, pravo pacijenta koji učestvuje u medicinskom istraživanju, pravo deteta u stacionarnim zdravstvenim ustanovama, pravo pacijenta da na sopstvenu odgovornost napusti stacionarnu zdravstvenu ustanovu, pravo na olakšavanje patnji i bola, na poštovanje pacijentovog vremena, na prigovor i pravo na naknadu štete" (Zakon o pravima pacijenata iz 2013. godine [ZPP] 2019: čl. 6–31).

Status starijih osoba, najpre, može biti doveden u pitanje kod ostvarenja prava na pristup zdravstvenoj zaštiti, najčešće usled problema teškog stanja i nebrige za stare u poznim godinama, kao i usled drugih otežavajućih okolnosti. Populacija starih ulazi u osetljive grupacije stanovništva koje su izložene povećanom riziku oboljevanja. Smatra se da već samo pravo na zdravstvenu zaštitu podrazumeva da ustanove zdravstvene zaštite treba da budu lako dostupne svima i da pacijenti mogu da koriste njihove usluge kontinuirano, što ovde nije slučaj. Pravo na pristup povlači za sobom i kvalitet pristupa koji treba da bude jednako obezbeđen za svakog, pa i za starije pacijente, bez izuzetka i bilo kog vida diskriminacije.

U postupcima zaštite zdravlja starijih osoba može biti od važnosti i valjanost izjave volje, odnosno primene načela pristanka obaveštenog pacijenta (*informed consent*) kao izraza šireg prava na samoodređenje u odnosu na telo i život. Nekada nezavidan položaj i ozbiljna dijagnoza mogu potpuno da kompromituju ili učine nemogućim proceduru medicinskog odlučivanja. Tada postoji obaveza da se pribavi pristanak srodnika ili bliskih lica kao zastupnika obolelog, što može biti od suštinske važnosti. Medicinska mera protivno volji pacijenta, odnosno zakonskog zastupnika pacijenta lišenog poslovne sposobnosti, može se preduzeti samo u izuzetnim slučajevima, koji su utvrđeni zakonom i koji su u skladu sa lekarskom etikom. Pored opštih, zakonom propisanih elemenata pristanka za sve kategorije pacijenata, za pacijente sa potrebama mentalnog zdravlja od posebne važnosti je propis o obavezi da „pacijent lišen poslovne sposobnosti uvek treba i sam da bude uključen u donošenje odluke o pristanku na predloženu medicinsku meru, a u skladu sa njegovom zrelošću i sposobnošću za rasuđivanje i onda kada pristanak u ime njega daje zakonski zastupnik (staratelj)" (ZPP 2019: čl. 19, st. 2).

Postoje brojne specifičnosti mentalnog zdravlja kod starijih osoba kao korisnika rezidencijalnih usluga. U dobro organizovanim sistemima kreirana i implementirana je Povelja o pravima pacijenata – korisnika rezidencijalnih

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usluga (Mujović 2017: 71), kojom se naglašava potreba intersektorske saradnje, a koju su i istraživanja u Srbiji proučavala i uvrstila u svoje preporuke (Sjeničić i Jovanović 2017: 119).

Od posebnog značaja za pripadnike starijih je, takođe, odredba prema kojoj pacijent „ima pravo da odredi lice koje će u njegovo ime dati pristanak, odnosno koje će biti obavešteno o preduzimanju medicinskih mera, u slučaju da pacijent postane nesposoban da donese odluku o pristanku" (ZPP 2019: čl. 16, st. 5). Prepoznaje se isto tako da za položaj korisnika usluga mentalnog zdravlja nekad može biti primarno pravo pacijenta da na sopstvenu odgovornost napusti stacionarnu zdravstvenu ustanovu (ZPP 2019: čl. 27). Po logici stvari ovo pravo je dopušteno ograničiti, ali opet kao izuzetak i u zakonom propisanim uslovima.

Pravo na davanje izjava unapred, odnosno na izricanje naloga unapred, omogućava pacijentu da svoju volju o lečenju iskaže u nekom ranijem momentu, kao pripremu za slučaj da izgubi sposobnost odlučivanja. Ove izjave su posebno relevantne za starije osobe sa degenerativnim bolestima, kao što je Alchajmerova bolest. Naime, pacijent može da imenuje lice koje će imati pravo da donosi neophodne odluke u njegovo ime. Unapred izražene želje mogu da obuhvate i listu onih medicinskih tretmana kojima pacijent ni u kom slučaju ne želi da bude podvrgnut. Prema zakonu koji važi u Srbiji „pacijent ima pravo da odredi lice koje će u njegovo ime dati pristanak, odnosno koje će biti obavešteno o preduzimanju medicinskih mera, u slučaju da pacijent postane nesposoban da donese odluku o pristanku". Ipak, ova odredba zakona se u praksi pokazala nefunkcionalnom, budući da starije osobe većinom ne poznaju zakon, a zdravstvene službe ih ne informišu o tome, niti je jasno dat algoritam ostvarenja ovog prava.

Još jedna specifična oblast prakse koja može imati odraza na stariju populaciju predstavlja učestvovanje starih u medicinskim istraživanjima. Ona mogu biti nedovoljna i dovoditi do deficita u razvoju lekova neophodnih za stanja starijih osoba. U tom kontekstu važni su, na primer, lekovi za terapiju bola.

Dostojanstven tretman starijih osoba je isto njima svojstven onda kada se podvrgavaju lečenju u terminalnim fazama bolesti. Pravo je pacijenta da bude tretiran kao ljudsko biće. Shodno važećem standardu, pacijent ima pravo na olakšavanje patnji i bola. Pacijent ima pravo na najviši nivo olakšavanja patnje i bola, saglasno opšteprihvaćenim stručnim standardima i etičkim principima, što podrazumeva terapiju bola i humano palijativno zbrinjavanje. Danas su dobro poznate usvojene smernice prema kojima svaka starija osoba kojoj je potrebno palijativno zbrinjavanje treba da ima pravo na pristup bez nepotrebnog odlaganja, u okruženju koje je u skladu s njenim potrebama i željama, uključujući negu kod kuće i u ustanovama za dugotrajnu negu. Nedovoljna politika palijativnog zbrinjavanja dovodi i do čestih slučajeva da se starije osobe podvrgavaju nepotrebnim pregledima, tretmanima, hospitalizacijama i prijemima na intenzivnu negu, ponekad i protiv svoje volje. To je opterećujuće i skupo za pacijenta, porodicu i društvo (The right of older persons to dignity and autonomy in care 2018). Kada je reč o stepenu zaštite po ovom pitanju u pravu Srbije, preporuke do kojih se u nekim od istraživanja[3] došlo su posebno naglasile:

[3] Projekat „Unapređivanje ljudskih prava putem poboljšanja usluga palijativne nege" Udruženja pravnika za medicinsko i zdravstveno pravo Srbije

„1) palijativno zbrinjavanje se ne odnosi samo na pacijente s kancerom, već i na obolele od drugih neizlečivih bolesti; 2) težak položaj osoba koje su na kraju života nikako ne sme da zbog njihove slabosti umanji i njihovu pravnu i socijalnu zaštitu. Naprotiv, njima je potrebna dodatna zaštita u svakom pogledu. Umirući pacijenti treba da uživaju sva osnovna prava pacijenata u skladu sa zakonom. Tu ne sme da bude diskriminacije ni po zdravstvenom statusu, niti po društvenom statusu, kakav često imaju marginalizovane grupe; 3) treba na prvo mesto staviti ljudsko dostojanstvo kada je reč o umirućim pacijentima i prema njemu meriti sve druge vrednosti; dostojanstvo se garantuje Ustavom Republike Srbije i zabranjuje se svaki oblik nečovečnog postupanja; 4) potrebno je da se u praksi palijativnog zbrinjavanja poštuju sva prava pacijenata, a ovde posebno pravo na odluku o svom lečenju (*informed consent*), bilo lično, preko zakonskog zastupnika, člana porodice ili drugog bliskog lica. Treba pravno podržati oblik pacijentove odluke unapred (*advance directive*) i planiranu palijativnu negu na kraju života; 5) treba dalje unapređivati pravo na pristup palijativnim merama, kako u pogledu kvaliteta usluga tako i organizaciono, preko različitih institucija i oblika pružaoca takvih usluga; 6) potrebno je dalje raditi na zakonskoj regulativi, kao i protokolima i vodičima dobre prakse u palijativnom zbrinjavanju, što će doprineti boljem tretmanu umirućih pacijenata" (Mujović 2019: 7–29).

– SUPRAM u partnerstvu sa Centrom za palijativno zbrinjavanje i palijativnu medicinu – BELhospis iz Beograda, sproveden u periodu od marta do septembra 2019.

5 TEŠKOĆE U ZAŠTITI PRAVA U VEZI SA ZDRAVLJEM

Pripadnici starije populacije kao korisnici usluga zdravstvene zaštite i nege u praksi mogu imati različita iskustva u pogledu vrsta i obima usluga, kvaliteta nege, kao i u odnosu na ishod tretmana. Poznato je da su starije osobe veoma podložne zlostavljanju, uključujući i situacije do kojih dolazi u pružanju usluga dugotrajne nege, a Svetska zdravstvena organizacija procenjuje da najmanje četiri miliona starijih osoba doživi zlostavljanje u evropskom regionu, svake godine (The right of older persons to dignity and autonomy in care 2018). Navodi se sudski predmet vođen u vezi sa gerijatrijskom medicinskom sestrom koja je otpuštena jer je pokrenula krivični postupak protiv svog poslodavca navodeći nedostatke u pruženoj nezi. Evropski sud za ljudska prava je prepoznao ovaj problem i izneo stav da je „u društvima sa sve većim delom starije populacije kojoj se pružaju različiti vidovi institucionalne nege i staranja, a uzimajući u obzir posebnu ranjivost pacijenata koji često nisu u poziciji da samoinicijativno skrenu pažnju na nedostatke u pružanju nege, širenje informacija o kvalitetu ili nedostacima takve nege od vitalnog značaja u cilju prevencije zlostavljanja" (European Court of Human Rights Court (Fifth Section) – Judgment (Merits and Just Satisfaction) – CASE OF HEINISCH v. GERMANY 2021). Praksa pokazuje da u delu pravne zaštite putem nacionalnih mehanizama starije osobe nailaze na poteškoće, kao što su nedostatak potrebe zastupanja i protežiranje kada su u pitanju liste čekanja i duge procedure za koje po pravilu nisu spremni. Takođe, mnoge administrativne zahteve doživljavaju kao prepreke. Prethodno navedeno otežava položaj starih osoba u ostvarivanju zdravstvenih usluga

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i u suprotnosti je sa odredbama zakona. Naime, Zakonom se izričito propisuje postupak istrage o žalbama pacijenata. Cilj žalbene procedure je da: 1) pruži pacijentima informacije o postupku i njihovim pravima; 2) ponudi pomoć u pismenom podnošenju žalbe; 3) posreduje između pacijenta i ustanove zdravstvene zaštite u nastojanju da se slučaj reši (Cernus 2013). U pravu Srbije usvojeno je rešenje prema kome pacijent onda kad „smatra da mu je uskraćeno pravo na zdravstvenu zaštitu, ili da mu je postupkom zdravstvenog radnika uskraćeno neko od prava u oblasti zdravstvene zaštite, ima pravo da podnese prigovor zdravstvenom radniku koji rukovodi procesom rada ili direktoru zdravstvene ustanove (privatne prakse) ili savetniku za zaštitu prava pacijenata" (Zakon o pravima pacijenata iz 2013. godine 2019: čl. 30). Drugi oblik pravne zaštite predstavlja pravo pacijenta na naknadu nastale štete. Naime, „pacijent koji zbog stručne greške zdravstvenog radnika u ostvarivanju zdravstvene zaštite pretrpi štetu na svom telu, ili se stručnom greškom prouzrokuje pogoršanje njegovog zdravstvenog stanja, ima pravo na naknadu štete prema opštim pravilima o odgovornosti za štetu. Pravo na naknadu štete ne može se unapred isključiti ili ograničiti" (ZPP 2019: čl. 31).

6 KAPACITETI ZDRAVSTVENIH SISTEMA U PRUŽANJU ZDRAVSTVENIH USLUGA STARIJIM OSOBAMA

Sve države sveta suočavaju se sa izraženim trendom povećanja broja starijih osoba u ukupnoj populaciji. Iako je prvobitno razmatran u visokorazvijenim zemljama koje su se prve suočile sa sve brojnijom starijom populacijom u ukupnoj populaciji, fokus na proces starenja je postao globalni društveni fenomen od 1980-ih godina. Tome je doprinelo prosečno produženje životnog veka (Obadić i Smolić 2008: 86). Posledice demografskog starenja stanovništva ogledaju se u povećanim troškovima za javno zdravlje.

Javni zdravstveni sistem predstavlja osnov evropskog koncepta socijalne zaštite te, posledično, evropske zemlje izdvajaju sve više budžetskih sredstava za finansiranje zdravstvene zaštite. U tome posebno prednjače Austrija, Nemačka, Francuska, Holandija i Belgija koje ulažu značajniji deo bruto domaćeg proizvoda u zdravstvenu zaštitu. Pojedine zemlje EU poput Grčke, Italije, Irske, Portugala i Španije su u prethodnom periodu, usled *Subprime* krize i zapadanja u dužničku docnju, smanjile sredstva za zdravstvenu zaštitu, što se posledično odrazilo i na kvalitet zdravstvene usluge njihovih građana (Sovilj 2018: 146). Međutim, uprkos ekonomskoj krizi i recesiji, države se konstantno suočavaju sa raznovrsnim izazovima finansiranja zdravstvenog sistema usled permanentnog porasta troškova i ograničenih resursa. Među glavnim uzrocima porasta troškova u pružanju usluga zdravstvene zaštite su prevashodno promene u demografskim trendovima i sve veće učešće starih u ukupnoj populaciji koji imaju povećane potrebe za zdravstvenom negom i zbrinjavanjem, porast broja osoba sa hroničnim oboljenjima koja se multipliciraju u starijoj dobi, razvoj i primena inovativnih terapija i medikamenata u zdravstvu koji su skupi, kao i porast očekivanja korisnika (pacijenata) zdravstvene zaštite (Jurlina Alibegović 2014: 339). Imajući u vidu da se sve navedeno odražava na porast troškova lečenja, te samim tim javni sektor zdravstva nije u mogućnosti da efikasno zadovolji sve potrebe korisnika zdravstvenih usluga, prvenstveno starih osoba, kontinuirano se sprovode reforme zdravstvene zaštite

uključivanjem privatnog sektora u pružanje zdravstvenih usluga.

Danas većina evropskih zemalja finansira zdravstvenu zaštitu stanovništva kako iz javnih, tako i iz privatnih izvora. U javne izvore finansiranja spadaju budžetski prihodi, kao i doprinosi po osnovu obaveznog socijalnog osiguranja. Privatne izvore finansiranja zdravstvene zaštite obuhvataju sredstva koja plaćaju privatna zdravstvena osiguranja, dobrovoljni prilozi, kao i sredstva koja građani plaćaju iz sopstvenog džepa za potrebe lečenja (Jovičić 2014: 8). U savremenom zdravstvenom okruženju sve je izraženiji trend pružanja zdravstvenih usluga preko institucija privatnog zdravstvenog sektora, pri čemu državama nedostaje direktna kontrola nad pojedinim komponentama zdravstvenog sistema. Kako je Svetska zdravstvena organizacija konstatovala, privatno pružanje zdravstvenih usluga beleži kontinuirani rast u ovom sektoru koji zauzima sve veći udeo na zdravstvenom tržištu širom sveta (WHO 2010: 1). U prilog tome navodimo da je i Nacionalna zdravstvena služba Velike Britanije (*National Health Service – NHS*), koja je dugo bila stožer univerzalne zdravstvene zaštite koju finansira država, prošla strukturne promene omogućavajući privatnom sektoru pružanje zdravstvenih usluga radi unapređenja zdravstvene zaštite stanovništva (Chapman 2014: 123). U međuvremenu, privatni sektor se, osim u razvijenim zemljama, i u nerazvijenim zemljama sve više uključuje u pružanje zdravstvenih usluga (WHO 2000: 2). Osim prvobitnog angažovanja privatnog sektora u pružanju zdravstvenih usluga na primarnom nivou zdravstvene zaštite, vremenom je proširen delokrug poslova ovog sektora, te su uključeni i u pružanje zdravstvenih usluga na sekundarnom i tercijarnom nivou zdravstvene zaštite, odnosno u izgradnju i održavanje zdravstvene infrastrukture.[4]

Pored toga, poslednjih decenija u visokorazvijenim zemljama kreirana je praksa osnivanja javno-privatnih partnerstava u zdravstvu s ciljem poboljšanja zdravstvenih usluga. Ugovorima o javno-privatnom partnerstvu uređuju se međusobna prava i obaveze u pružanju zdravstvenih usluga. Tako, na primer, u Austriji, Danskoj, Nemačkoj i Velikoj Britaniji ugovorima o javno-privatnom partnerstvu reguliše se pružanje zdravstvenih usluga u bolnicama (npr. ishrana, sterilizacija), dok se u Velikoj Britaniji, osim navedenih usluga, ugovorima predviđa izgradnja, održavanje i nabavka medicinske opreme. Realizacijom ugovora o javno-privatnom partnerstvu u Češkoj su izgrađene dve bolnice i dijagnostički centar, dok je npr. u Francuskoj podignuto šest bolnica i nekoliko gerijatrijskih centara (Jurlina Alibegović 2014: 341–342). Iskustva evropskih zemalja predstavljaju primer dobre prakse kako su kroz realizaciju javno-privatnih partnerstava podignuti značajni infrastrukturni objekti u zdravstvu, poput bolnica, hospisa, gerijatrijskih centara i domova za stare za pružanje odgovarajuće nege i zbrinjavanja starih lica, a sve sa ciljem unapređenja njihovog zdravlja, odnosno kvaliteta života. Ovo je posebno značajno budući da se na ovaj način postiže povećanje smeštajnih kapaciteta u zdravstvenim institucijama za prihvat

[4] Međutim, nasuprot primarnoj zdravstvenoj zaštiti u kojoj je pregovaranje i zaključivanje ugovora između fondova privatnog osiguranja i lekara ustaljena praksa, u sekundarnoj i tercijarnoj zdravstvenoj zaštiti država preuzima aktivniju ulogu u definisanju uslova plaćanja za pružene usluge nege i zbrinjavanja. U praksi razvijenih evropskih država sasvim je normalno da regulatorni državni organi propišu obavezu pacijenata da plaćaju participaciju prilikom korišćenja bolničke odnosno kliničke nege, uglavnom u određenom paušalnom iznosu za svaki dan proveden u bolnici odnosno na klinici (Jovičić 2014: 26).

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starih lica, uzimajući u obzir da gotovo sve evropske zemlje imaju problem sa deficitom smeštajnih kapaciteta, a da je kod starih lica izraženija potreba za zdravstvenom negom i zbrinjavanjem u zdravstvenim ustanovama. Svakako, pozitivna rešenja iz uporednopravne prakse mogu koristiti kao potencijalni pravac razvoja javno-privatnog partnerstva u zdravstvenom sistemu Srbije.

Globalni trend privatizacije sistema zdravstvene zaštite predstavlja značajan rizik za pravičnu dostupnost zdravstvenih usluga, posebno za stara lica, siromašne i druge vulnerabilne ili marginalizovane grupe (Chapman 2014: 129). Uzimajući u razmatranje trend povećanja učešća privatnog sektora u pružanju zdravstvene zaštite stanovništva, posebno spremnost pojedinaca za izdvajanje „iz džepa" radi kvalitetnije zdravstvene nege u situaciji kada istu obavezno zdravstveno osiguranje ne pokriva u dovoljnoj meri, postavlja se pitanje kako obezbediti da stara lica dobiju adekvatnu i kvalitetnu zdravstvenu uslugu uz prihvatljivu cenu, imajući u vidu njihove relativno niske prihode. Osim toga, ograničena finansijska izdvajanja u uslovima značajnih socioekonomskih promena, s jedne strane, i neophodnost ostvarivanja jednakosti u zdravlju za sve društvene grupe, s druge strane, nalaze se u koliziji, te je neophodno utvrditi odgovarajući način prevazilaženja problema, a sve u kontekstu održivosti zdravstvenog sistema (Sovilj, Stojković Zlatanović i Škobo 2020: 155). Shodno tome, neophodno je jasno i precizno definisati ugovorna prava i obaveze između učesnika u javno-privatnom partnerstvu u zdravstvenom sistemu, uključujući podelu profita, odnosno gubitaka među partnerima. Dakle, potrebno je uspostaviti ravnotežu, te dopustiti učesnicima privatnog sektora da omoguće pružanje inovativnih i delotvornih usluga nege i zbrinjavanja starih lica, s jedne strane, a s druge strane država mora obezbediti uslove (putem participacije i sl.) da stara lica mogu ostvariti nameravane zdravstvene usluge (Jurlina Alibegović 2014: 346).

7 ZDRAVSTVENA ZAŠTITA STARIJIH OSOBA – POKRIVENOST USLUGA PO OSNOVU OBAVEZNOG ZDRAVSTVENOG OSIGURANJA

Kao što je u prethodnom delu ukazano, finansiranje i pružanje zdravstvene zaštite starim osobama predstavlja neprevaziđen problem u svim zemljama sveta. Sprovedena istraživanja demonstriraju da su troškovi za javno zdravlje lica starijih od 65 godina značajno veći u odnosu na lica drugih starosnih dobi (Nestić i Rubil 2014: 93). Posledica porasta udela starijeg stanovništva u ukupnoj populaciji, odnosno povećanje njegove prosečne starosti, ogleda se u povećanom korišćenju bolničkih usluga (čak dve trećine udela u povećanju bolničkih usluga), kao i u povećanoj potrošnji medikamenata (Obadić i Smolić 2008: 92). Upravo je starosna dob u direktnoj sprezi sa povećanom zdravstvenom uslugom kako u javnom, tako i u privatnom sektoru. Kao tipičan primer navodimo naknadu odnosno participaciju za lekove, koja se uređuje ugovorima koje zaključuju farmaceutske kuće sa fondovima zdravstvenog osiguranja uz posredovanje države. U organizovanju i sprovođenju praćenja propisivanja medikamenata, uloga nadležnih organa je dvostruka s obzirom na to da se nastoje smanjiti troškovi uz istovremeno sprečavanje zloupotrebe lekova (Jovičić 2014: 27).

Uprkos tome što većina država izdvaja dodatna sredstva BDP-a za zdravstvo, ipak je to nedovoljno kako bi se pokrile sve neophodne usluge zdravstvene zaštite

iz obaveznog zdravstvenog osiguranja. Shodno tome, brojnim regulatornim propisima (zakoni, pravilnici) države nastoje da odrede medicinske usluge koje su pokrivene obaveznim zdravstvenim osiguranjem. U gotovo svim evropskim zemljama uobičajena je praksa da paketi obaveznog zdravstvenog osiguranja obuhvataju razne zdravstvene usluge u ambulantnoj i bolničkoj nezi, kao i participaciju za medikamente i medicinska pomagala (Jovičić 2014: 27).[5] Primera radi, u nemačkom zdravstvenom osiguranju ne postoji konačan katalog precizno definisanih medicinskih usluga namenjenih starim licima koje su pokrivene obaveznim zdravstvenim osiguranjem. Peta knjiga Socijalnog zakonika određuje koje su zdravstvene usluge pokrivene obaveznim osiguranjem: „prevencija, zaštita i lečenje koje obuhvata ambulantno i bolničko lečenje, stomatološke usluge, kućna nega, rehabilitacija, socioterapija, medicinska pomoć u hitnim slučajevima, kao i transport pacijenata" (Glintić 2014: 48). Nemački sistem zdravstvenog osiguranja temelji se na postojanju brojnih zdravstvenih kasa. Zdravstvene kase koje imaju više starih i bolesnih lica dobijaju više sredstava naspram zdravstvenih kasa koje mahom osiguravaju mlade osobe.[6] Pojedine zemlje poput Švedske pružaju širok spektar usluga za stare osobe, koje su pokrivene obaveznim zdravstvenim osiguranjem. Tako, program zdravstvene zaštite obuhvata usluge pomoći starim licima u sopstvenim domovima, smeštaj starih u stacionarne zdravstvene ustanove, te institucionalnu zaštitu u domovima. Zdravstvena zaštita starih obuhvata, takođe, kućne posete lekara, prepisivanje terapije, kao i bolničko lečenje. Subvencionisanjem zdravstvenih usluga u sopstvenim domovima švedska vlada nastoji da omogući dostojanstven život svojim sugrađanima i u najstarojoj dobi (Leibovich i dr. 1998).

I domaći zakonodavac prati evropske tekovine u pogledu obuhvata zdravstvenih usluga iz obaveznog zdravstvenog osiguranja. Tako su obaveznim zdravstvenim osiguranjem pokrivene sledeće usluge starim licima: lečenje u primarnoj zdravstvenoj zaštiti od strane izabranog lekara, ambulantni pregledi kod lekara specijaliste i bolničko lečenje, stacionarno lečenje, kućno lečenje,[7] kao i palijativno zbrinjavanje (ZZO 2023: čl. 55). Takođe, starim licima pruža se

[5] Paketi zdravstvenih usluga zapravo predstavljaju katalog odnosno spisak medicinskih usluga koje su pokrivene obaveznim zdravstvenim osiguranjem. Ovi spiskovi su važni i starim licima kao korisnicima medicinskih usluga s obzirom na to da se mogu informisati koja prava imaju po osnovu obaveznog zdravstvenog osiguranja. Liste o obaveznom paketu zdravstvenih usluga podložne su izmenama i dopunama kako bi se adaptirale novim lekovima i inovativnim tehnologijama. Uobičajeno je da se jednom godišnje ažurira lista kako bi se proširila na nove lekove ili medicinsko-tehnička pomagala za koje je prethodno utvrđeno da su delotvorni i medicinski neophodni (Jovičić 2014: 31-32).

[6] U Nemačkoj postoji nekoliko vrsta zdravstvenih kasa: opšte, regionalne, dopunske, korporativne, poljoprivredne, rudarsko-železničko-pomorske, kao i kase namenjene pojedinim profesijama. Stara lica kao osiguranici imaju na raspolaganju preko 150 zdravstvenih kasa koje pružaju zdravstvene usluge po osnovu obaveznog osiguranja i koje se nalaze u privatnom vlasništvu. Takođe, osiguranicima je data mogućnost da mogu promeniti zdravstvenu kasu po isteku roka od 12 meseci (Glintić 2014: 46).

[7] Stara lica upućuju se na stacionarno lečenje kada im neophodnu zdravstvenu uslugu u vidu dijagnostike, lečenja ili rehabilitacije nije moguće pružiti u kućnim ili ambulantnim uslovima. U izuzetnim uslovima, starim licima koja su u terminalnoj fazi bolesti i napokretna su, odnosno pokretna uz pomoć drugih lica, a kojima je neophodno palijativno zbrinjavanje, obezbediće se kratkotrajno lečenje u stacionarnoj ustanovi zarad primene simptomske terapije i nege (ZZO 2023: čl. 57). Ako je medicinski neophodno i opravdano, nakon stacionarnog lečenja nastavlja se kućno lečenje. Kućno lečenje odobrava izabrani lekar ili lekar specijalista u slučaju kada je staroj osobi potrebna primena parenteralnih lekova, medicinska i rehabilitaciona nega koju zdravstveni radnik može pružiti u kućnim uslovima (ZZO 2023: čl. 58).

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medicinska rehabilitacija zarad „poboljšanja ili uspostavljanja nepostojeće, izgubljene ili oštećene funkcije, koja je nastala zbog kongenitalnih anomalija, razvojnog poremećaja, akutne bolesti ili povrede, pogoršanja hronične bolesti ili medicinske intervencije. Medicinskom rehabilitacijom obezbeđuje se utvrđivanje, primena i evaluacija rehabilitacionih postupaka koji obuhvataju kineziterapiju i sve vidove fizikalne, okupacione terapije i terapije glasa i govora, kao i određene vrste medicinsko-tehničkih pomagala, nameštanje, primenu i obuku za upotrebu tog pomagala kod stare osobe" (ZZO 2023: čl. 64). Nasuprot većini evropskih sistema zdravstvenog osiguranja koji ne pokrivaju stomatološke usluge starim licima po osnovu obaveznog osiguranja, domaći zakonodavac je pokrio određene stomatološke usluge obaveznim zdravstvenim osiguranjem. Tako je licima starijim od 65 godina obezbeđena izrada akrilatne totalne i subtotalne proteze u visini od najmanje 65% od cene zdravstvene usluge iz sredstava obaveznog zdravstvenog osiguranja (ZZO 2023: čl. 63, st. 1, tač. 7, a u vezi sa čl. 131, st. 1, tač. 4). Pored toga, starim licima obezbeđena su očna i slušna pomagala u iznosu od 65% od cene zdravstvene usluge iz sredstava obaveznog osiguranja (čl. 131, st. 1, tač. 4).

Kao što smo ukazali u prethodnom delu, usluge nege i zbrinjavanja starih lica kako u evropskim sistemima zdravstvenog osiguranja, tako i u domaćem zdravstvenom sistemu nisu u potpunosti pokrivene iz obaveznog zdravstvenog osiguranja. Upravo, visoki troškovi zdravstvenih usluga koje su neophodne starim licima, a koje istovremeno prati sve manje učešće mlađeg, radno sposobnog stanovništva iz čijih bi se zarada delom finansirala socijalna zaštita, kao i skupo upravljanje fondovima socijalnog osiguranja, uz nezaustavljiv napredak ostvaren na polju medicine i farmacije, samo su neki od činilaca koji su doprineli finansijskoj neodrživosti sistema obaveznog zdravstvenog osiguranja (Glintić 2022: 358). Sledstveno tome, prethodnih decenija iniciran je razvoj dobrovoljnog zdravstvenog osiguranja. Međutim, dobrovoljno zdravstveno osiguranje razlikuje se od obaveznog s obzirom da nije dostupno svima pod istovetnim uslovima, jer osiguravači nemaju obavezu da zaključuju ugovore o dobrovoljnom osiguranju sa svakim ko im se obrati. Ovaj vid osiguranja naročito ne pogoduje starim licima budući da osiguravači nude ugovore starim licima sa kraćim trajanjem, ili im zaračunavaju više premije ako procene da je izražen veći rizik od oboljevanja (Jovičić 2014: 38). Imajući u vidu diskriminatoran pristup prema starim licima, prvenstveno zbog slabijeg zdravstvenog stanja i platežne (ne)mogućnosti (uglavnom niski prihodi), u praksi se ovaj vid zdravstvenog osiguranja pokazao izuzetno destimulativan za stariju populaciju.

8 ZAKLJUČNE NAPOMENE

Pristup pitanjima medicinskog i zdravstvenog prava u sagledavanju položaja i perspektive za sve one koji pripadaju populaciji starih od vitalnog je značaja za svaku društvenu zajednicu. Reč je o zdravstvenom kontekstu, što znači o čuvanju najvažnijih čovekovih vrednosti kakve su život, zdravlje, telesni i psihički integritet. Starije osobe su po pravilu radno neaktivne, različitog ekonomskog statusa. Predstavljaju ranjivu populaciju, a može se reći često i marginalizovanu u zdravstvenim aspektima kako u komunikaciji sa profesionalcima u zdravstvu, sa drugim društvenim grupama, tako i od samog zdravstvenog sistema usled

nedovoljnih resursa ili drugih prioriteta. Njihova zaštita odnosi se pre svega na očuvanje zdravlja i dobrobiti za stare. Ustanovljeno je da se problemi sa mentalnim zdravljem i invaliditetom češće javljaju u starijoj životnoj dobi i njima treba posvetiti veću pažnju. Zaključuje se takođe da, uprkos sve većem broju starijih osoba i njihovoj potrebi za stalnom zdravstvenom zaštitom, još uvek postoji nedovoljna organizovanost i obučenost službi gerijatrije i gerontologije u zdravstvenim profesijama. Sve su to segmenti zaštite koje treba unaprediti u zdravstvenom sistemu i društvenoj zajednici Srbije. Posebnu pažnju zavređuju institucionalni kapaciteti i finansijska održivost sistema obaveznog zdravstvenog osiguranja. Naime, adekvatno regulisanje i finansiranje obaveznog zdravstvenog osiguranja treba da omogući kvalitetniju zdravstvenu uslugu stanovništvu, prvenstveno starim licima kao ranjivoj populaciji kojoj je potrebno obezbediti veću dostupnost zdravstvenih usluga, kao i širi obim prava s tim u vezi.

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REFERENCE

Baer, B., Bhushan, A., Abou Taleb, H., Vasquez, J., & Thomas, R. (2016). The Right to Health of Older People. *Gerontologist*, 56(2), 206–217. http://dx.doi.org/10.1093/geront/gnw039

Bajeux, E., Corvol, A., & Somme, D. (2021). Integrated Care for Older People in France in 2020: Findings, Challenges, and Prospects. *International Journal of Integrated Care*, 21(4), 1–12. http://dx.doi.org/10.5334/ijic.5643

Cernus, E. (2013). *Basic patients' rights*. Budapest: Hungarian Civil Liberties Union.

Chapman, A. (2014). The Impact of Reliance on Private Sector Health Services on the Right to Health. *Health and Human Rights Journal*, 16(1), 122–134.

Charter of Fundamental Rights of the European Union, *Official Journal of the European Union* (2007, December 14) https://www.europarl.europa.eu/charter/pdf/text_en.pdf

Council of Europe (2018). *The right of older persons to dignity and autonomy in care*. Human rights comment, Strasbourg. https://www.coe.int/fi/web/commissioner/-/the-right-of-older-persons-to-dignity-and-autonomy-in-care

Čanković, S. (2017). *Determinante zdravlja i korišćenja zdravstvene zaštite starih osoba na teritoriji Vojvodine*. Novi Sad: Univerzitet u Novom Sadu, Medicinski fakultet. https://nardus.mpn.gov.rs/handle/123456789/8658, Pristupljeno 10. juna 2023.

Dyussenbayev, A. (2017). Age Periods of Human Life. *Advances in Social Sciences Research Journal*, 4(6), 258–263. https://doi.org/10.14738/assrj.46.2924

European Charter of patients rights, Rome (2002). http://healthrights.org/index.php/cop/item/european-charter-of-patients-rights

European Commission (2017). Peer Review on "Germany's latest reforms of the long-term care system". (Host Country Discussion Paper – Germany, 11–12 January, 1–18). DG Employment, Social Affairs and Inclusion, Germany: Federal Ministry of Health. https://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=9008#navItem-1

European Court of Human Rights Court (Fifth Section) – Judgment (Merits and Just Satisfaction) – CASE OF HEINISCH v. GERMANY (2011, July 21). https://www.stradalex.eu/en/se_src_publ_jur_eur_cedh/document/echr_28274-08

European Parliament resolution of 1 June 2017 with recommendations to the Commission on the protection of vulnerable adults (2017, June 1). https://www.europarl.europa.eu/doceo/document/TA-8-2017-0235_EN.html

Glintić, M. (2014). Savezna republika Nemačka. In K. Jovičić (Ed.), *Sistemi zdravstvene zaštite i zdravstvenog osiguranja – Uporednopravna analiza u evropskim zemljama* (pp. 41–57). Beograd: Institut za uporedno pravo i Sindikat lekara i farmaceuta Srbije – Gradska organizacija Beograda.

Glintić, M. (2022). Regulisanje odnosa obaveznog i dobrovoljnog zdravstvenog osiguranja u zakonodavstvu Republike Srbije. In M. Orlić (Ed.), *Aktuelna pitanja savremenog zakonodavstva: zbornik radova sa Savetovanja pravnika* (pp. 355–370). Beograd: Budva Savez udruženja pravnika Srbije i Republike Srpske.

Jovičić, K. (2014). Osnovna pitanja zdravstvenih sistema u evropskim zemljama. In K. Jovičić (Ed.), *Sistemi zdravstvene zaštite i zdravstvenog osiguranja – Uporednopravna analiza u evropskim zemljama* (pp. 8–39). Beograd: Institut za uporedno pravo i Sindikat lekara i farmaceuta Srbije – Gradska organizacija Beograda.

Jurlina Alibegović, D. (2014). Uloga javno-privatnog partnerstva u ekonomskoj procjeni racionalnog korištenja resursa u zdravstvu. In M. Vehovec (Ed.), *O zdravstvu iz ekonomske perspektive* (pp. 333–356). Zagreb: Ekonomski institut.

Leibovich, E., Bergman, H., & Béland, F. (1998). Health Care Expenditures and the Aging Population in Canada. In *Health care systems in Canada and elsewhere: striking a balance* (pp. 290–297). Quebec: Editions MultiMondes.

Mujović, H. (2017). Aspekti medicinskog i procesnog prava u zaštiti korisnika usluga ustanova rezidencijalnog smeštaja. In M. Sjeničić & M. Marković (Eds.), *Obezbeđivanje zdravstvene zaštite osobama sa mentalnim smetnjama u skladu sa ljudsko-pravnim standardima* (pp. 59–88). Beograd: Institut društvenih nauka i Udruženje pravnika za medicinsko i zdravstveno pravo Srbije – SUPRAM.

Mujović, H. (2019). Aspekti medicinskog prava u palijativnom lečenju umirućih pacijenata. In H. Mujović (Ed.), *Unapređenje ljudskih prava kroz razvoj usluga palijativnog zbrinjavanja* (pp. 7–29), Beograd: Udruženje pravnika za medicinsko i zdravstveno pravo Srbije – SUPRAM.

Nestić, D., & Rubil, I. (2014). Privatni izdaci za zdravstvo u Hrvatskoj. In M. Vehovec (Ed.), *O zdravstvu iz ekonomske perspektive* (pp. 79–108). Zagreb: Ekonomski institut.

Obadić, A., & Smolić, Š. (2008). Ekonomske i socijalne posljedice procesa starenja stanovništva. *Ekonomska istraživanja*, 21(2), 86–98. https://hrcak.srce.hr/38172

Obradović, M., Petrović, J., Obradović, M., Radovanović, M., Timotić, A., & Anđelski Radičević, B. (2009). Korišćenje zdravstvene zaštite starih osoba u domu zdravlja. *Zdravstvena zaštita*, 38(6), 65–73. https://doi.org/10.5937/ZZ0906065O

Older Americans Act (OAA) Reauthorization Act, Public Law No. 114–144, From the U.S. Government Publishing Office, (2016, April 19). https://acl.gov/about-acl/authorizing-statutes/older-americans-act

Satarić, N. (2015). *Vodič kroz prava 65+ jer je pravo jednako za sve.* Beograd: Udruženje građana „Snaga prijateljstva" – Amity.

Sjeničić, M., & Jovanović, M. (2017). Međusektorska saradnja u pružanju usluga i zaštita prava korisnika rezidencijalnog smeštaja. In M. Sjeničić & M. Marković (Eds.), *Obezbeđivanje zdravstvene zaštite osobama sa mentalnim smetnjama u skladu sa ljudsko-pravnim standardima* (pp. 101–120). Beograd: Institut društvenih nauka i Udruženje pravnika za medicinsko i zdravstveno pravo Srbije – SUPRAM.

Sovilj, R. (2018). Uporednopravna analiza i izazovi regulisanja i finansiranja zdravstvenog osiguranja. *Strani pravni život*, 62(3), 143–161. https://doi.org/10.5937/spz1803143S

Sovilj, R., Stojković Zlatanović, S., & Škobo, M. (2020). Right to Health Care after the Economic Crisis. In G. Ilik & A. Stanojoska (Eds.), *Towards a better future: human rights, organized crime and digital society* (pp. 155–167). Volume II. Bitola: „St. Kliment Ohridski" University, Faculty of law – Kicevo.

Szmukler, G., Daw, R. F., & Callard, F. (2014). Mental health law and the UN Convention on the rights of persons with disabilities. *International Journal of Law and Psychiatry*, 37(3), 245–252. https://doi.org/10.1016%2Fj.ijlp.2013.11.024

United Nations Convention on the Rights of Persons with Disabilities (CRPD) (2006). https://social.desa.un.org/issues/disability/crpd/convention-on-the-rights-of-persons-with-disabilities-crpd

United Nations Principles for Older Persons, Resolution 46/1991 (1991, December 16). https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-principles-older-persons

World Health Organization. Regional Office for Europe (WHO) (1999). *HEALTH21: the health for all policy framework for the WHO European Region*. WHO: Regional Office for Europe. https://apps.who.int/iris/handle/10665/272657

World Health Organization (WHO) (2010). Health systems financing – the path to universal coverage. Geneva: WHO (The World Health Report 1–128).

World Health Organization (WHO) (2000). *Guidelines on Working with the Private Sector to Achieve Health Outcomes*. Report by the Secretariat http://apps.who.int/gb/archive/pdf_files/EB107/ee20.pdf

World Health Organization. Regional Office for Europe (WHO) (2021). European Programme of Work 2020–2025: United Action for Better Health. World Health Organization. Regional Office for Europe. https://iris.who.int/handle/10665/339209

Zakon o javnom zdravlju (2016, February 25). http://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/skupstina/zakon/2016/15/7/reg

Zakon o potvrđivanju Konvencije o pravima osoba sa invaliditetom (2009, June 2). https://www.paragraf.rs/propisi/zakon_o_potvrdjivanju_konvencije_o_pravima_osoba_sa_invaliditetom.html

Zakon o potvrđivanju Konvencije o zaštiti ljudskih prava i dostojanstva ljudskog bića u pogledu primene u biologiji i medicini: Konvencija o ljudskim pravima i biomedicine (2010, December 17). https://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/mu/skupstina/zakon/2010/12/16/reg

Zakon o pravima pacijenata iz 2013. godine (2019, April 3). http://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/skupstina/zakon/2013/45/2/reg

Zakon o socijalnoj zaštiti iz 2011. godine (2022, October 26). http://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/skupstina/zakon/2011/24/2/reg

Zakon o zdravstvenoj zaštiti iz 2019. godine (2023, October 27). http://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/skupstina/zakon/2019/25/2/reg

Zakon o zdravstvenom osiguranju iz 2019. godine (2023, October 27). http://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/skupstina/zakon/2019/25/1/reg

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The fragmented regulation of the traineeship in Hungary

Bernadett Solymosi-Szekeres [1]

ABSTRACT

The situation of young workers is determined by the legal regulation of work. Of particular interest in this context is the traineeship, which is statistically proven to be the basis for many young people entering the labour market. In this context, it is especially important that national regulations are clear and stable to ensure the security of young workers. The Hungarian national regulations will be examined in this study, starting with statistical data, i.e. the extent to which traineeships are present, and examining the related legal relationships based on the EU conceptual background, with the aim of exploring whether the Hungarian legal framework guarantees status security for young trainees. Based on the legislation, case law and relevant literature, it can be concluded that the Hungarian national legislation on traineeship is fragmented, non-transparent, complex, and generally does not provide an impeccable basis for improving the labour market situation of young people from a labour law or social security perspective, and shows a number of inconsistencies in national and EU labour law.

KEYWORDS

Hungary, traineeship, labour law, social security, young workers

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1 INTRODUCTION

The world of work is a complex web of many factors. It is influenced by several areas of law, as work creates value, is the driving force of the economy, and is a source of livelihood and dignity for the individual. Of particular importance is how people, as workers, view the legal environment in which they work, be it labour law or social security law, as a means of ensuring fair and equitable work.

When it comes to young workers, we must be particularly careful, as in many countries their labour market situation is worrisome. The European Commission has also stated in its proposal on traineeships Article (1) of the Council Recommendation of 10 March 2014 on a Quality Framework for Traineeships [QFT] (2014), in the following: that youth unemployment rates have achieved historical peaks in the past years in many Member States, thus fostering the employability of young workers is in fact key to bringing them onto the labour market. In Europe, we are witnessing ageing societies in which the emergence of young workers in the social supply chain network is particularly important. If young workers are valued players in the overall labour market, they can contribute to sustaining the national economy at a higher level and with greater efficiency, even in the face of increasing demographic challenges. This is a particularly important objective, and it is therefore necessary to examine the employment sectors that often become the framework for the work of young labour market actors, looking at whether these specific forms of work are actually properly regulated and capable of guaranteeing young workers a fair and equitable working environment. This is particularly important because, if they are not traditionally employed as employees, young workers face difficulties accessing the labour market and the stable living conditions.

Traineeships have received particular attention from the European Union in 2023. EU research has shown that the extent and quality of regulation of traineeships varies between Member States, there is a diversity of approaches and legal bases regarding the numerous types of traineeships (Müller 2022), even though it affects many young people starting their careers, determining their first steps towards the labour market, and diversity and different security conditions are also a major obstacle to international free mobility. This disparity is illustrated by the fact that, on average, only 61% of respondents in each Member State surveyed stated that they had full or partial access to social protection during their traineeship. This low rate is certainly a cause for concern and has prompted the Council of the European Union to call for the updating of the quality framework for traineeships to be one of the key outcomes of the European Year of Skills (European Commission 2023a). This way in 2014, the Council formulated guidelines for its member states on how to improve the quality of what it chose to call 'traineeships' (Stewart et al. 2021). The European Commission itself urges that differences in the rights and conditions of traineeships should be explored and addressed to ensure equity for all trainees (European Commission 2023b). In addition to the Commission, other EU bodies such as the European Parliament are also committed to the cause, which has "repeatedly underlined the importance of ensuring implementation of quality traineeships" (Müller 2022: 8).

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2 METHOD

The focus of the research is on the specific employment structures related to young workers, namely traineeships, with a particular focus on Hungary. The reason is that comprehensive labour law regulation and social security are essentially linked to traditional employment in labour law systems following the Fordist tradition. The special form of employment under study – traineeship – falls outside the category of traditional employment relationships in Hungarian legislation, and it is therefore worth examining the research question of whether it nevertheless guarantees young workers an appropriate legal framework and social security. The hypothesis of the research is that this is not the case in the Hungarian legal system, given the predominance of the typical employment relationship in the detailed and extensive legislative processes in Hungary. Our hypothesis is that the regulation of traineeship in Hungary is too complex, complicated, almost incomprehensible for the young workers, and inconsistent, and thus does not provide an adequate framework for the atypical, yet frequent employment as trainees of young workers.

This assumption is to be substantiated or refuted by examining national case law and literature, as well as national legal sources using comparative legal methods, which are a common type of qualitative legal research methodology. Before doing so, existing statistical data will be presented to justify the importance of investigating this issue, pointing out the large number of people involved.

For the conceptual framework, we use the EU conceptual toolbox. The QFT (2014) states in the Article (27) that for the purpose of the Recommendation "traineeships are understood as a limited period of work practice, whether paid or not, which includes a learning and training component, undertaken in order to gain practical and professional experience with a view to improving employability and facilitating transition to regular employment". Following this conceptual background, we should see that two types of traineeships are relevant to this research, as they fall within the scope of the QFT: Active Labour Market Policy (ALMP) Traineeships and the Open market traineeships (OMT). The Active Labour Market Policy Traineeship is nothing less than "traineeship is offered to (young) unemployed or those at risk of becoming unemployed to increase their employability/skills with a view to supporting their entry into the labour market" (European Commission 2023b: 2). Traineeships as part of *active labour market policies*, are this way based on a tripartite agreement with the aim to help unemployed or inactive young people into employment. There is usually a public institution, Public Employment Services acting as an intermediary between the host organization and the trainee and also supervises the traineeship. On the contrary, Open Market Traineeships are defined as bilateral, non-mandatory, and private agreements between a trainee and a traineeship provider. They do not have a formal connection to education or training and opposite to the Active Labour Market Policy Traineeship, there is no third party in this relationship in addition to the trainee and the traineeship provider.

Of course, individual Member States may have a few other traineeship formats, as there is no standardized regulation. The present research is limited to the presentation and evaluation of those forms of traineeships which fall within the

scope of the QFT, i.e., which are the focus of EU research and are known in the Hungarian legal system. For example, we do not examine traineeships that are part of the curricula of formal education. These are optional or mandatory work-based forms of learning and are often concluded with the involvement of the educational institutions. These traineeships do not fall within the QFT scope, "as it is considered that those traineeships are of better quality, due to the quality assurance by the educational institutions involved" (European Commission 2023b: 2).

3 RESULTS

3.1 STATISTICS ON THE EMPLOYMENT OF YOUNG WORKERS

Both the European Union and the national statistical offices monitor employment policy trends and labour market developments in national labour markets. In the following lines, we focus on traineeships as a form of employment tailored to young workers, targeting those just starting their careers, and its data. The European Parliamentary Research Service in 2022, based on 2016 data, has established the share of young population (15–34 years old) with at least one traineeship experience, which can be an important cornerstone to assess the share of young workers affected by traineeships and their legal regulation. It shows that almost half (46%) of the social group surveyed is affected by traineeships in the EU average, which is similar for Hungary (45%) (Müller 2022).

More recent results are available in a Eurobarometer survey, that took place between 15 and 24 March 2023, and 26 334 people participated, between 18 and 35 years from all EU Member States. This survey reveals that traineeships are a very important stepping stone for young workers into the labour market. The research concluded that 78% of young people surveyed participated in at least one traineeship. It should also be noted that 19% of young workers surveyed said their first work experience was a traineeship (Eurobarometer 2023).

There seems to be a high participation of young people in traineeships, which may be based on a different legal status, as national regulations, especially in terms of social security, vary widely.

3.2 THE COMPLEX REGULATION OF TRAINEESHIPS FOR YOUNG WORKERS IN HUNGARY

In order to improve the Community framework for traineeships in all Member States, it is necessary to examine the legal framework for traineeships from the employment perspective. This need is also substantiated, for example, by a 2019 decision in a complaint procedure, which draws attention to the widespread phenomenon of unpaid internships in Belgium (Hajdú 2022). In this paper, we present the Hungarian system of Open Market Traineeship and Active Labour Market Policy Traineeship, exploring the above hypothesis that currently in Hungary young people are faced with a complex and inconsistent set of rules, inadequate and fragmented labour legislation, uncertain social security frameworks.

If we look at traineeships in the Hungarian legal system, we can see that traineeship employment is governed by a complex and complicated set of rules. The focus of the research is on two types of traineeship based on the methodology described above: Active Labour Market Policy Traineeships and the Open market traineeships:

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A. *Legal categories and regulation of Open Market Traineeship in the Hungarian system*

Within the category of Open Market Traineeships, there are two types of legal relationship available in the Hungarian legal system. First, there is a student employment contract under the Article 44 of the Act CCIV of 2011 on National Higher Education (2016). Student employment contracts regulate in the case of Article 44(1), point a) the dual training, therefore, they are not covered in this research. However, according to the Article 44(1), point b), in this relationship the student may work on the basis of a student employment contract in the higher education institution or in a business organisation with the participation of the higher education institution, in the core activity of the higher education institution, in a field unrelated to the study programme. This regulation therefore falls within the scope of the OMT, and must be examined in this research.

The legislator has established the following rules in relation to the legal relationship. According to the reasoning of the law, this case will allow for a more flexible possibility of student employment by allowing the student to be employed by their higher education institution under a student employment contract in a field not strictly related to the course of study, for example in the study office. Students working under a student employment contract are subject to the provisions of the Labour Code and are therefore considered employees, but not in every case. Open market traineeships may be covered typically by normal employment contracts with full employment and social protection. However, the Government intended lay down more favourable conditions for students than those provided for in the Labour Code when determining the rules relating to student employment contracts. This intention has resulted in, based on the amendment, from 18 December 2018, a student does not need to conclude a student employment contract in the case of work not directly related to the training programme in the higher education institution or in an economic organisation established by the higher education institution (so in case of Article 44 (1) point b)), and the higher education institution may employ the student by means of an assignment contract in such cases, as explained in the reasoning of the Act. This also means that the remuneration is based on the agreement of the parties, there is no mandatory minimum (Hajdú 2022).

The second relationship in the category of OMT, employment with a scholarship, is regulated by Act CXXIII of 2004 on Promoting the Employment of Young People Starting out on Their Careers, Unemployed People over Fifty Years of Age and People Looking for Work after Caring for a Child or a Family Member, and Employment with a Scholarship [Act CXXIII] (2022). Employment with a scholarship may be concluded by the scholarship holder and their employer, if the scholarship holder is a person under 30 years, within two years of receiving a diploma, who is not employed in a private or a public employment relationship, and the employer may be either a private employer under the scope of the Labour Code, or any public employer under the scope of any public employment Act. The employment rules are contained by Articles 9–16 of Act CXXIII (2022), and many provisions of the Labour Code listed by Article 15 of this Act. Although this is a special employment relationship with the aim

of participating in work training, most of the employment protection of the Labour Code applies to it. Formally the trainee although is not an employee, as the parties do not enter into an employment relationship (for example, they are not covered by a collective agreement which covers the employer).

Examining the employment statuses of these trainees, we can find differences between the two regulations, as well as in the case of social security regulation. When we think about the legal obligation of the general remuneration, in the case of the student employment contract we can find the legal obligation in general, but occasionally traineeships in a budgetary body may take place without a student employment contract and without remuneration, by agreement. Although in the case of the employment with a scholarship we cannot talk about the employee status, specific regulation still exists about the obligation in connection with the general remuneration. Based on that, the sum of the monthly scholarship may not be less than the current minimum statutory monthly wage for full-time employees.

Other types of regulation can be observed when examining of the compensation for the trainee. In the case of student employment contract, the training centre may, at its discretion, provide the student with other allowances and benefits (e.g. travel allowance, meal ticket or voucher), but the extent of these and the conditions under which they are granted must be specified individually in the student's contract. In comparison regarding the employment with a scholarship, the compensation is paid by the "employer", and the rules on the reimbursement of expenses in the Labour Code apply to the amount in this case.

The trainees in these two relationships are in a similar situation in terms of social security legislation. In the cases of accident and occupational injuries and sickness and healthcare, the trainee is liable to pay contributions and therefore has access to these benefits based on their status as a trainee and is considered as a person covered by social security. The situation is similar for unemployment benefits, where the contribution is borne by the trainee, as well as for old-age benefits and maternity benefits, in particular infant care allowance. A similarity between the two traineeships is that both require a written agreement indicating allowance or compensation, amount, and how the trainee or the traineeship provider can terminate the traineeship. An important difference in the purpose of traineeships is that in the case of employment with a scholarship the tasks allow the trainee to work towards their learning and training objectives, however, this is not the case with the student employment contract, where the student works for the organisation or university but not in the field of activity related to their profession.

B. *Legal categories and regulation of traineeships as part of active labour market policies in the Hungarian system*

ALMP traineeships with the involvement of the Public Employment Service do not exist in Hungary. There are three other forms of work, closely related to the concept of an ALMP traineeship, but without involvement of the Public Employment Service. In view of this, this is the subject of the present study.

Traineeships as part of active labour market policies are regulated by Act LXXVII of 2013 on Adult Education

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(2023) in the form of the adult education contract. Articles 1 and 12/A-13/B of this Act regulates, that the scope of the Act extends over training and education provided by natural person, individual entrepreneur, private company, organization, legal person as a business activity, internal training, adult training. Adult education legal relationship may be established by a written adult education contract by the service provider and the recipient person, thus we can speak of a bilateral legal relationship in the context of this traineeship.

Thinking of the employment status, the adult education legal relationship may exist at the same time as an employment contract in case the employee of that company receives the training. This situation also makes the social security of the trainee more complex, because, if there is an existing parallel employment relationship, the employee (trainee) is an ensured person based on the employment, also is entitled to all social security services. However, if the person receiving training in an adult education legal relationship is not an employee at the same time, the trainee will not have any employment protection and social security. This way the trainee is not entitled to social security services based only on this relationship.

The second type of this category of traineeships is the vocational training employment. The Act LXXX of 2019 on Vocational Training [Vocational Training Act] (2023) regulates vocational training employment contract in Articles 83–90, which may be concluded by the public vocational training institution and the student, or an adult person receiving training. In the latter case, i.e. when the adult person receives training, they must have an adult education legal relationship. The employees in a vocational training employment contract are formally employees with employment and social security protection. Analysing the legal relationship and employment status, we can find that the vocational training employment contract is regulated by the Labour Code as lex generalis, so it is applied in the lack of a special provision in the Vocational Training Act. The Vocational Training Act (2023) is the lex specialis, supplemented by its implementation decree. In view of this, this legal relationship is an employment relationship between the employer, i.e. the vocational training institution and the trainee (employee), who can be a student or adult person receiving training. This specific relationship may be stablished from 2020 only for professions included in a public register and is provided in the public education system. It may be concluded for the entire period of the training, and also once per year for a period of 4–12 months.

As a third category, we can find a very specific and even more problematic traineeship that is the part of the active labour market policies on the side of the state administration. Although it is a specific traineeship outside of the private sphere, its regulation is quite confusing. It is called the Hungarian Public Administration Scholarship Program, which is a specific professional training in the field of public services. The Act CXXV of 2018 on Government Administration [Kit.] (2021) provides for fellowships in Article 88, and the Act CXCIX of 2011 on Civil Servants [Kttv.] (2023) also regulates this type of scholarship in Article 47. On the basis of these, the Government establishes a scholarship to support administrative internships. The purpose of this relationship is to ensure a supply of suitably qualified, professionally committed professionals with

practical experience and commitment to the national public administration, in accordance with Government Decree No. 52/2019 on Hungarian Public Administration Scholarship Program (2022), which lays down the detailed rules. The government decree defines the scholarship period (10 months) as a traineeship. The period of scholarship counts, for example, towards the period required for the recognition of service, the period of practical training for the administrative professional examination and the period of administrative practice. The fellowship is therefore a sui generis special working relationship of limited duration between the trainees and the traineeship provider, partly for the purpose of acquiring professional skills and experience and partly for the performance of tasks. Scholarship holders must be young people starting their careers, under the age of 30, and may not enter any other employment relationship, either at the time of application or during the period of the scholarship. This scholarship relationship is a special, three-way relationship. The Minister for Administrative Quality Policy and Personnel Policy is responsible for the operation of the scholarship program, conducting the application procedure, drawing up the program's rules and regulations, and concluding, amending, and terminating scholarship contracts, among other tasks. At the same time, however, the host institution is in fact the employer in the legal relationship, not the host institution according to case law, see below in the discussion. The person who has been awarded a scholarship is in fact undergoing a traineeship at the specified host institution within the framework of the scholarship program. The host institution may be an administrative body subject to the Kit. (2021) or the Kttv. (2023). It is therefore a tripartite obligation. The rights and obligations of the traineeship are laid down in a contract between the trainee, the host institution and the mentioned Ministry. No detailed rules on this contract or on the quality of the working relationship resulting from it can be found in the aforementioned acts, but the Ministry's position is available on its website. According to the latter, the legal relationship of a scholarship holder does not constitute an employment relationship, and therefore the scholarship holder is not an employee, as published on the website of the Hungarian Government Scholarship Program. This stipulates that the person awarded the scholarship will participate in a traineeship under the Programme and will be a scholarship holder. The scholarship recipient who meets the application criteria will receive a scholarship awarded by the Minister, taking into account the recommendation of the Programme Management Committee. The monthly amount of the remuneration is determined by the Minister.

In the three traineeships mentioned above, although they are all part of the active labour market policy, we can see a varied picture of how they are regulated. Status security starts with income, yet general remuneration is not legally required as part of the adult education contract. In the vocational training employment contract, there is a legal obligation, and the remuneration has to be equal to the monthly amount of the cost price of the specialised education as defined in the Act XXV of 2022 on the Central Budget of Hungary in the Year of 2023 [Act on the Central Budget] (2023), up to a maximum of 168% of the cost price. In the third type, the Hungarian Government Scholarship program, the

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monthly amount of the scholarship is set by the Minister. The amount of the scholarship for the domestic part of the programme is HUF 250,000 net per month, while the amount for the international part varies, averaging HUF 450,000 per month. It is paid by the host institution. The remuneration of the scholarship in this final form is not subject to social security contributions and the scholarship holder is therefore not insured under the contract. The scholarship holder is exempted from daily work and other obligations during the period of illness certified by a doctor, but no scholarship is paid for this period.

The compensation for the trainee is possible only in the vocational training employment. The trainee is entitled to the benefits provided for employees in the dual training place with the qualifications required for the profession chosen by the trainee (working clothes, reduced meals, travel expenses, personal protective equipment, cafeteria). Other allowances shall be granted at the same rate as the allowance for persons employed in a job with the qualifications required for the profession chosen by the student, up to a maximum of 168% per year of the monthly amount of the monthly cost of the vocational training as defined in the Act on the Central Budget (2023). The minimum income is also set for Vocational training employment alone, but it is not linked to the statutory minimum wage.

In the context of social security, the legislation makes it clear that adult education status alone does not entitle you to social security benefits. In the case of Vocational training, being an employment relationship, benefits and allowances are linked to this status, the trainee is considered to be socially insured in the Hungarian legal system. For the Public Administration Scholarship Program, the remuneration of the scholarship is not subject to social security contributions and the scholarship holder is therefore not insured under the contract. The scholarship holder is exempted from daily work and other obligations during the period of illness certified by a doctor, but no scholarship is paid for this period. However, this legal relationship is particularly problematic, as illustrated by the case law below.

4 DISCUSSION

Based on the above results, it can be concluded that for many young people, traineeships are the first point of contact with the labour market, which can then determine their long-term employment, and therefore the experience of traineeships is undoubtedly an attitude-forming experience. The development of a young worker's pattern of behaviour should be a soft aspect in creating a framework through which employee satisfaction can be achieved, and through which commitment, loyalty and confidence in the young worker to a life-defining job can be developed, thereby making goals such as developing the need for lifelong learning and securing similar long-term goals in the face of the challenges of an ageing society more certain. Given such a multifaceted impact of traineeships, which intersect multiple goals for both the worker, the employer and the state, how a nation regulates traineeships is particularly important. Above, we have presented the definitional framework of QFT, i.e. which relationships are considered by the European Union as particularly vulnerable and deserving of focus.

On this basis, we have shown that young workers can encounter two types of rights in the OMT. In the case of the

student employment contract under examination, it is a form of student employment that is not related to the purpose of the training, but rather focused on the student's livelihood, which it supports. It is a form of strict employment that offers stability and guarantees in terms of labour law, but from 2018, following the government's move, students can also be employed outside of this legal relationship in specific units, as we have shown above. The question arises as to whether this trend towards flexibility is consistent with the need for secure employment in terms of status, since if an assignment contract is concluded, for example, the minimum wage and other protections in the Labour Code may be circumvented. In the case of employment with a scholarship, although we are not formally talking about an employee, the concept of worker under the EU case-law system includes this young person working in an traineeship relationship, as it corresponds to the 'Lawrie Blum formula'. According to settled legal precedent – under the 'Lawrie Blum formula' – the crucial aspect of the employment relationship is that, for a certain period of time, one person provides services for and under the supervision of another individual in exchange for which the worker (in this case trainee) receives remuneration. It is of major importance that a person (worker, trainee) acts under the guidance of the employer as regards, in particular, their freedom to choose the time, place, and nature of their work (Risak and Dullinger 2018). So, in my view, despite the fact that in Hungarian law we can not formally speak of an employee, there is a category of worker based on the assessment of EU case law, which may create an internal tension and uncertainty between the application of EU law and Hungarian labour law.

In the context of the category traineeships as part of active labour market policies, we looked at three legal-relationship regulations. The aim of all three is to promote the employment of young people, yet the regulations are questionably different, varied and somewhat uncertain. In the case of the adult education contract, social security does not arise in the situation of the trainee unless he is simultaneously employed by the company under a parallel legal entity, so that social security is not linked to the contract itself. Vocational training employment is perhaps the most regulated, with social security and employment protection linked to the legal relationship, yet its complexity and multiple layers of regulation make the precise framework of the legal relationship difficult for the citizen to follow, thus increasing the vulnerability of the young person. In support of this, the Szeged Tribunal's decision No. K. 700.470/2022/9. is worth highlighting. In this case, the court found a breach of the rules against the training institution in relation to the working conditions and remuneration of a person employed under a vocational training contract. In the specific case, the training centre committed three breaches of the rules: firstly, it paid the wages of the trainees in cash, which is possible under the rules of the Labour Code but is not permitted under Article 85. Second, it violated the rules on rest periods by not guaranteeing the required amount of rest time between the break and the two working days, but by providing the complainant students with a shorter rest period; thirdly, by requiring the pupils concerned to pay compensation for their employment by reducing their wages, in breach of the general prohibition of

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compensation laid down in Article 5 of the Government Decree.

Thirdly, perhaps one of the most objectionable trainee statuses is the Hungarian Public Administration Scholarship Program and the situation of the trainee working in it. This person can certainly be considered a worker according to the Lawrie Blum formula described above, but according to the status laws and the information published by the responsible ministry, this person is not an employee, and thus the young graduate, who has undergone a high degree of screening, is deprived of general labour law guarantees. Such a lack of service and protection is unprecedented in the context of a special government traineeship programme to replenish the public service.

To some extent, the court also highlighted this situation in a labour law dispute between the ministry and the trainee concerning the traineeship. In 2020, case law has established the status and relationship of a scholarship holder as a civil servant for procedural law purposes, which does not affect the substantive law aspect. It is interesting to note that, despite the fact that the relationship was classified as a civil service relationship only from a procedural law perspective, the related line of argument referred to the substance of the relationship. The Supreme Court classified the relationship as a public service relationship for the purposes of the procedural law, with which the parties to the litigation (the scholarship holder and the Ministry) disagreed, as they considered that the relationship was not a public service relationship. The parties later appealed again to the Supreme Court to have the unlawfulness of this decision established, but in its decision of November 2022, the Supreme Court did not accept the dispute.

Returning to the merits of the case, on 13 April 2017, the applicant entered a scholarship contract with the Prime Minister's Office, as the body involved in the implementation of the Hungarian Public Administration Scholarship Program, and the Ministry of National Economy, as the host institution. According to the contract, the parties shall establish a scholarship relationship for a fixed term from 18 April 2017 to 18 February 2018 pursuant to Article 47 of the Kttv. (2023). The parties claimed that their relationship did not constitute a civil service relationship. However, the Supreme Court considered this to be unfounded and ruled that the employment relationship with the Ministry, which was based on a scholarship, constituted a public service relationship within the meaning of Article 4 of the Code of Administrative Procedure, which is nothing other than a relationship between the State or a body acting on behalf of the State and a person employed on behalf of the State for the purpose of employment or the performance of services, which is a public service relationship with specific obligations and rights defined by law.

In support of this procedural qualification, which does not affect the substantive character of the relationship, the related reasoning of the Supreme Court referred to the content of the relationship, justifying its creation of a public service relationship under procedural law by the following. In its order for reference, it relied on the fact that, according to the legislation, the scholarship relationship with the Ministry is governed by the provisions of the Kttv. Thus, the rule that a scholar must perform the duties in the public interest in accordance with the law, professional

ethics and management decisions is also applicable to the scholar's employment.

On the basis of the foregoing, the scholarship relationship with the Ministry, as a special employment relationship partly for training and experience and partly for the performance of duties, the purpose of which is to provide a supply of new government employees, is a public service relationship according to the Supreme Court. In addition, according to Article 47 of the Kttv. (2023), the public administration is obliged to employ the scholarship holder, to provide the necessary working conditions, to provide the information and guidance necessary for the performance of the duties of the post, and to pay the scholarship holder's salary and other allowances as provided for in this Act. The Ministry is therefore the facilitator, the coordinator, who provides methodological guidance and monitoring for the implementation of the programme, but the host institution is responsible for the tasks, exercising the powers of an employer, while the scholarship holder is required to carry out these tasks in accordance with the law, the host institution's internal rules and instructions, and to attend meetings and other programmes and training courses provided for by the host institution.

The reasoning of this decision clearly points towards a substantive public employment status, however, since the decision only qualifies the relationship from a procedural point of view, and since the substantive employment rules do not provide otherwise, and since the Act CXXII of 2019 on the Persons Entitled to Social Security Benefits and the Coverage of these Benefits [Social Security Act] (2023) does not include scholarship relationship among the relationships giving rise to an insurance obligation, the position of the Ministry as explained above, which does not associate an insured status to this relationship and does not consider the scholarship holder as an employee, should be followed.

On the basis of the above, we consider that the scholarship holder does not qualify as a public sector employee, and thus not as an insured person, since the Social Security Act (2023) does not mention the scholarship holder among the legal relationships with an insurance obligation, but at the same time, we can speak of a de facto worker in the case of these persons, as the court indirectly states. For example, the legislation provides that, under a fellowship contract, a scholar is required to carry out the tasks assigned to the scholar by the host institution in accordance with the law, the host institution's internal rules and regulations, the instructions and the programme of professional practice, to attend meetings and other programmes prescribed by the host institution and to attend training courses and other programmes organised for scholarship holders by the Minister. The scholar may not be employed or otherwise engaged in a public service relationship during the period of the fellowship contract. The scholarship holder shall undertake in the scholarship contract to maintain his/her relationship with the employer government administration for a period of 10 months from the date of nomination. The traineeship shall be carried out in the normal working hours of the host institution. During the period of the in-country programme, he/she shall be required to work eight hours per day in accordance with the rules of the Kit. (2021), for a total of forty hours per week.

These traineeships linked to active labour market policy, similarly to the

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OMT, therefore present a varied picture through the lens of labour law and social security, whether in terms of guaranteed pay or entitlement to social security benefits. The statistics show a slightly higher level of stability in the employment of young Hungarian trainees than the EU average from the two perspectives mentioned above, but looking at the detailed rules, we can still paint a worrying national picture. It is questionable to what extent these regulations described above are reflected in stronger legal protection of trainees. Based on this, we see the hypothesis of the research as being undermined, and traineeship in the ALMP and OMT categories can be considered as a precarious status in the Hungarian legal system as a whole. The Euro-pean Parliamentary Research Service considers it particularly important to implement, among other things, the Guarantee of a minimum wage and the Coverage by social protection schemes. We see that this is not uniformly implemented in the different legal contexts. This is in no way compatible with EU intentions.

The conclusion that can be drawn from the legislation is clear, yet national literature on this worrying phenomenon is scarce. Hajdú (2022), who also notes the seriousness of the Hungarian situation, is worth highlighting, as he states, based on case law, that in Hungary the term 'trainee salary' does not even exist in the minds of many company managers or HR professionals, who see in trainees not the promise of the future, but rather a free temporary worker.

According to the Eurobarometer survey, although the level of social security (with a special focus on guaranteed pay) is higher than the EU average, a high percentage of Hungarian workers still reported unpaid work experience and that they were not entitled to social security benefits, or not for all benefits (Eurobarometer 2023). Unfortunately, this is not surprising given the above legislative landscape and should certainly spur national and EU legislation to action. In this context, Hajdú (2022) sees the only regulatory solution for traineeships as being purely employment-related, with which we can agree on all grounds.

5 CONCLUSION

Traineeships are of crucial importance. Whether we think of the challenges of an ageing society or of vulnerable social groups such as young workers without experience and capital, all the evidence suggests that the conditions of employment of young people in early careers are particularly important, especially in terms of livelihood security, labour law guarantees and social safety nets. Statistics show that throughout the European Union, and in Hungary too, there are problems in meeting this need. Even though many young people start their active years on the labour market with a traineeship, many of them do this work for free – of course not as part of voluntary work – or in a special job that is not covered by social security provisions.

With this in mind, we have primarily examined the legal framework of Hungarian traineeships from the perspective of labour law and social security status within the limits of the EU conceptual framework. First, the two categories of OMT, i.e. the student employment contract and the employment with a scholarship, were presented in detail. Due to the government's intentions of flexibility, students are increasingly vulnerable in the former, as they are not obliged to conclude an employment contract. The two types of traineeships

present a different picture in terms of their labour status, but social security and access to social security benefits are relatively uniform and guaranteed. However, this is not the case for the three forms of traineeship under the ALMP, which have also been analysed. Neither the labour law nor the social security guarantees are uniform, leaving young people working in this type of relationship vulnerable.

In examining Hungarian case law, we have drawn attention to the internal contradictions that affect the different employment statuses of trainees, which is particularly problematic in relation to the public sector trainee scheme. Some trainees are not considered to be insured or employed, while in other traineeships these guarantees exist. There are also examples of traineeships where national law does not provide for labour law protection in the absence of an employment relationship, but where the EU conceptual framework allows us to speak of a worker.

Therefore, based on the above analysis, there is no comprehensive labour law protection or social status security in the Hungarian legal system linked to traineeship as a general category of employment policy, which, moreover, affects a vulnerable and valuable social group, i.e. young people starting their careers. There is also a difference in the existence of substantive legal employee status and procedural legal employee status in the public sector trainee scheme. This overall picture suggests that there are legislative and legal development objectives for traineeships, where the way forward, in line with national literature, is to think in terms of the employee category. Labour and social legislation has to support young people in a weakening labour market.

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REFERENCES

Act XXV of 2022 on the Central Budget of Hungary in the Year of 2023 (2023, November 24). https://net.jogtar.hu/jogszabaly?docid=a2200025.tv

Act LXXVII of 2013 on Adult Education (2023, November 24). https://net.jogtar.hu/jogszabaly?docid=a1300077.tv

Act LXXX of 2019 on Vocational Training (2023, November 24). https://net.jogtar.hu/jogszabaly?docid=a1900080.tv

Act CXXII of 2019 on the Persons Entitled to Social Security Benefits and the Coverage of these Benefits (2023, November 24). https://net.jogtar.hu/jogszabaly?docid=a1900122.tv

Act CXXIII of 2004 on promoting the employment of young people starting out on their careers, unemployed people over fifty years of age and people looking for work after caring for a child or a family member, and employment with a scholarship (2022, May 25). https://njt.hu/jogszabaly/2004-123-00-00.32#CI

Act CXXV of 2018 on Government Administration (2021, March 31). https://europam.eu/data/mechanisms/COI/COI%20Laws/Hungary/6.%20Law%20No.%20CXXV%20of%202018_ENG.pdf

Act CXCIX of 2011 on Civil Servants (2023, November 24). https://net.jogtar.hu/jogszabaly?docid=a1100199.tv

Act CCIV of 2011 on National Higher Education (2016, September 2). https://www.mab.hu/wp-content/uploads/Nftv_angol_2Sept2016_EMMI-forditas.pdf *Council Recommendation of 10 March 2014 on a Quality Framework for Traineeships* (2014, March 10). https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014H0327(01) Eurobarometer (2023). *Integration of young people into the labour market with particular focus on traineeships – Country Factsheets Hungary (2023).* https://europa.eu/eurobarometer/surveys/detail/2964

European Commission (2023a). *Eurobarometer survey shows that traineeships help young people land their first job.* News. https://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=10566&furtherNews=yes

European Commission (2023b). Study supporting the evaluation of the Quality Framework for Traineeships. Luxembourg: Publications Office of the European Union (Final report, VC/2021/0654). https://www.researchgate.net/publication/367542600_European_Commission_2023_Study_supporting_the_evaluation_of_the_Quality_Framework_for_Traineeships_Final_report_VC20210654_Luxembourg_Publications_Office_of_the_European_Union

Government Decree No. 52/2019 on Hungarian Public Administration Scholarship Program (2022, August 12). https://njt.hu/jogszabaly/2019-52-20-22

Hajdú, J. (2022). The right to fair remuneration for postgraduate interns – the decision of the ECSR in European Youth Forum (YFJ) v. Belgium, Complaint No. 150/2019. *Miskolci Jogi Szemle*, 17(2), 150–158. https://doi.org/10.32980/MJSz.2022.2.2003

Müller, K. (2022). The quality of traineeships in the EU – European added value assessment. European Parliamentary Research Service (European Added Value Unit PE 699.459). https://www.europarl.europa.eu/RegData/etudes/STUD/2022/699459/EPRS_STU(2022)699459_EN.pdf

Risak, M., & Dullinger, T. (2018). The concept of 'worker' in EU law – Status quo and potential for change. Brussels: European Trade Union Institute (Report 140). https://www.etui.org/sites/default/files/18%20Concept%20of%20worker%20Risak%20Dullinger%20R140%20web%20version.pdf

Stewart, A., Owens, R., O'Higgins, N., & Hewitt, A. (2021). Internships: A policy and regulatory challenge. In A. Stewart, R. Owens, N. O'Higgins & A. Hewitt (Eds.), *Internships, Employability and the Search for Decent Work Experience* (pp. S2–16). http://dx.doi.org/10.4337/9781800885042.00008

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Fragmentarno regulisanje radnih praksi u pravu Mađarske

SAŽETAK

Položaj i status mladih radnika u Mađarskoj u vezi je sa i uslovljen javnopolitičkim i pravnim okvirom kojim se reguliše oblast rada i zapošljavanja. S tim u vezi od posebnog značaja jeste institut radne prakse, koji je i statistički potvrđen kao važan za ulazak mladih na tržište rada. Pravna adekvatnost nacionalne legislative o radnim praksama preduslov je za osiguranje stabilnosti zaposlenja i sigurnosti rada, kao i delotvorne radnopravne zaštite ranjivih kategorija radnika, uključujući i one koji prvi put ulaze u svet rada. U radu se primenom pravnoteorijskog i uporednopravnog metoda, a polazeći od statističkih podataka o zastupljenosti različitih oblika radnih praksi, analizira normativni okvir u Mađarskoj, na osnovama koncepcijskog pristupa u pravu Evropske unije. Analizom relevantne literature, zakonodavstva i sudske prakse utvrđeno je da mađarski normativni i institucionalni okvir u domenu radnih praksi jeste fragmentaran, odnosno nepotpuno regulisan, a pored toga ga odlikuje i svojevrsno odsustvo transparentnosti čime se, u krajnjem, ugrožava status i zaštita prava mladih radnika, uzimajući u obzir osnovne postulate radnog prava i prava socijalne sigurnosti. Osim toga, u radu se ukazuje i na neusaglašenost nacionalnog odnosno mađarskog i prava Evropske unije u ovoj oblasti.

KLJUČNE REČI

pravo Mađarske, radna praksa, radno pravo, pravo socijalne sigurnosti, mladi radnici

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Students' jobs – the necessity of labour law protection

Milica Kovač Orlandić [1]

ABSTRACT

The student population is becoming an increasingly important actor in the labour market, which is very important for students as well as society. Although the negative aspects of working while studying are sometimes highlighted, this trend is generally perceived as positive since it appears as a measure against unemployment and a way of acquiring work skills. However, this trend, which has not bypassed our region, has not been accompanied by the adoption of appropriate legislation. As a result, students work under very insecure contracts, such as service contracts or volunteering contracts, which do not even provide them with certain elements of labour law protection.

Considering the above-mentioned, there is a need for the legal regulation of students' labour as a special form of labour. This need is mostly present in countries that do not have a significant number of contracts available to students but which are characterized by a large percentage of undeclared work and a very long transition period from school to the first suitable job. At the same time, the regulation of students' labour must ensure social justice and an appropriate level of labour law protection.

One of the acceptable models is the regulation of a student employment contract as a contract by which a person with the status of a student performs a job for an employer, with remuneration, for a short period of time, without establishing an employment relationship and with limited protection of labour rights. It is a sui generis contract whose legal nature is not easy to determine due to the fact that it is close to an employment contract in its content and essential features. At the same time, it is a contract that does not establish an employment relationship, which is why it raises many doubts, especially regarding the primary causa of this contract — the provision of minimum labour law protection for students.

Determining the content of the so-called minimum labour standards should start with decent work as the highest value and the common denominator of a series of rights that every worker should enjoy. The components of

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dignified labour are complex, but they, in the context of student labour, without exception, involve protection against discrimination, decent remuneration, protection at work, and basic rights such as the right to limited working hours, the prohibition of overtime work and the right to weekly and annual vacation.

KEYWORDS

labour market, students' labour, youth employment, minimum labour standards, decent work

Radno angažovanje studenata – nužnost radnopravne zaštite

SAŽETAK

Rad tokom studiranja višestruko je značajan, kako za studente tako i za ukupnu dinamiku tržišta rada. Nezavisno od toga da li se posmatra kao vid neformalnog obrazovanja, kao način sticanja praktičnih znanja i vještina ili kao važan izvor prihoda, rad tokom studiranja pozitivno utiče na brži i bezbolniji prelazak iz svijeta obrazovanja u svijet rada. Premda se studenti mogu zapošljavati na osnovu ugovora o radu, oni se mahom angažuju u nekim drugim formama rada koje ne podrazumijevaju zasnivanje radnog odnosa. U pitanju su, međutim, forme koje nijesu adekvatno i dovoljno regulisane, niti su prilagođene mladima kao posebno ranjivoj kategoriji radnika koja se na tržištu rada suočava sa brojnim izazovima vezanim za diskriminaciju, rad na crno i nedovoljnu plaćenost. Cilj je, otuda, ovog rada da ukaže na forme radnog angažovanja studenata, na potrebu njihovog posebnog zakonskog regulisanja i na nužnost određenih aspekata radnopravne zaštite mladih u svim tim slučajevima. Uvođenje određenih radnopravnih elemenata u sve forme radnog angažovanja studenata od suštinskog je značaja za njihovu zaštitu od ekspoloatacije i nedostojanstvenih uslova rada. Ovo posebno kada su u pitanju minimalni radni standardi koji se tiču zaštite na radu, nadoknade za rad, prava na dnevni i nedjeljni odmor, odsustva tokom praznika i prekovremenog rada. Pitanje zaštite i pravovremenog uključivanja mladih na tržište rada značajno je i u kontekstu aktuelnih demografskih kretanja, te traganja za adekvatnim nivoom međugeneracijske solidarnosti. U radu se kao ilustrativan primjer koriste zakonodavstvo i praksa u Crnoj Gori.

KLJUČNE RIJEČI

tržište rada, studentski poslovi, zapošljavanje mladih, minimalni radni standardi, dostojanstvo na radu

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1 UVODNE NAPOMENE

Studentska populacija postaje sve značajniji akter tržišta rada, s obzirom na to da je prema podacima Eurostudenta iz 2018. godine oko 50% studenata u nekom trenutku radno angažovano, s tim da ovaj procenat varira u pojedinim evropskim zemljama i zavisi od njihovih brojnih karakteristika, uključujući institucionalne, kulturološke i tržišne determinante, i kreće se od 22% do 70% (Eurostudent 2018). Prema ovom istraživanju, neki od njih rade tokom cijele studijske godine (35%), neki povremeno (16%), dok ima i onih koji rade samo u periodima kada nema predavanja (20%). Takođe, varira i broj sati koji studenti rade, i kreće se od minimalnih četiri pa do 37 na nedjeljnom nivou. Interesantno je i to da, kada je u pitanju njihova samoidentifikacija, u prosjeku oko 65% studenata koji rade sebe primarno doživljava kao studenta, dok ostatak sebe vidi prvenstveno kao radnika koji istovremeno studira. No, uprkos sve većem učešću ovog dijela populacije u tržištu rada, pojam studentskog rada nije lako odrediti, jer se radi o generičkom pojmu koji podrazumijeva najrazličitije forme rada tokom studiranja, sa ili bez nadoknade. Uopšteno uzevši, radi se o bilo kojoj vrsti radnog angažovanja tokom studija, bilo da se ono temelji na ugovorima kojima se zasniva radni odnos ili ugovorima kojima se ne zasniva radni odnos, uključujući samozapošljavanje, studentske prakse i slično. Radno angažovanje studenata posebno je teško definisati u onim zemljama u kojima ne postoji regulativa koja uređuje pitanje studentskih poslova, studentskih praksi ili drugih oblika angažovanja studenata. U pitanju su države koje nemaju razvijene politike i podsticaje prelaska mladih iz svijeta obrazovanja u svijet rada i u kojima obrazovni sistem nije povezan sa tržištem rada, kao i države koje nijesu prepoznale značaj većeg radnog angažovanja studentske populacije, niti potrebu posebne zaštite njihovih radnih prava.

Tradicionalno broj studenata koji rade mnogo je veći u Americi i u zemljama sjeverne Evrope, poput Danske, Finske, Holandije, Ujedinjenog Kraljevstva, Švedske, s tim da je ovaj trend sve više zastupljen i na jugu (Smyth i dr. 2001). Premda spada u red država u kojima postoji potpuna odvojenost obrazovnih programa od svijeta rada, i premda se ne može pohvaliti velikim brojem onih koji se istovremeno nalaze u procesu obrazovanja i na tržištu rada, posljednjih godina u Crnoj Gori (ali i regionu) sve je prisutnija želja mladih da istovremeno rade i studiraju, pri čemu, zbog odsustva regulative, studenti rade u vrlo nesigurnim i prekarnim formama rada, poput ugovora o djelu ili ugovora o volontiranju, odnosno formama koje im ne osiguravaju ni pojedine elemente radnopravne zaštite. Svim ovim formama rada zajedničko je to što rad obavlja lice koje ima status studenta, što su povoljnije za poslodavce, što se po pravilu radi o kraćim/privremenim periodima radnog angažovanja i što student, kao izvršilac posla, ne uživa ni približan nivo zaštite koji je obezbijeđen zaposlenima putem radnog zakonodavstva.

Prilikom razmatranja pitanja radnog angažovanja studenata ne smije se zaboraviti da je pravovremeno zapošljavanje mladih od velikog značaja za rješavanje brojnih socijalnih, ekonomskih i demografskih problema svakog društva, te da države aktivno i neizostavno moraju raditi na stvaranju boljih izgleda za budućnost mladih generacija, uključujući i donošenje odgovarajućeg pravnog okvira koji treba da podstakne radno angažovanje studenata, uz puno obezbjeđenje njihove zaštite i sigurnosti.

Ovo posebno imajući u vidu da su mladi ranjiva kategorija radnika koja se suočava sa brojnim izazovima vezanim za eksploataciju i diskriminaciju na tržištu rada, kao i za rad na neodgovarajućim i manje plaćenim poslovima. Pronalaženje odgovarajućeg zaposlenja za mlade ljude izuzetno je važno, jer se zapošljavanje javlja kao emancipatorski faktor i kao pretpostavka ukupne dobrobiti pojedinca, njegove ekonomske samostalnosti i ostvarivanja drugih uloga u svijetu odraslih (Kovačević 2021). Upravo pristup zapošljavanju mladih kroz tzv. životni ciklus (eng. *life-cycle approach*) prepoznaje da ono što se dešava u jednom trenutku života utiče na prilike u drugim fazama – tako da, primjera radi, ako se pojedinci suočavaju sa diskriminacijom, siromaštvom ili nejednakošću kada su mladi, veća je vjerovatnoća da će u odrasloj dobi biti u nepovoljnijem položaju (International Labour Conference 2005).

Osim toga, problematika radnog angažovanja studenata mora se staviti i u kontekst demografskih trendova unutar Evropske unije. Evropu u narednih nekoliko decenija očekuje drastično starenje stanovništva, a to će svakako uzrokovati probleme u dinamici kojom se pune i prazne penzioni fondovi, posebno u onim zemljama u kojima se primjenjuje sistem tekućeg finansiranja. Ono će uzrokovati i sve veće migracije mladih ljudi, sa čijim posljedicama su se neke zemlje već ozbiljno suočile. Evropskim zemljama, otuda, pogoduje što brže zapošljavanje mladih, sa što kraćim periodom odnosno bez praznog hoda između obrazovanja i zapošljavanja. Imajući u vidu očekivano starenje stanovništva, politika zapošljavanja će zahtijevati i redefinisanje principa međugeneracijske solidarnosti, koji u savremenim društvima treba da zadovolji dvije osnovne potrebe: potrebu da se mladim radnicima omogući da se uspješno integrišu u tržište rada, da steknu radno iskustvo i da napreduju u karijeri, i potrebu za što dužim očuvanjem radne sposobnosti starijih radnika (Kovačević 2021). Pitanje tranzicije od obrazovanja do zaposlenja u tijesnoj je vezi i sa porodičnom tranzicijom, tranzicijom u roditeljstvo, te stambenom tranzicijom, budući da odluke mladih ljudi o osamostaljivanju, braku i roditeljstvu u velikoj mjeri zavise od uspjeha ove prve, a zbog čega su odlaganje rađanja i smanjenje broja djece postale važne demografske karakteristike (Tomanović i Stanojević 2015).

Imajući u vidu značaj radnog angažovanja studenata i nadolazeće trendove, postoji potreba pravnog regulisanja studentskih poslova kao posebne vrste poslova, s ciljem stvaranja zakonske pretpostavke za njihovo masovnije radno angažovanje. Ova potreba posebno je prisutna u zemljama koje nemaju značajniju lepezu ugovora koji studentima i poslodavcima stoje na raspolaganju, a u kojima je u velikoj mjeri prisutan rad mladih na crno, odnosno rad u tzv. simulovanim ugovornim formama, kao i u državama koje imaju visoku stopu nezaposlenosti mladih i veoma dug period tranzicije od završetka školovanja do pronalaženja prvog odgovarajućeg zaposlenja.[1] Na ovom putu, međutim, stoje brojni izazovi budući da je neophodno pomiriti suprotstavljene interese i uvažiti prednosti rada studenata na jednoj, te osigurati adekvatan nivo radnopravne zaštite na drugoj strani. Stoga će se u ovom radu poći od nekoliko opštih teza vezanih za radno angažovanje studenata: *prvo*, studentski poslovi su značajni i po mnogo čemu specifični, zbog čega

[1] U Crnoj Gori je mladoj osobi u prosjeku potrebno 20,8 mjeseci od perioda završetka školovanja do prvog posla koji se smatra ili stabilnim ili zadovoljavajućim (Đurić 2016).

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postoji potreba njihovog posebnog zakonskog regulisanja; *drugo*, regulisanjem studentskih poslova moraju se osigurati humanizacija rada i socijalna pravednost, te primjena odgovarajućih radnopravnih elemenata neophodnih za zaštitu studenata na radu; i *treće*, studentski poslovi moraju biti uređeni tako da ostanu atraktivni za studente i poslodavce, ali da se istovremeno, na što manju mjeru, svedu potencijalni negativni efekti studentskog rada.

2 ZNAČAJ RADNOG ANGAŽOVANJA STUDENATA

Visoka stopa nezaposlenosti jedan je od problema sa kojim se, u većoj ili manjoj mjeri, suočavaju mnoge zemlje, a kada je riječ o mladim ljudima, jedno od osnovnih obilježja njihovog položaja na tržištu rada jeste upravo teškoća da pronađu i sačuvaju zaposlenje, posebno ono koje odgovara njihovom obrazovanju, potrebama i interesovanjima (Kovačević 2022). Načini na koje se države bore protiv nezaposlenosti su brojni, a sve više se govori o potrebi bržeg i efikasnijeg uključivanja mladih na tržište rada kao jednom od načina da se preventivno djeluje na nezaposlenost. Premda u literaturi ne postoji jedinstven stav o tome da li rad tokom studiranja doprinosi bržoj tranziciji na tržište rada, uopšteno uzevši, pokazuje se da u onim zemljama koje imaju visok procenat studenata koji su radno angažovani postoji manja stopa nezaposlenosti mladih zato što ove zemlje imaju kraći period tranzicije između školovanja i prvog pravog zaposlenja, a što bitno utiče i na ukupnu zaposlenost, životni standard i buduće perspektive mladih ljudi (Nilsson 2016). Rad tokom studiranja pokazao se kao dobar način da se obezbijedi brži, elegantniji i bezbolniji prelazak iz svijeta obrazovanja u svijet rada. Ovo zato što je rad komplementaran studiranju i kao takav vrlo je benefitan iz aspekta razvoja ljudskog potencijala (Nilsson 2016).

Rad tokom studiranja javlja se kao izvanredna prilika za sticanje tzv. mekih vještina, upoznavanje sa širim spektrom poslova, sticanje iskustva i prednosti u odnosu na one kandidate koji takvo iskustvo nemaju. Ovo između ostalog i zbog toga što formalno obrazovanje, samo po sebi, nije u stanju da mlade ljude u potpunosti spremi za tržište rada, da ih opremi svim vještinama, znanjima i sposobnostima koje se od njih traže već prilikom prvog zapošljavanja. Paradoksalno je, međutim, to što je formalno obrazovanje i dalje visoko vrijednovano kao kulturni kapital koji je neophodan za zaposlenje, uprkos tome što se pokazuje kao nedovoljno i što strategije i politike zapošljavanja sve više uključuju neformalne vidove obrazovanja (Tomanović i Stanojević 2015).

Mladi se upravo i suočavaju sa brojnim izazovima vezanim za pronalaženje prvog zaposlenja jer poslodavci očekuju da kandidati prilikom prvog zapošljavanja imaju određeno iskustvo i da posjeduju niz tzv. mekih vještina. Poslodavci, naime, vjeruju da radno iskustvo predstavlja važan dokaz o tome da radnik primjenjuje (formalno i neformalno) stečeno znanje i vještine (Kovačević 2022). Budući da poslodavac teško može da izmjeri sposobnosti i motivaciju mlade osobe, on nastoji da iskoristi sve podatke o ranijem iskustvu, a rad tokom studiranja pokazuje prisustvo snažne motivacije (Nilsson 2016). Za buduću karijeru studenata i sticanje odgovarajućih vještina i iskustava posebno je značajno radno angažovanje u oblastima koje su srodne studijskim programima koje pohađaju. Procenat studenata koji rade u ovim srodnim oblastima varira od

zemlje do zemlje, ali se primjećuje da je, po pravilu, veći kada su u pitanju master studije i kada broj nedjeljnih časova rada prelazi 20 (Eurostudent 2018). Ne treba zanemariti ni to da rad tokom studiranja predstavlja način za uspostavljanje široke mreže kontakata, a što značajno povećava šanse kod kasnijeg zapošljavanja. Rapidan porast broja studenata koji rade povezuje se sa strukturalnim promjenama tržišta rada uzrokovanim razvojem tehnologije, zbog kojih su studenti postali poželjna radna snaga u sektoru usluga u kome se traže meke vještine i fleksibilan pristup zapošljavanju (Kurekova i Žilinčikova 2016). I zaista, porast broja studenata koji rade poklapa se u velikoj mjeri za opštom fleksibilizacijom tržišta rada do koje je došlo posljednjih nekoliko decenija.

Premda su sticanje iskustva, priprema za potrebe tržišta rada i povećanje konkurentnosti značajni motivi za rad tokom studiranja, finansijski razlozi nalaze se visoko na ljestvici razloga zbog kojih studenti odlučuju da rade tokom studija. Pomenuto istraživanje Eurostudenta pokazuje da je sticanje iskustva primjenljivije za studente koji potiču iz prodica koje su visoko obrazovane, dok je pokrivanje troškova života važnije za studente bez prethodnog porodičnog iskustva u visokom obrazovanju, zatim za studente koji žive odvojeno od roditelja i starije studente. Međutim, finansijski razlozi pokrivaju širok spektar motivacija i razlikuju se u zavisnosti od socioekonomskog porijekla studenata, pa tako u zemljama u kojima se sistem visokog obrazovanja dominantno finansira iz školarina, jedan od češćih motiva rada tokom studija može biti pokrivanje školarine, dok u zemljama u kojima se obrazovanje finansira iz javnog budžeta studenti odlučuju da rade kako bi se izdržavali dok studiraju ili kako bi povećali svoj životni standard (Eurostudent 2018). Prihodi od rada predstavljaju više od pola ukupnog budžeta studenata, a što pokazuje da je samofinansiranje značajan oblik finansiranja studenata u Evropi (Kosi, Nastav i Šušteršič 2013). U zavisnosti od socioekonomskog statusa studenta, moguće je, dakle, uočiti tri glavna tipa radnog angažovanja, i to: (1) rad tokom studija kao privilegija i priprema za tržište rada; (2) rad tokom studija kao nužnost; i (3) mješoviti tip (Stanojević, Živadinović i Čekić Marković 2015).

Osim na brojne prednosti uporednog rada i studiranja, s pravom se ukazuje i na rizike, posebno one skopčane sa radnopravnom zaštitom, napuštanjem studija ili niskim intenzitetom studiranja. Takođe, postoji bojazan od ukupnih efekata koje masovniji rad studenata može imati na tržište rada u cjelini (Kuzelj 2020). Otuda, pravo pitanje jeste na koji način se, odgovarajućim politikama i zakonskim rješenjima, može postići balans između prednosti i nedostataka studentskog rada, odnosno kako obezbijediti atraktivnost studentskog rada na jednoj, te zaštitu studenata i ravnotežu na tržištu rada, na drugoj strani.

3 FORME RADNOG ANGAŽOVANJA STUDENATA

Već je bilo riječi o tome da se studenti za rad angažuju u najrazličitijim formama rada, od klasičnog ugovora o radu, preko ugovora o djelu, ugovora o privremenim i povremenim poslovima i ugovora o volontiranju, pa do različitih vrsta neregulisanih ugovora o praksi ili stažiranju. Nijedna od ovih formi, međutim, nije posebno dizajnirana da zadovolji specifične interese studenta kao radnika, da obezbijedi odgovarajući nivo radnopravne zaštite ili da spriječi negativne efekte studentskog rada. Sa izuzetkom

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ugovora o radu, čijim zaključivanjem student ulazi u radnopravni režim i uživa zaštitu kao i svaki drugi zaposleni, ostale ugovorne forme izuzetno su nepovoljne za studente i predstavljaju loš primjer njihovog radnog angažovanja. U odsustvu posebnih ugovornih formi koje bi bile namijenjene studentima, *ugovor o djelu* i *ugovor o volonterskom radu* javljaju se kao dominantne forme studentskog rada.

Ugovor o djelu kao ugovor obligacionog prava ne nudi nikakav vid radnopravne zaštite, čime se stvara pogodno tlo za eksploataciju studenata kao radne snage i za zloupotrebe od strane poslodavaca, a što može negativno uticati i na razvoj buduće karijere studenta. Premda ugovor o djelu, baš kao i ugovor o radu, karakterišu dobrovoljnost i plaćenost, lično izvršavanje rada i povinovanje nalozima naručioca posla karakterišu ga samo do određenog (ograničenog) stepena. Budući da predmet ovog ugovora nije sam *rad*, već *rezultat rada*, ugovor o djelu ovlašćuje naručioca posla da izdaje samo opšte smjernice za rad, bez zalaženja u način izvršavanja posla (Šunderić i Kovačević 2017). U pitanju je, dakle, rad za drugog, ali ne u službi drugog (Tintić 1969). Ova suštinska razlika uslovila je da ugovor o djelu ne podrazumijeva čitav niz prava i garancija koje u radnom odnosu predstavljaju vrstu protivteže podređenom položaju zaposlenog, zbog čega student koji radi po osnovu ugovora o djelu nema pravo na minimalnu zaradu, pravo na dnevni, sedmični i godišnji odmor. Treba, međutim, napomenuti da je u praksi došlo do ozbiljne deformacije ugovora o djelu budući da se dominantno zaključuje radi obavljanja redovnih poslova kod poslodavca, uprkos činjenici da je osnovno svojstvo ovog ugovora to što se zaključuje sa određenim licem radi obavljanja poslova koji su van djelatnosti poslodavca (Jovanović 2018). U pitanju su tzv. prikriveni radni odnosi koji postoje onda kada se radnik angažuje na poslovima koji s obzirom na prirodu rada i ovlašćenja poslodavca imaju obilježja posla za koji se zasniva radni odnos, a na osnovu različitih simulovanih ugovora (Senčur Peček i Laleta 2018).[2]

Na drugoj strani, volontiranje je, kao aktivnost usmjerena na opštu dobrobit društva, izuzetno značajna djelatnost koja nema za cilj sticanje dobiti, već obavljanje aktivnosti od opšteg interesa ili za opšte dobro. Premda je volontiranje posebno značajno za mlade jer im omogućava da razviju svoju ličnost i da usvajaju vrijednosti poput solidarnosti, humanosti i zajedništva, studentima ono omogućava sticanje vrlo ograničenih zanja i vještina zato što im nije dostupan tako širok spektar poslova koje mogu obavljati na bazi ugovora o volontiranju. Ako se ovome doda i činjenica da volontiranje po definiciji znači obavljanje posla bez nadoknade, onda je jasno da ono nema mnogo dodirnih tačaka sa onim što se zove plaćeni i podređeni rad za drugog, a pod kojim obično podrazumijevamo i radno angažovanje studenata. Međutim, baš zbog toga što se obavlja bez isplate novčane nadoknade, poslodavci često zloupotrebljavljaju volontiranje, posebno onda kada izostaje adekvatan inspekcijski nadzor ili kada zakonodavni okvir kojim se uređuje volontiranje ne pruža dovoljno zaštite od zloupotreba.

[2] Iako se ne zna tačan broj simulovanih ugovora, posredno se dolazi do zaključka da je ova deformacija u Crnoj Gori dostigla ozbiljne razmjere, te da su, samim tim, riziku rada u simulovanim formama izloženi u velikoj mjeri i studenti budući da se poslodavci teško odlučuju da sa njima zaključe ugovor o radu. Posebno zabrinjava što su ugovori o djelu široko rasprostranjeni u javnoj upravi. Vlada Crne Gore je samo ove godine sklopila 60 odsto više ugovora o djelu u odnosu na isti period prošle godine, u kojoj je isplaćeno oko 3,2 miliona eura po osnovu ugovora o djelu (Durutović 2023).

Tako, Zakon o volonterskom radu Crne Gore ne sadrži *načelo zabrane zloupotrebe* volontiranja koje, između ostalog, podrazumijeva da je zabranjeno organizovanje volontiranja kojim se mijenja rad koji obavljaju lica u skladu sa propisima o radu. Ne sadrži ni odredbu kojom se propisuje da se pod volontiranjem ne smatra obavljanje poslova koji, s obzirom na prirodu i vrstu rada, te ovlašćenja poslodavca, imaju obilježja poslova za koje se zasniva radni odnos. Štaviše, sadrži odredbu koja omogućava da se ugovor o volonterskom radu zaključi sa licem koje želi da se stručno osposobi i stekne posebna znanja i vještine za rad u svojoj struci. U ovom slučaju volonterski rad priznaje se kao radno iskustvo i kao uslov za polaganje stručnog ispita, pa se ovom zakonu zamjera to što volonterski rad više reguliše kao besplatan oblik rada nego kao način participacije građana u razvoju zajednice.[3] Posljedično, najveći problem postojećeg zakonodavnog okvira je to što je ostavio veliki prostor za manipulaciju mladima i njihovom besplatnom radnom snagom.

Radne (studentske) prakse, takođe, nijesu jednoznačan pojam i teško ih je definisati, budući da se mogu javiti u najrazličitijim oblicima. Najšire posmatrano, radna praksa se definiše kao aktivnost koja se preduzima kao dio, paralelno sa, ili nakon formalnog programa obrazovanja i obuke, a koju organizuje poslodavac, na svoju inicijativu ili na zahtjev obrazovne ustanove/ustanove za obuku, ili pak na inicijativu praktikanta, a sve kako bi praktikant stekao radno iskustvo u određenoj organizaciji ili sektoru i uspostavio kontakte od značaja za buduću profesionalnu karijeru (Kovačević 2022). Često se definišu i kao *kontrolisano iskustveno učenje* ili kao *oblik učenja zasnovanog na radu* (Kovačević 2022). Ove prakse, kada su zakonski regulisane, bilo da su obavezne ili ne, plaćene ili neplaćene, predstavljaju vrlo važan način sticanja praktičnih znanja i vještina studenata, koje ih pripremaju za posao i omogućavaju brži ulazak na tržište rada. Radne prakse uklanjaju osnovne nedostatke sistema visokog obrazovanja, kome se zamjera to što produkuje diplomce koji imaju samo teorijska a ne i praktična znanja, te kod kojih postoji očigledan nedostatak tzv. mekih vještina. Baziraju se na ideji da je najbolje ono učenje koje je zasnovano na iskustvu i koje studentima pruža realističan pogled na određenu profesiju i na probleme u praksi (Burke i Carton 2013). Posebno su zastupljene u zemljama koje njeguju tzv. dualni model u pogledu odnosa obrazovnog sistema i poslodavaca, a koji podrazumijeva da je praktična obuka sastavni dio obrazovanja (Kovačević 2022). Uopšteno uzevši, radne prakse ubrzano postaju sastavni dio procesa obrazovanja i važan most između obrazovanja i plaćenog rada, s tim da sa ovim trendom sve više raste i zabrinutost da mnogi modeli ove prakse nijesu u stanju da odgovore na potrebe mladih, već radije predstavljaju izvor besplatne ili jeftine radne snage (Paz-Fuchs 2021).

Ova zabrinutost samo je veća u zemljama koje nijesu pravno uredile radne prakse, a u koje spada i Crna Gora. Ovo iz razloga što se različite forme neregulisanih ugovora o radnim/studentskim praksama koriste u svrhu radnog angažovanja studenata koji, željni praktičnih znanja, naročito iz oblasti za koju se školuju, prihvataju uslove definisane ovakvim ugovorima. Na ovaj način,

[3] Zakon o volonterskom radu uređuje pravni okvir za volonterski rad a ne volontiranje, a volonterski rad reguliše kao javnopravni (*ius imperium*) prije nego privatnopravni institut (*ius gestionis*), što se ogleda u nizu njegovih odredbi (Ministarstvo javne uprave CG 2018).

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i u slučaju radnih praksi, radno angažovanje studenata ostaje izvan bilo kog oblika radnopravne zaštite, sa svim preduslovima za diskriminaciju i eksploataciju, te uz krajnje podređen položaj poslodavcu, ali bez odgovarajuće zaštite koja bi opravdala takvu potređenost. Ovo je izuzetno opasno budući da radne prakse sa sobom nose brojne pravne, pedagoške i etičke dileme, posebno kada se radi o neplaćenim radnim praksama (Burke i Carton 2013). Ove i slične forme, dakle, nisu adekvatan odgovor na nadolazeći trend radnog angažovanja studenata, u prvom redu zbog toga što ostavljaju studente daleko izvan sistema radnopravne zaštite, prepuštene surovosti obligacionih odnosa i lišene humanizovanih elemenata rada koji su neophodni kako bi se spriječile zloupotrebe. Ovo zato što je *causa* ugovora koji spadaju u domen građanskog prava *ekonomski ekvivalent za izvršeni rad*, dok je *causa* ugovora o radu kao ugovora radnog prava *dostojanstven rad* (Lubarda 2012). Upravo nedostatak socijalne dimenzije radnog angažovanja studenata u ovim formama rada ukazuje na potrebu posebnog zakonskog regulisanja studentskog rada, uz uvođenje određenih radnopravnih elemenata odnosno minimalnih standarda zaštite na radu, a sve s ciljem da i radno angažovanje studenata kao osnovnu vrijednost ima dostojanstvo na radu.

4 UGOVOR O OBAVLJANJU STUDENTSKIH POSLOVA – *PRO ET CONTRA*

Uopšteno govoreći, pod studentskim poslovima podrazumijevaju se kraći radni angažmani studenata koji nemaju zasnovan radni odnos niti se bave samostalnom djelatnošću, a na osnovu posebnog ugovora o obavljanju studentskih poslova. Ova posebna vrsta ugovora ne srijeće se u velikom broju evropskih država, najvjerovatnije zbog toga što su studenti dovoljno zaštićeni i u nekim drugim nestandardnim formama rada (npr. ugovor o radu sa nepunim radnim vremenom), što im na raspolaganju stoje neke druge specifične forme rada koje mogu da zadovolje njihove potrebe (npr. mini-poslovi), ili zbog toga što postoje brojni drugi načini za sticanje praktičnih znanja i vještina za vrijeme studiranja (npr. radne prakse). Tako, primjera radi, u Njemačkoj su među studentskom populacijom veoma zastupljeni tzv. mini-poslovi, koji su izuzeti iz sistema socijalnog osiguranja i za koje se može isplatiti zarada samo do određenog iznosa (Govindjee, Brockmann i Walser 2017). Može se, otuda, zaključiti da potreba posebnog regulisanja tzv. studentskih poslova najprije postoji u onim zemljama koje imaju veći rizik eksploatacije mladih radnika, a koje na drugoj strani nemaju pravno regulisane modele rada koji bi mogli da zadovolje naraslu želju studenata da istovremeno rade i studiraju ili obavljaju radne prakse. Potrebno je, međutim, prethodno razmotriti prirodu ugovora o obavljanju studentskih poslova, njegove prednosti i nedostatke i analizirati na koji način se studentski poslovi mogu uklopiti u postojeća tržišta rada, a da pritom ne dovedu do njihovih većih poremećaja.

Ugovor o obavljanju studentskih poslova, uopšteno uzevši, mogao bi se definisati kao ugovor kojim se lice sa statusom studenta angažuje za obavljanje određenih poslova kod poslodavaca, uz nadoknadu, po pravilu na kraći rok, bez zasnivanja radnog odnosa i uz djelimičnu radnopravnu zaštitu. Otuda, bitna svojstva ovog ugovora su: a) to što ga može zaključiti samo lice sa statusom studenta; b) što se njime ne zasniva radni odnos; c) što izvršilac posla (student) uživa određene elemente radnopravne

zaštite; i d) privremenost. Kako će, međutim, u konačnom izgledati tzv. studentski poslovi zavisi od bližeg zakonskog uređenja pojedinih elemenata, odnosno od toga kako se u konkretnom slučaju definiše pojam studenta, koje se trajanje ugovora smatra maksimalnim, koja se radna prava konkretno studentu garantuju itd. Tako, primjera radi, hrvatski Zakon o obavljanju studentskih poslova predviđa da student može sklopiti ugovor za obavljanje studentskog posla za vrijeme studiranja od dana upisa na fakultet, da je ovo pravo ograničenog trajanja, te da ne može biti duže od dvostrukog vremena trajanja studija, prvog i drugog nivoa. Također, posao posredstvom ovog ugovara može obavljati student upisan u tekuću akademsku godinu koji je u prethodnoj akademskoj godini ostvario najmanje 1 ECTS bod. Ugovor se zaključuje prije početka obavljanja posla, za svaki kalendarski mjesec. Prema konceptu koji je Hrvatska usvojila, studentski poslovi se organizuju isključivo uz posredovanje studentskih centara ili fakulteta/univerziteta koji imaju poseban centar za studentski standard, te uz posebnu dozvolu nadležnog ministarstva, a sve radi kontrole studentskog rada. Student dok obavlja studentske poslove uživa zaštitu na radu, pravo na minimalnu naknadu za rad, pravo na naknadu putnih troškova, pravo na uvećanje naknade za rad u vrijeme državnih praznika, rad noću, prekovremeni rad i rad nedjeljom, kao i pravo na zaštitu dostojanstva. Da bi se spriječile zloupotrebe studentskog rada, propisano je da naručilac posla ne može sklopiti ugovor o obavljanju studentskih poslova radi obavljanja poslova zaposlenog kome je otkazao ugovor o radu zbog ekonomskih razloga, u periodu od šest mjeseci od dana takvog otkaza.

Ključna *differentia specifica* ovog ugovora u odnosu na klasični ugovor o radu, dakle, jeste to što se njime ne zasniva radni odnos, ali odstupanja postoje i u pogledu trajanja ugovora i obima radnih prava koje uživaju zaposleni i izvršilac studentskog posla. Ova donekle vještački stvorena razlika između ugovora o radu i ugovora o studentskim poslovima razlog je kritika ugovora o obavljanju studentskih poslova, pri čemu se ističe da priroda sadržaja studentskog ugovora suštinski odgovora radu koji se obavlja posredstvom klasičnog ugovora o radu, odnosno da rad putem studentskog ugovora sadrži sve bitne elemente radnog odnosa (Kuzelj 2020). Bez obzira na to što ova kritika nije neosnovana i što se tzv. studentski poslovi suštinski ne moraju razlikovati od drugih poslova za čije se obavljanje zaključuje ugovor o radu, izdvajanje ugovora o obavljanju studentskih poslova u posebnu kategoriju, sa fleksibilnijim obilježjima od standardnog ugovora o radu ima svoje opravdanje. Prvi argument za ovakvu tvrdnju jeste činjenica da izvršilac posla ima *dvostruku ulogu*, odnosno da je istovremeno student i radnik, a što u materijalnom smislu znači da je u pitanju osoba koja je u prvom redu dužna da vodi računa o svojim akademskim obavezama (Kuzelj 2020), te da ove suprotstavljene interese može pomiriti samo specifičnim i fleksibilnim ugovorom. Drugi argument tiče se činjenice da značajan broj studenata već *radi na crno*, ili u veoma nesigurnim formama rada, te da uvođenje jedne ovakve forme svakako znači unapređenje položaja studenata na tržištu rada i veliki korak naprijed u pogledu njihove radnopravne zaštite. Treba imati na umu i to da kod rada na crno dolazi do izražaja *subordinacija* u svom negativnom vidu, budući da se radnik nalazi pod vlašću poslodavca ali bez mogućnosti uživanja

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pravne zaštite koju bi mu pružio registrovani radni odnos (Lipovčić 2019). Osim toga, istraživanja pokazuju da su radom na crno upravo najviše pogođeni mladi ljudi starosne dobi od 20 do 29 godina (Milić 2014).

Ipak, *pravnu prirodu* ugovora o obavljanju studentskih poslova nije lako odrediti. Razlog je to što se, iako vrlo blizak ugovoru o radu, od njega suštinski razlikuje (ne zasniva se radni odnos), zbog čega se sa njim ne može poistovjetiti. Na drugoj strani, još teže ga je poistovjetiti sa ugovornim formama građanskog prava, imajući u vidu činjenicu da odnos koji se njime uspostavlja ima esencijalne elemente radnog odnosa (dobrovljnost, plaćenost, lično izvršavanje rada i podređenost), te da student po osnovu ovog ugovora uživa veliki broj radnih prava koja nikako nijesu svojstvena obligacionim ugovorima. Moglo bi se, dakle, reći da je u pitanju *sui generis* ugovor čijim zaključivanjem student ne ulazi u režim radnopravne zaštite, već u jedan poseban režim rada koji mu obezbjeđuje ograničen broj radnih prava. Ova specifičnost uslovljava brojne nedoumice vezane za ugovor o obavljanju studentskih poslova, posebno kada je u pitanju određivanje obima radnopravne zaštite. No, upravo je *prima causa* posebnog regulisanja studentskih poslova obezbjeđivanje minimalne radnopravne zaštite na koju studenti nemaju pravo kada obavljaju poslove u nekim drugim formama rada. Postavlja se, međutim, pitanje koji su to nužni radnopravni elementi koji ne smiju izostati i koji će obezbijediti socijalnu pravednost ove posebne vrste ugovora.

Kada je riječ o mogućim negativnim efektima studentskih poslova, ukazuje se na mogućnost potencijalnih poremećaja na tržištu rada zbog upliva većeg broja studenata, naročito u sektoru usluga, kao i na rizik da se putem ugovora o obavljanju studentskih poslova maskira stvarna potreba za ugovorima o radu kod poslodavca (Kuzelj 2020). Često se ukazuje i na to da postoji veliki rizik od masovnijeg napuštanja studija ili veoma niskog intenziteta studiranja, usljed nemogućnosti adekvatnog usklađivanja radnih i studijskih obaveza. U vezi sa ovim moguće je postaviti dvije oprečne pretpostavke, prvu – da rad tokom studiranja negativno utiče na uspješnost studiranja, i drugu – da rad tokom studiranja djeluje podsticajno na izvršavanje studijskih obaveza (Hraba 2017). Podaci, međutim, pokazuju da postoji obrnuta proporcionalnost između broja radnih sati i broja sati koje studenti provode u aktivnostima povezanim sa učenjem i studiranjem, te da rad negativno utiče na proces studiranja, posebno kada prelazi 20 sati nedjeljno, pa je, u skladu sa tim, najprihvatljivije primjeniti tzv. granični model prema kome se negativni uticaji paralelnog rada i studiranja javljaju onda kada student radi više sati nego što je optimalno (Hrabar 2017).

Istraživanje Eurostudent-a iz 2018. godine pokazuje i da je napuštanje studija, iz razloga vezanih za rad, češće kod starijih studenata (muškaraca), zatim kod studenata master studija, te onih koji su kasno upisali studije, imali nizak intenzitet studiranja, koji ne žive sa roditeljima ili koji rade veći broj sati u poređenju sa drugim studentima (Eurostudent 2018). Kao negativna strana uporednog rada i studiranja ističe se i to da ono samo produbljuje diskriminaciju i socijalnu nejednakost među studentskom populacijom. Može se pretpostaviti da će u većoj mjeri raditi studenti slabijeg socioekonomskog položaja, kao i da će siromašniji među njima raditi veći broj sati nedeljno (Turk 2022). Dodatno, ukazuje se i na to da studenti koji rade žrtvuju svoj društveni život i manje vremena

posvećuju vannastavnim aktivnostima kao što su volontiranje, druženje i sport (Kosi, Nastav i Šušteršič 2013). Kada je u pitanju zadovoljstvo studenata koji rade, podaci pokazuju da rad veoma pozitivno utiče na zadovoljstvo studenata koji rade do deset sati nedjeljno, te da ovakvi studenti imaju bolju prosječnu ocjenu od studenata koji uopšte ne rade (Tessema, Ready i Astani 2014).

Značajan broj ovih prigovora moguće je, međutim, otkloniti odgovarajućim zakonskim rješenjima, posebno odgovarajućom poreskom politikom. Otuda, oporezivanje studentskih poslova treba da bude dovoljno prihvatljivo da ne utiče demotivišuće na poslodavce da angažuju studente, ali i dovoljno oštro da odvrati poslodavce od zloupotrebe ove vrste ugovora. Na drugoj strani, studentski poslovi treba da u svojoj suštini ostanu studentski, te da omoguće studentu ostvarenje njegove primarne uloge, tj. studiranje. U tom smislu, potrebno je ograničiti maksimalni nedjeljni broj časova rada, čime se umanjuje rizik od napuštanja studija, ali i rizik od značajnijih poremećaja tržišta rada. Poreske olakšice i broj sati rada treba da budu važna specifičnost ovih ugovora u odnosu na klasični ugovor o radu. Studentski poslovi treba, dakle, da budu uređeni na način da predstavljaju samo jednu više mogućnost za studente i poslodave, onda kada se njihovi interesi poklope, te da dovedu do smanjivanja rada na crno i rada po osnovu ugovora o djelu ili ugovora o volontiranju koji suštinski ne odgovaraju prirodi odnosa koji se uspostavlja kod poslodavca.

5 NUŽNI RADNOPRAVNI ELEMENTI RADNOG ANGAŽOVANJA STUDENATA

Usljed pojave velikog broja atipičnih formi rada koje ostaju izvan polja regulisanja radnog zakonodavstva, sve je veći broj radnika koji ne uživaju radnopravnu zaštitu. Kako je ovo postao globalni problem, međunarodne i evropske organizacije sve više usmjeravaju svoju normativnu aktivnost ka uspostavljanju univerzalne zaštite za sve radnike, nezavisno od pravnog osnova njihovog angažovanja (Kovačević 2021). Treba, međutim, napomenuti da u smislu određivanja polja primjene radnog zakonodavstva ne postoji nikakva sumnja da se u slučaju studentskih poslova radi o podređenom odnosno zavisnom radu, kod koga subordiniran položaj izvršioca posla (studenta) u odnosu na poslodavca dolazi do izražaja u svom punom obimu. Samim tim, nema sumnje da studentima dok su radno angažovani pripada popriličan obim radnopravne zaštite. Ovo posebno uzme li se u obzir ranjivost mladih kao posebne kategorije radnika, te presudan uticaj koji prva radna angažovanja mogu imati na njihovu dalju percepciju rada i razvoj buduće karijere, a posljedično i na njihov socijalni i ekonomski status u kasnijoj životnoj dobi.

U određivanju sadržine tzv. minimalnih standarda rada treba poći od *dostojanstva na radu*, kao najviše vrijednosti i zajedničkog imenitelja niza prava koja svaki radnik treba da uživa. Komponente dostojanstvenog rada su složene, ali one, bez izuzetka, obuhvataju zaštitu od diskriminacije i uznemiravanja na radu, odgovarajuću nadoknadu za rad, zaštitu zdravlja i bezbjednosti na radu, te osnovna prava poput prava na ograničeno radno vrijeme, zabranu

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prekovremenog rada, pravo na dnevni, nedjeljni i godišnji odmor (Kovač Orlandić 2022). Koncept pristojnog rada, koji se određuje kao pravo na produktivan rad u uslovima slobode, jednakosti, bezbjednosti i ljudskog dostojanstva, takođe može poslužiti kao osnov za određivanje neophodnih elemenata radnopravne zaštite (Anker i dr. 2002). Potrebna je, međutim, operacionalizacija ovog pojma u praksi, s obzirom na to da pojam *pristojnog* ne mora imati isto značenje u svim djelatnostima, kompanijama ili državama, zbog čega se predlaže definisanje objektivnih mjerila odnosno statističkih indikatora, čijim praćenjem bi se mogao vršiti efikasniji monitoring pristojnog rada (Anker i dr. 2003). Premda je koncept pristojnog rada izuzetno širok i sadržajan, u kontekstu studentskog rada, njegove najvažnije komponente su odgovarajuća zarada/nadoknada, zaštita zdravlja i bezbjednosti na radu u najširem smislu, kao i zabrana diskriminacije. Hrvatski Zakon o studentskim poslovima propisuje da student dok obavlja studentske poslove uživa zaštitu na radu, pravo na minimalnu naknadu za rad, pravo na naknadu putnih troškova, pravo na uvećanje naknade za rad u vrijeme državnih praznika, rad noću, prekovremeni rad i rad nedjeljom, kao i pravo na zaštitu dostojanstva.

Rješenja ovog zakona se kritikuju zbog toga što nije predvidio pravo studenta na zaradu, već na nadoknadu, kao ni pravo na plaćeni godišnji odmor, pravo na naknadu zarade u slučaju privremene spriječenosti za rad, te zaštitu od jednostranog otkaza studentskog ugovora od strane poslodavca (Kuzelj 2020). Određene nedoumice postoje i u vezi sa eventualnom analognom odnosno supsidijarnom primjenom radnopravnih propisa u slučaju disciplinske odgovornosti, oglašavanjem slobodnih radnih mjesta, te načinom na koji se ova radna mjesta tretiraju kod poslodovca. Istina je, međutim, da su studentski poslovi posebno dizajnirani za populaciju studenata, da su u startu vremenski oročeni (dok traje status studenta), da se zaključuju na kraći period, sa kraćim radnim vremenom, da svojom fleksibilnošću treba da zadovolje specifične potrebe studenata, zbog čega ne mogu i ne treba da se u cjelosti poistovjećuju sa radnim odnosom. Iscrtavanje razlike između ugovora o radu i ugovora o obavljanju studentskih poslova kao *sui generis* ugovora nije lako budući da svaki od parametara može izazvati dalekosežne posljedice. Ipak, čini se da pored gorepobrojanih prava (zaštita na radu, pravo na naknadu putnih troškova, pravo na uvećanje naknade za rad u vrijeme državnih praznika, rad noću, prekovremeni rad i rad nedjeljom, kao i pravo na zaštitu dostojanstva) student koji radi na bazi studentskog ugovora treba da, kao minimum, uživa i pravo na godišnji odmor u odgovarajućem trajanju i pravo na naknadu zarade u slučaju privremene spriječenosti za rad. Na državama je da, poštujući koncept pristojnog i dostojanstvenog rada, a uz uvažavanje svojih unutrašnjih prilika, institucionalnog okvira, stanja na tržištu rada, broja mladih i poreske politike, regulišu studentske poslove kao posebnu vrstu poslova, uz odgovarajuću kontrolu i inspekcijski nadzor, bez kojih, kako se više puta pokazalo do sada, nema zaštite radničkih prava. Osim toga, treba imati na umu da studenti dok rade, zahvaljujući suštinskom obilježju njihovog rada – *subordinaciji*, ulaze u pojam *radnika* onako kako ga vidi Evropski sud pravde, a što takođe predstavlja snažan osnov njihove radnopravne zaštite (Rosin 2021).

6 ZAKLJUČAK

Studentska populacija postaje sve značajniji akter tržišta rada, a to je veoma značajno kako za studente tako i za društvo u cjelini. Premda se ističu i negativne strane rada tokom studiranja, uglavnom se ovaj trend doživljava kao pozitivan budući da se javlja kao mjera protiv nezaposlenosti, kao način sticanja iskustva i vještina, kao vid neformalnog obrazovanja, ali i kao način obezbjeđivanja potrebnih finansijskih sredstava tokom studija. Sporno je, međutim, to što ovaj trend, koji nije zaobišao ni naše prostore, nije ispraćen donošenjem odgovarajuće zakonske regulative. Posljedično, studenti rade u vrlo nesigurnim i prekarnim formama rada, poput ugovora o djelu ili ugovora o volontiranju, odnosno formama koje im ne osiguravaju niti pojedine elemente radnopravne zaštite. U pitanju su forme rada koje nijesu prilagođene mladima kao posebno ranjivoj kategoriji radnika, koja se na tržištu rada suočava sa brojnim izazovima vezanim za diskriminaciju, rad na crno i nedovoljnu plaćenost.

Imajući u vidu navedeno, postoji potreba posebnog regulisanja studentskih poslova radi stvaranja zakonske pretpostavke za njihovo masovnije radno angažovanje. Ova potreba posebno je prisutna u zemljama koje nemaju značajniju lepezu ugovora koji studentima i poslodavcima stoje na raspolaganju, a u kojima je u velikoj mjeri prisutan rad mladih na crno, kao i u zemljama koje imaju visoku stopu nezaposlenosti mladih i veoma dug period tranzicije od završetka školovanja do pronalaženja prvog odgovarajućeg zaposlenja. Pritom, regulisanjem studentskih poslova moraju se osigurati socijalna pravednost i primjena odgovarajućih radnopravnih elemenata neophodnih za zaštitu studenata dok rade. Stoga, regulisanje studentskih poslova predstavlja izazov jer se, odgovarajućim politikama i zakonskim rješenjima, mora postići balans između prednosti i nedostataka studentskog rada, odnosno obezbijediti atraktivnost studentskog rada na jednoj, te zaštita studenata i ravnoteža na tržištu rada, na drugoj strani.

Jedan od prihvatljivih modela jeste regulisanje posebnog ugovora o obavljanju studentskih poslova, kao ugovora kojim se lice sa statusom studenta angažuje za obavljanje određenih poslova kod poslodavaca, uz nadoknadu, po pravilu na kraći rok, bez zasnivanja radnog odnosa i uz djelimičnu radnopravnu zaštitu. U pitanju je *sui generis* ugovor, čiju pravnu prirodu nije jednostavno odrediti zato što je po sadržini blizak ugovoru o radu i što ga karakterišu dobrovoljnost, plaćenost, lično izvršavanje rada i subordinacija. Istovremeno, to je ugovor kojim se ne zasniva radni odnos i čijim zaključenjem student ne ulazi u režim radnopravne zaštite, već u jedan poseban režim rada koji mu obezbjeđuje zaštitu samo do određenog stepena. Ova specifičnost uslovljava brojne nedoumice vezane za ugovor o obavljanju studentskih poslova, posebno kada je u pitanju obim radnopravne zaštite studenata.

U određivanju obaveznog minimuma radnopravne zaštite treba poći od *dostojanstva na radu*, kao najviše vrijednosti i zajedničkog imenitelja niza prava koja svaki radnik treba da uživa. Komponente dostojanstvenog rada su složene, ali one, i u kontekstu studentskog rada, nesumnjivo obuhvataju zaštitu od diskriminacije i uznemiravanja na radu, odgovarajuću nadoknadu za rad, zaštitu zdravlja i bezbjednosti na radu, te osnovna prava poput prava na ograničeno radno vrijeme, zabranu prekovremenog rada, pravo na dnevni, sedmični i godišnji odmor.

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LITERATURA

Anker, R., Chernyshev, I., Egger, P., & Ritter, J. A. (2002). Measuring decent work with statistical indicators. Geneva: Policy Integration Department Statistical Development and Analysis Group International Labour Office (Working Paper No. 2). https://www.ilo.org/wcmsp5/groups/public/---dgreports/---integration/documents/publication/wcms_079089.pdf

Anker, R., Chernyshev, I., Egger, P., & Ritter, J. A. (2003). Measuring decent work with statistical indicators. *International Labour Review* 142(2), 147–178. https://doi.org/10.1111/j.1564-913X.2003.tb00257.x

Burke, D., & Carton, R. (2013). The Pedagogical, Legal and Ethical Implications of Unpaid Internship. *Journal of Legal Studies Education*, 30(1), 99–130. http://dx.doi.org/10.1111/j.1744-1722.2013.01115.x

Eurostudent (2018). Combining studies and paid jobs. UAB "Araneum" (Thematic Review). https://www.eurostudent.eu/download_files/documents/TR_paid_jobs.pdf

Durutović, A. (2023, maj 24). Prikupljanje izborne podrške u Crnoj Gori ugovorima o djelu. *Radio Slobodna Evropa*. https://www.slobodnaevropa.org/a/izbori-kampanja-crna-gora/32426132.html

Đurić, D. (2016). Labour market transitions of young women and men in Montenegro. ILO: International Labour Office, Geneva (Work4Youth publication series; No. 34). https://www.ilo.org/wcmsp5/groups/public/---ed_emp/documents/publication/wcms_477695.pdf

Govindjee, A., Brockmann, J., & Walser, M. (2017). *Atypical Employment in an International Perspective*. Hamburg: Universität Hamburg. https://law.mandela.ac.za/law/media/Store/documents/Govindjee/Heft15_Atypical-Employment_Final.pdf

Hrabar, D. (2017). *Usklađenost studentskih poslova sa studiranjem i razvojem karijere* (diplomski rad). Univerzitet u Splitu.

International Labour Conference (2005). Youth: Pathways to decent work. ILO. Geneva (Report VI, 93rd Session). https://learning.itcilo.org/ilo/youthemployment/PDF/rep-vi_en.pdf

Jovanović, P. (2018). *Radno pravo*. Novi Sad: "Futura" Petrovaradin.

Kosi, T., Nastav, B., & Šušteršič, J. (2013). Does Student Employment Deteriorate Academic Performance? The Case of Slovenia. *Revija za socijalnu politiku*, 20(3), 253–274. http://dx.doi.org/10.3935/rsp.v20i3.1129

Kovačević, Lj. (2021). *Zasnivanje radnog odnosa*. Beograd: Pravni fakultet Univerziteta u Beogradu.

Kovačević, Lj. (2022). Pojam radne prakse i pravni položaj praktikanata – važnija radnopravna pitanja In J. Perović Vujačić (Ed.), *Zbornik radova Kopaoničke škole prirodnog prava Slobodan Perović* (pp. 584–633). Beograd.

Kovač Orlandić, M. (2022). The Europeanization of Montenegro, A Western Balkan Country and it Neighborhood in Europe and the Global World. In A. Bence Balazs (Ed.), *Transformation of the Montenegrin Labour Legislation under the Influence of the EU Integration Process – Advantages and Disadvantages* (pp. 265–290). Baden-Baden: Nomos.

Kurekova, L. M., & Žilinčikova, Z. (2016). Are students jobs flexible jobs? Using online data to study employers' preferences in Slovakia. *IZA Journal of European Labor Studies*, 5(20), 1–14. https://doi.org/10.1186/s40174-016-0070-5

Kuzelj, V. (2020). Socijalni karakter normativnog uređenja studentskog rada u Republici Hrvatskoj. *Ekonomska misao i praksa*, 29(2), 513–538. https://doi.org/10.17818/EMIP/2020/2.10

Lipovčić, S. (2019). Inspekcijski nadzor kao instrument borbe protiv faktičkog rada u domaćem i međunarodnom pravu. *Strani pravni život*, 63(3), 107–117. https://doi.org/10.5937/spz63-22550

Lubarda, B. (2012). *Radno pravo, rasprava o dostojanstvu na radu i socijalnom dijalogu*. Beograd: Pravni fakultet Univerziteta u Beogradu.

Milić, M. (2014). Fenomen sive ekonomije i njezini pojavni oblici u privredi Crne Gore. *Poslovna izvrsnost Zagreb*, 8(1), 65–81. https://hrcak.srce.hr/123570

Ministarstvo javne uprave Crne Gore (2018). *Strategija unapređenja podsticajnog okruženja za djelovanje nevladinih orgnanizacija 2018–2020*. https://www.gov.me/dokumenta/c1f02df7-5ad0-4975-ade0-4cc97a90d9d0

Nilsson, B. (2016). Does the work-study combination among youth improve the transition path? An updated review. ILO: International Labor Office, Geneva (Analytical Brief no. 4). https://www.ilo.org/wcmsp5/groups/public/---ed_emp/documents/publication/wcms_497336.pdf

Paz-Fuchs, A. (2021). Internships, Employability and the Search for Decent Experience. In A. Stewart, R. Owens, N. O'Higgins & A. Hewitt (Eds.), *Trainees – the new army of cheap labour: Lessons from workfare* (pp.255–268). Edward Elgar Publishing, Cheltenham.

Rosin, A. (2021). Internships, Employability and the Search for Decent Experience. In A. Stewart, R. Owens, N. O'Higgins & A. Hewitt (Eds.), *Fundamental Rights Broadening the Scope of Labor Law? The example of trainees* (pp.285–301). Edward Elgar Publishing, Cheltenham.

Senčur Peček, D., & Laleta, S. (2018). Ugovor o radu i ugovor o djelu: područje primjene radnog zakonodavstva. *Zbornik pravnog fakulteta Sveučilišta u Rijeci*, 39(1), 411–456. https://doi.org/10.30925/zpfsr.39.1.14

Smyth, E., Gangl, M., Raffe, D., Hannan, D., & McCoy, S. (2001). A Comparative Analysis of Transitions from Education to Work in Europe. Economic and Social Research Institute (ESRI), Dublin (CATEWE Final Report). http://www.mzes.uni-mannheim.de/projekte/catewe/publ/publ_e.html

Stanojević, D., Živadinović, I., & Čekić Marković, J. (2015). Finding the Right Path, Higher Education Financing and Social Dimension in the Western Balkan Countries. In N. Žarkić Joksimović & S. Benković (Eds.), *Studying and working: aspirations and needs of students in Bosnia and Herzegovina, Montenegro and Serbia* (pp.129–164). Univerzitet u Beogradu.

Tessema, M. T., Ready, K. I., & Astani, M. (2014). Does Part-Time Job Affect College Students' Satisfaction and Academic Performance (GPA)? The Case of a Mid-Sized Public University. *International Journal of Business Administration*, 5(2), 50–59. http://dx.doi.org/10.5430/ijba.v5n2p50

Tintić, N. (1972). *Radno i socijalno pravo, Knjiga prva: Radni odnosi* (II). Zagreb: Narodne Novine.

Tomanović, S., Stanojević, D. (2015). *Mladi u Srbiji 2015 – stanja, opažanja, verovanja i nadanja*. Beograd: Friedrich Ebert Stiftung. https://library.fes.de/pdf-files/bueros/belgrad/12065.pdf

Turk, I. (2022). *Obrasci plaćenog rada studenata Fakulteta hrvatskih studija* (diplomski rad). Sveučilište u Zagrebu

Zakon o volonterskom radu Crne Gore 2010 (2015, avgust 21). https://www.zzzcg.me/wp-content/uploads/2015/05/Zakon-o-volonterskom-radu.pdf

Zakon o obavljaju studentskih poslova Hrvatske 2018 (2020, februar 13). https://www.zakon.hr/z/1173/Zakon-o-obavljanju-studentskih-poslova

Šunderić, B., & Kovačević, Lj. (2017). *Radno pravo, priručnik za polaganje pravosudnog ispita*. Beograd: Službeni glasnik.

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Women's rights in the workplace – EU vs. Spanish legislation on co-responsibility rights

María Isabel Ribes Moreno [1]

ABSTRACT

The establishment of a regulatory framework to ensure women's equality in the workplace has been a lengthy journey in the European Union (EU) and its Member States. In Spain, there was no significant impetus initially. Nevertheless, a few decades later, due to substantial legislative improvement, Spain is considered by many a very convenient place for women to live and work, even though there is still much to be done. This article aims to analyse the adequacy of Spanish labour regulations with the EU's normative acquis concerning work-life balance and co-responsibility—essential elements for the achievement of equality in the workplace. To this end, detailed reference will be made to the introduction of rights through the domestic regulatory framework. Consequently, the study will assess whether Spain is one of the EU countries with the highest standards of gender equality in employment and occupation resulting from the implementation and exercise of work-life balance rights to achieve co-responsibility and resolve reconciliation issues.

KEYWORDS

co-responsibility, work-life balance, reconciliation issues, equality, workers' rights

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1 INTRODUCTION

Despite gender equality being a fundamental human right, women continue to be a disadvantaged group regarding employment. This disadvantage is mainly due to issues related to motherhood and the traditional role women play in society. It is a proven fact at a global level that most of the responsibility for family care falls on women. These circumstances mean that women's professional ambitions are often relegated because they shoulder this task in addition to motherhood when necessary (European Institute for Gender Equality [EIGE] 2021).

The level of achieved gender equality varies across Member States, with labour aspects playing a decisive role. Regularly published statistics offer a comparative view of the situation of women. Organisations such as the World Economic Forum and the European Institute for Gender Equality release annual reports evaluating various parameters, which enable us to measure the level of women's integration in society. One such parameter is women's participation in the labour market, albeit in a broad sense. According to the World Economic Forum's 2023 Gender Gap survey, Spain's overall score is undeniably positive, ranking 18th globally and eighth in the EU. However, in the sub-index on Economic Participation and Opportunity, Spain ranks 48th in the world and 12th in the EU. The latest data from EIGE for the year 2022 places Spain in 12th position among the EU Member States in terms of the employment situation of women, although its results are above the EU average (EIGE 2022).

However, the efforts of specific international organisations have been pivotal in promoting equality and non-discrimination of women in the workplace. These efforts have taken various forms, all aimed at achieving equal opportunities and eliminating gender discrimination in employment. In short, numerous measures have been implemented. Notably, some of the most important ones focus on addressing challenges encountered by working women concerning maternity matters, including obligations such as attending medical appointments or childbirth preparation courses, as well as by the assumption of caregiving responsibilities.

As highlighted by the United Nations in the Introduction to the Convention on the Elimination of All Forms of Discrimination against Women (1979), achieving "a proper understanding of maternity as a social function" necessitates a fully shared responsibility for child-rearing by both sexes. Consequently, provisions for maternity protection and childcare are proclaimed essential rights and are incorporated into all areas of the Convention, including employment.

It is evident that the root cause of discrimination against women in the labour market is gender, as women have been assigned a reproductive rather than a productive role. This perspective has led to the development of labour standards towards a male worker model, whose problems and needs are unrelated to motherhood and/or family responsibilities. Consequently, these issues are foreign to the business world, placing women at a significant disadvantage.

The International Labour Organisation (ILO) took this initiative very early (Rodríguez Rodríguez, 2021). The ILO first introduced standards on reconciliation with Convention No. 3 on Maternity Protection (International Labour Organisation [ILO] 1919). This convention underwent revision with Convention

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No. 103 (ILO 1952), and it was supplemented by Recommendation No. 95 (ILO 1952).

Convention No. 183 (ILO 2000) reformulated maternity protection to include more comprehensive regulations. It introduced mandatory maternity leave alongside other prenatal leave, employment protection, and non-discrimination. This latter provision was of paramount importance as it prevented dismissal on grounds related to women's status and shifted the burden of proof. The adoption of Convention No. 156 (ILO 1981) and Recommendation No. 165 (ILO 1981) addressed equality of opportunity and treatment for men and women workers with family responsibilities. Both texts, in conjunction with Conventions No. 111 on Discrimination (Employment and Occupation) (ILO 1958) and No. 122 on Employment Policy (ILO 1964), underscore the importance of safeguarding workers' family interests as a critical factor in addressing inequality.

Similarly, the EU has been developing equality and non-discrimination policies since its inception. Evolving from the limited recognition of the principle of equal pay, the EU has undergone a major change towards gender equality across the entire spectrum of employment relations. In fact, the principle of equal pay was initially introduced to mitigate the social disparities stemming from the free movement of workers, Article 119 of the Treaty of Rome (1957) introduced the notion that "Each Member State shall during the first stage ensure and subsequently maintain the application of the principle that men and women should receive equal pay for equal work". The principle of equal pay was later extended to encompass employment relations.

Subsequently, Title VIII of the Amsterdam Treaty (1997) set out provisions on "Employment", supplemented by specific guidelines, which were to be incorporated into the various employment plans of the Member State. The guidelines encompassed measures aimed at reducing gender inequality, facilitating personal and family life reconciliation, and reintegrating individuals into the labour market (Decision 2001/63 2001). In addition, EU law has sought to strengthen gender equality to increase women's participation in the labour market and gender co-responsibility for family duties.

The various Member States of the EU have had to incorporate the content of these different normative actions into their legal systems. Notwithstanding, although a wide range of directives have contributed to equality between women and men in the workplace, the most impactful measures for such equality are focused on work-life balance and co-responsibility. This paper's justification lies in the comparative analysis of the regulatory framework in the EU and Spain. We aim to assess the situation in Spain concerning work-life balance and whether it aligns with EU legislation or potentially surpasses it. Consequently, this paper will initially provide a brief overview of the evolution of EU legislation on work-life balance, which is essential for the equality and well-being of women in the workplace. Next, we will analyse how the transposition of the directives on work-life balance has been implemented in Spain. Thirdly, we will assess the content of the rights and the improvements and shortcomings observed in the Spanish legal system, concluding with some proposals for the future.

2 EQUALITY, NON-DISCRIMINATION AND CO-RESPONSIBILITY IN THE EU FRAMEWORK

As has been previously pointed out, the Treaty of Rome contained as the only provision on the principle of equal treatment and non-discrimination the reference to equal pay for equal work or work of equal value between women and men. However, a body of legislation aimed at guaranteeing equality in employment has gradually grown, including reconciliation as an essential element (Guerrero Padrón et al. 2023), where the interpretations by the European Court of Justice (ECJ) have played a fundamental role.

Two periods can be clearly distinguished regarding this issue. In the first phase, the focus was on guaranteeing equal pay without addressing matters related to work-life balance. This period spanned from the Treaty of Rome (1957) to the 1997 Treaty of Amsterdam, which marked a paradigm shift. The second phase begins with the Treaty of Amsterdam and continues up to the present day.

Following the Treaty of Rome (1957), the Community institutions developed an essential body of legislation to establish the principle of equality. Firstly, Directive 75/117 (1975) on the approximation of the laws of the Member States related to the application of the principle of equal pay for men and women, reflected the implementation of Article 119 of the Treaty of Rome (1957). This directive aimed to eliminate discrimination by introducing neutral job classification systems, establishing effective measures to render any provision contrary to equal pay null and void, and protecting workers when they took action to enforce their rights through appropriate means of enforcement. However, this directive made no mention of reconciling work, personal life, and family responsibilities.

Similarly, Directive 76/207 (1976) further extended the principle of equality between the sexes across the entire field of labour relations. This regulation marked an extraordinary advancement. On one hand, it established the "principle of equal treatment" in accessing employment, encompassing promotion, vocational training, and working conditions, ensuring the progressive application of the principle of equal treatment in social security. On the other hand, it prohibited direct and indirect discrimination while allowing measures to rectify inequalities. It also mandated Member States to take the necessary actions to abolish, rescind, amend, or revise any laws, regulations, or administrative provisions conflicting with the principle of equal treatment, including those contained in collective agreements or employment contracts, concerning the matters covered by Directive 76/207 (1976). In addition, Member States were required to introduce measures to enable individuals who perceived themselves wronged on these grounds to exercise their rights through legal avenues after potentially seeking recourse with other competent authorities. Finally, the Directive safeguarded employees against dismissal on the basis of lodging complaints at a company level or taking legal action for breaching the principle of equal treatment. Consequently, Directive 76/207 (1976) has been regarded as a "Framework Directive" on equal treatment and non-discrimination based on sex in employment.

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Although several directives were subsequently enacted addressing specific aspects of gender equality, it was not until Directive 92/85 (1992) that the issue of pregnancy, maternity, and breastfeeding for working women was underlined. This Directive focused on the guidelines for protecting motherhood, specifically by identifying measures for pregnant or breastfeeding workers to avoid risks. It mandated employers to adjust and protect the worker's health in this situation, allowing for modifications of working conditions, a change of position, or even the suspension of her activity for the duration of any adverse health situation.

Furthermore, Directive 92/85 (1992) prohibited night work or exposure to harmful agents during pregnancy or breastfeeding. It established the right to paid leave for prenatal examinations and specified the right to maternity leave of at least 14 uninterrupted weeks, distributed before and/or after childbirth, with a compulsory maternity leave of at least two weeks to be allocated before and/or after childbirth. Finally, it outlined a series of rights inherent to the employment contract. This included the maintenance of payment and/or entitlement to an adequate allowance for workers equivalent to what they would receive in the event of a health-related interruption of her activities, along with protection against dismissal. However, it's important to note that Directive 92/85 (1992) aimed to protect the mother's health and foster bonding with the newborn as an occupational health measure. It did not include the father as a recipient of these specific rights.

In the second phase, reconciliation issues took on a prominent role. The Treaty of Amsterdam (1997) marks a turning point, significantly amplifying the provisions related to non-discrimination. Two important treaties incorporated non-discrimination provisions in detail. Firstly, the Treaty on the Functioning of the European Union (2007) stipulates in Article 157, alongside the obligation of each Member State to ensure equal pay, that:

> *The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, and after consulting the Economic and Social Committee, shall adopt measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, including the principle of equal pay for equal work or work of equal value.*

It also allows each Member State to maintain or adopt "measures providing for specific advantages in order to make it easier for the underrepresented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers." On the other hand, the Charter of Fundamental Rights (2000), in Chapter III on Equality, incorporates in Article 21 the prohibition of discrimination in the broadest sense and the right to equality in Article 23. Chapter IV on Solidarity includes in Article 33 a necessary element to guarantee equality, specifically addressing the reconciliation of family and professional life. It establishes the right to paid maternity leave and parental leave upon the birth or adoption of a child, as well as protection against dismissal for exercising these rights.

Hereinafter, two directives establish the right to equality based on co-responsibility as a determining factor. Directive 96/34 (1996) and Directive 2010/18 (2010) implemented the re-

vised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP, and ETUC, which review and replaced the previous agreement. Both directives not only grant rights to women for family reasons but also extend certain rights to men, making their entitlements indistinct.

The first Directive marks the starting point for the EU regulation of work-life balance in the workplace, a fundamental element in achieving gender equality among workers of both genders (Rodríguez Rodríguez 2010). In line with Paragraph 16 of the Community Charter of the Fundamental Social Rights of Workers (1989), it aimed to develop "measures […] enabling men and women to reconcile their occupational and family obligations." The Directive 96/34 (1996) stressed the need to promote women's participation in the workforce and introduced two specific measures. Firstly, it referred to parental leave, providing men and women alike the right to be absent from work to care for children, and, secondly, it included absence for reasons of *force majeure*, allowing both men and women to take time off for urgent family matters necessitating their immediate presence, such as illness or accidents. The parental leave, granted for the birth or adoption of a child, had a minimum duration of three months and could be taken up to a certain age of the child, which was suggested to be up to eight years. However, a fundamental issue was the absence of remuneration and that, in the case of force majeure leave, there was a limitation to guaranteeing absence from work without providing flexible arrangements. While the Directive 96/34 (1996) configured parental leave as an individual right, it was predominantly "in principle, non-transferable," thereby reducing the practical implementation possibilities. Some scholars argued that it introduced formal equality rather than an effective role (Rodríguez Rodríguez 2010). Similarly, the Directive 96/34 (1996) ensured the maintenance of rights acquired or in the process of being acquired by the worker on the date of the start and until the end of the parental leave. It also established the prohibition of dismissal for the exercise of these rights and guaranteed the right to return after the leave and the preservation not only of the job but also of the rights acquired during this period.

The Directive 2010/18 (2010) amplified the role of co-responsibility in eliminating sex discrimination. Thus, the agreement extended to all workers, including part-time workers, those on fixed-term contracts, or those with an employment relationship with a temporary agency. It extended parental leave from three to four months while specifying that only one of these months was non-transferable. It acknowledged the specificities of paternity through adoption, referring to this circumstance in Clause 4. Nevertheless, it did not address scenarios such as multiple births or adoptions, which the ECJ clarified in the Judgement of 16 September 2010, (Case C-149/10 2010), referring to the need for national laws to consider this issue.

Measures ensuring the return to work after parental leave were improved. Clause 6 introduced rules for "return to work," providing that States shall include in their national regulations the possibility for workers to request changes in their working hours or working arrangements for a certain period. It also encouraged employers and workers to maintain contact during the leave to facilitate their return.

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Notwithstanding, the lack of income during leave remained the main challenge. The Directive 2010/18 (2010) tentatively suggested in Clause 5.5 that:

> *All matters regarding income in relation to this agreement are for consideration and determination by Member States and/or social partners according to national law, collective agreements and/or practice, taking into account the role of income – among other factors – in the take-up of parental leave.*

The clause meant that if the State did not incorporate such a provision in its legal system, the lower-paid parent, usually the woman, would apply for the entitlement. In the same vein, Recital 20 of the Directive 2010/18 (2010) established that "experiences in Member States have shown that the level of income during parental leave is one factor that influences the take up by parents, especially fathers." Families with more significant financial problems, or single parents, would likely not take leave for the same reason.

The circumstances of children with disabilities or long-term illnesses were vaguely addressed. The Directive 2010/18 (2010) briefly stated in Clause 3.3 that "Member States and/or social partners should assess the need to adjust the conditions for access and modalities of application of parental leave to the needs of parents of children with a disability or a long-term illness," as a clear result of the Judgement of the ECJ of 17 July 2008 (case C-303/06 2008). In other words, States were charged with accommodating leave to complex family situations.

The right to *force majeure* leave was maintained in the same terms as in the 1995 Agreement included in Directive 96/34 (1996). However, the paid or unpaid character of the leave and its distribution among several workers still needed to be specified. Nor did it contain provisions on protection against dismissal or other consequences of such leave.

Other legislation, such as Directive 2006/54 (2006) on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) did not explicitly include provisions for the reconciliation of work and family life. Only Articles 15 and 16 introduced the right of the worker "to return to her job or to an equivalent post on terms and conditions which are no less favourable to her" after maternity, paternity, or adoption leave, guaranteeing that the worker could benefit from "any improvement in working conditions to which she would have been entitled during her absence." This measure aimed to allow both parents to take responsibility for family care without prejudice.

On the other hand, recital 11 of Directive 2006/54 (2006) contains references to establishing flexible working hours and parental leave for both fathers and mothers. It also urges Member States to "include appropriate parental leave arrangements which could be taken up by either parent as well as the provision of accessible and affordable childcare facilities and care for dependent persons." Additionally, it introduces intriguing concepts for achieving equality, such as "positive action."

However, Directive 2000/78 (2000) establishing a general framework for equal treatment in employment and occupation, the Part-Time Work Directive (Directive 97/81 1997), or the Working Time Directive (Directive 2003/88 2003) did not include provisions on this issue. Nevertheless, part-time work for family

reasons is primarily undertaken by women (EIGE 2015), so some reference to it would have been desirable (EIGE 2015).

Finally, Directive 2019/1158 (2019) on work-life balance for parents and carers, repealing Directive 2010/18 (2010), represents a significant step forward. The importance of the Directive lies in its being the first to establish not only reconciliation but co-responsibility as a factor to strengthen equality between men and women, which is one of the fundamental principles of the EU. The right to equality is, without a doubt, "a macro-principle that underpins work-life balance rights" (Lousada Arochena 2019a: 791).

Therefore, the rights to work-life balance and co-responsibility are essential elements for consolidating gender equality (Maneiro Vázquez 2023). Directive 2019/1158 (2019) encompasses a series of rights that extend beyond the concept of reconciliation, embracing co-responsibility (Guerrero Padrón et al. 2023). The enactment of this directive marked a crucial milestone for gender equality.

This directive introduces various individual rights, such as new paternity leave, distinct maternity or parental leave, and carers' leave. Paternity leave is set to last at least 10 days, and although there is no reference to its non-transferability, it is inferred from the text. Carers' leave is extended to a minimum of five days per year and differs from *force majeure* leave.

The revised approach to paternity leave also covers other family structures, including same-sex partnerships. According to Article 4 of Directive 2019/1158 (2019), "Member States shall take the necessary measures to ensure that fathers or, where and insofar as recognised by national law, equivalent second parents" are accommodated. At this point, remuneration or a social security benefit, equivalent to that which would be payable for a break from work for health reasons, will also be guaranteed during the period of leave, which is a real advancement.

Parental leave remains for four months and can be utilised until the child is eight years old. However, it has been established that two of the four months are non-transferable, enhancing the repealed Directive. Additionally, the Directive improves the right by guaranteeing payment or allowance during the leave. Absence due to *force majeure* is maintained in the same terms.

As the most relevant issue, the Directive 2019/1158 (2019) establishes flexible working arrangements for workers who are parents or carers. This includes not only flexible or reduced working hours but also telecommuting as an appropriate mechanism to balance professional and personal responsibilities.

In societies where family responsibilities are equally shared, women tend to enter and remain longer in the labour market (Añón Roig 2009). Therefore, these measures contribute to women's full integration into the workforce by promoting the equal distribution of caring responsibilities.

3 DOES SPANISH LABOUR LAW ADDRESS CARE BY FACILITATING WOMEN'S EQUAL INTEGRATION?

There has been a growing recognition in Spain of the need for both legislative and cultural changes. Presently, a considerable number of permits and licences exist to manage care responsibilities, but there is still room for improvement. In most cases, the impetus for legislation was due to the impact of the EU regulatory framework. In the following

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pages, we will delve into the gradual integration of work-life balance rights into Spain's labour legislation.

The starting point in the Spanish legislative framework regulating work-life balance was Law 3/1989 (1989). The Act improved maternity leave, extending it from 14 to 16 weeks and establishing measures to promote equal treatment in workplaces. It granted the adoptive parents of children under the age of 5 a leave on par with maternity leave. Specific rights for men were also instituted.

A pivotal advancement in the basic labour regulations was made with the Royal Legislative Decree 2/2015, known as the revised text of the Workers' Statute Law (*Estatuto de los Trabajadores* [ET] (2015). The first step was made with Law 39/1999 (1999) on reconciliation of work and family life for workers, transposing Directives 92/85 (1992) and 96/34 (1996). While the first Directive was inadequately transposed through the Law on Prevention of Occupational Risks. Consequently, Law 39/1999 (1999) completed the transposition, partly improving the directives.

One of the most important measures was that women could transfer a portion of their maternity leave to the father, up to 10 weeks of the 16 they were entitled to. Simultaneous maternity leave for both parents was also granted. In the case of multiple births, maternity leave was extended by an additional two weeks for each child. Changes were also introduced to allow adoptive or foster parents to take leave to care for children under the age of six. Provisions for breastfeeding leave were made more accessible. The law maintained the provisions of Directive 96/34 concerning accident and hospitalisation reasons. Additionally, it established the individual right of workers, both men and women, to reduce working hours and take parental leave to care for sick, elderly, and dependent family members.

Subsequently, the Organic Law 3/2007 (2007) transposed Directive 2002/73 (2002) on effective equality between women and men. This Law, which has had several amendments, represents a turning point, but it goes further than the directive. It introduced paternity leave for biological, adoptive, and foster fathers in the Spanish legal system, distinct from maternity leave. The entitlement to the right was attributed to the father and other parents, adapting thus to the new families. The paternity leave duration was 13 days, progressively introduced in the framework and extendable in cases of multiple births. The right was individual, non-transferable, and entitled fathers to receive a social security allowance. Nevertheless, despite efforts to increase men's participation in care work, the regulation allowed fathers to allocate leave according to their personal needs without considering the primary objective.

Maternity leaves, too, saw positive reform, being extended by two weeks for children born with disabilities, an extension that either parent could take. In the event of the mother's death, the other parent could use all or part of the remaining maternity leave entitlement, counting it from the date of birth, regardless of whether the deceased carried out any paid activity. Nor would the mother's possible use of the leave period she could have taken before the birth be deducted. In the event of the child's death, the suspension period would also not be reduced unless the mother voluntarily requested to return to work after the compulsory six weeks following childbirth. In the case of premature births or situations where the

newborn had to be hospitalised for more than seven days, the suspension period was extended by the same number of days of hospitalisation, with a maximum of 13 additional weeks. Moreover, paternity and maternity leaves were extended to the self-employed and other special social security schemes.

Breastfeeding leave was partially modified. Although the woman's entitlement was retained, she could now transfer it to the father for his use. However, no reference to same-sex couples was made in this right.

A notably positive amendment was made concerning the right to reduce working hours for childcare purposes. The law extended the age of the child for which the parent could request this reduction from six to eight years and introduced more flexible parameters. The minimum period for reducing working hours was decreased from at least one-third to one-eighth. This revision significantly facilitated the reduction of working hours without notably impacting pay, particularly when there was no absolute need to harmonise work with childcare, for instance. Family leave was increased from one to two years, allowing it to be taken in instalments. This flexible form of leave was extended to childcare leave.

Additionally, the introduction of the right to adjust working hours to accommodate the demands of balancing work and family life as an individual right for men and women should be highlighted. Notwithstanding, the terms of this measure depended on the provisions laid out in collective bargaining agreements or in individual arrangements with employers, which hampered the effective implementation of the right.

Subsequently, a minor amendment was made by Royal Decree-Law 3/2012 (2012), to align Article 37.4 ET (2015) with the Judgment of the ECJ of 30 September 2010 (Case C-104/09 2010). The amendment extended the entitlement to breastfeeding leave to men even if the mother was not employed. The ECJ's judgment deemed the distinction that recognised only employed mothers, not employed fathers, as eligible for paid time off work to care for a child as a breach of the equal treatment principle.

Conversely, Law 6/2018 (2018), State Budget Law 6/2018 (2018), increased paternity leave to five weeks, with the potential for extension by two additional days for multiple births, adoptions, or foster care. The legislation aimed to promote work-life balance by stipulating that in cases of childbirth, the leave would exclusively be allocated to the other parent. In cases of adoption, guardianship for adoption, or foster care, this right would apply to only one of the parents, at the choice of the interested parties. Nevertheless, when maternity leave is entirely taken by one parent, the right to paternity leave may only be exercised by the other one. In other words, it contributed to co-responsibility by limiting transfer.

Royal Decree-Law 6/2019 (2019), on urgent measures to guarantee equal treatment and opportunities for women and men in employment, marked another significant reform (Lousada Arochena 2019b). The Royal Decree-Law 6/2019 (2019) did not transpose EU directives. It is based on the obligation of public authorities to adopt specific measures in favour of women in explicit situations of inequality. The Royal Decree-Law 6/2019 (2019) introduced changes in leave terminology to better reflect social changes and established substantive amendments. Firstly, breastfeeding leave was revised to infant care leave

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as specified in Article 37.4 ET. Likewise, in a move towards gender-neutral language and inclusivity of LGTBI+ communities, the terms "mother" and "father" were replaced by "working persons." Considering that the noun "children" is of masculine grammatical gender in Spanish, the Royal Decree-Law 6/2019 (2019) included the feminine gender by replacing it with "sons and daughters." Similarly, maternity and paternity leave were renamed without distinction, becoming birth leave involving confinement and childcare for a minor up to 12 months. Furthermore, breastfeeding leave transformed into infant care leave, while confinement was replaced by birth when not related to a biological situation, a change that faced criticism (Lousada Arochena 2019b).

The most important of the substantive changes is the one made in birth leave. This 16-week leave is equal for both parents, with no distinction between biological, adopted, or foster children. For the first six weeks following childbirth, adoption, or fostering, both parents will take uninterrupted and full-time leave, although for different purposes. The biological mother ensures the protection of her health, while the other parent fulfils the caregiving duties. After this mandatory joint leave, the right becomes more flexible, allowing it to be taken continuously or intermittently, full-time or part-time, upon agreement with the employer. This right cannot be transferred to the other parent to avoid co-responsibility duties. When the child born, adopted, or in foster care for adoption or fostering is disabled, or in the case of multiple births, adoptions, or fostering, the leave could be extended by two weeks, with one week distributed to each parent, progressively implemented.

Infant care leave is maintained at one hour a day per parent, accumulable to full days, up until the child reaches nine months. Whether a parent is a biological, adoptive, guardian, or foster carer, they are entitled to the same leave duration and conditions. This right is non-transferable, and the regulation establishes a developmental measure: increasing the duration of the leave if both parents exercise the right for the same duration and time. The regulation also encourages co-responsibility by extending the childcare leave period granted by law for job reservation after leave from 12 to 18 months when both parents take the leave together.

Finally, the right to adjust the length and schedule of the working day, including remote working, is established to effectively reconcile personal and family life. The right is granted until the child reaches the age of 12, with the specific terms to be agreed upon in collective bargaining agreements.

Organic Law 1/2023 (2023) amending Organic Law 2/2010 (2010) on sexual and reproductive health and the voluntary interruption of pregnancy, and Law 4/2023 (2023) for the real and effective equality of trans persons and the guarantee of the rights of LGBTI persons introduced significant changes. The former eliminated the prerequisite for foster care to last at least one year to qualify for leave. The latter established that pregnant transsexual individuals were considered biological mothers for leave-related purposes.

Most recently, the Royal Decree-Law 5/2023 (2023), a comprehensive piece of legislation, updated several leave policies to align with EU directives. It enhanced the right to adapt the working time for employees with dependents in line with the content of Directive

2019/1158 (2019) on flexible working arrangements. Additionally, the law expanded the category of family members eligible for leave in cases of death, accident, or illness to include unmarried partners. Likewise, the carers' leave provided for in the Directive 2019/1158 (2019) is set up in more favourable terms, extending the number of days and including unmarried couples within its subjective scope. *Force majeure* leave is also stated for justified and urgent reasons, which require the immediate presence of the parent. The Royal Decree-Law 5/2023 (2023) established a new parental leave for childcare (including foster children) up to the age of eight, which is non-transferable and can be taken flexibly. In line with the above, protection against dismissal derived from enjoying all work-life balance rights is guaranteed, categorising these rights among the grounds for nullity. However, carers' leave is still pending and awaits transposition into domestic law.

4 A SYSTEMATIC OVERVIEW OF WORK-LIFE BALANCE RIGHTS IN SPAIN

After outlining the evolution of the work-life balance regulations, to clarify their content, we will detail them systematically as they are formulated in Spain's labour legislation. To do so, we will explain the tenor of the regulations contained in ET (2015), dividing it into the following sections: (4.1) Paid leaves (*permisos*). (4.2) Reductions in working time. (4.3) Birth leave (including confinement and care for a minor of up to 12 months) and risk during breastfeeding (*suspensiones*). (4.4). Family care leaves (*excedencias/permisos no retribuidos*). (4.5) Distribution of working time.

4.1 PAID LEAVES

The first set of rights encompasses paid leaves. During this leave, the wages are paid by the employer.

(a) First, a paid two-days' leave is granted in the event of the death of a spouse, unmarried partner, or relatives up to the second degree of consanguinity or affinity of both the spouse and the common-law partner. If death occurs outside the worker's residence and requires travel, this would be extended to two more days. When these family members suffer a severe accident or illness, hospitalisation, or surgery without hospitalisation that requires home rest, the worker is granted a five-day paid leave.

(b) Secondly, each parent is entitled to a paid leave of one hour per day in the case of premature births or situations where babies must remain in the hospital after childbirth. It is a non-transferable leave allowing flexibility in timing based on the child's discharge from the hospital, excluding the compulsory six weeks for the mother's post-confinement health. The worker determines the period of the leave within his/her ordinary working day. Workers must notify the employer of their leave period 15 days in advance or according to the collective bargaining agreement.

(c) Thirdly, childcare leave is granted for the care of children under nine months, comprising an hour per day for each parent, with proportional increases in cases of multiple births, adoptions, or fostering. The leave is non-transferable and can be managed as either hourly or half-hourly reductions in the working day. Depending on the provisions of the collective bargaining or company agreement, the

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worker may accumulate this reduction into full days. In the interests of promoting co-responsibility, one of the latest reforms has established an extension of the period of infant care by three more months, until the child is 12 months old, if it is taken jointly by both parents, adoptive parents, guardians, or foster parents. In this case, during the additional three months, the salary will be reduced proportionally so as not to overburden the employer, and a social security benefit supplements the remuneration.

(d) Fourthly, *force majeure* leave enables workers to attend to urgent family situations that necessitate their immediate presence. This paid leave is limited to four days per year unless the collective agreement establishes more favourable conditions.

(d) Lastly, less significant is paid leave for workers attending sessions on adoption, guardianship, or fostering suitability, and for pregnant women to attend prenatal examinations and childbirth preparation. Both leaves are provided for the essential time required during the working day.

Overall, these domestic regulations enhance and expand upon the EU legislation.

4.2 REDUCTIONS IN WORKING TIME

Reduced working hours without pay are established to facilitate work-life balance. All these rights are individual and non-transferable.

(a) Firstly, workers are entitled to two hours per day of the working day to care for prematurely born babies or infants who require extended hospitalisation after birth for any other reason. This reduction may be added to the previously mentioned paid leave for the same reason (4.1 (b)). However, it does not entitle the worker to remuneration, and the salary will be reduced proportionally to the absence. Its legal regime is the same as established in 4.1 (b).

(b) Secondly, workers responsible for a child under 12 or a disabled person who is not in paid employment are entitled to reduce their daily working hours by at least one-eighth and up to a maximum of one-half, with a proportional salary cut. The same entitlement is granted to the direct carer of a spouse, or unmarried partner, or a family member up to the second degree of consanguinity and affinity, including the blood relative of the unmarried partner, who for reasons of age, accident, or illness is unable to look after himself/herself, and who is not in paid employment. It can be criticised that this reduction is daily, without allowing for other more appropriate formulas, unless provided for in collective bargaining.

(c) Thirdly, the parent, the guardian for adoption, or permanent foster carer is entitled to a reduction of at least half the working day, with a proportional salary reduction during the hospitalisation and continuous treatment of a minor suffering from cancer or a serious illness requiring long-term hospitalisation and constant care. The illness must be accredited by the report of the public health service or administrative health body of the corresponding autonomous community. The right is maintained until the child reaches the age of 23 or 26 in cases of disability of 65% or more. However, the extension must be justified. The collective bargaining agreement may establish the conditions and cases where this working-hour reduction may be accumulated in full working days.

4.3 BIRTH LEAVE (INCLUDING CONFINEMENT AND CHILDCARE FOR A MINOR OF 12 MONTHS) AND RISK DURING BREASTFEEDING

Thirdly, the birth leave comprises two distinct leaves: confinement and care for a minor of 12 months, and the leave for risk during breastfeeding. During the exercise of this right, workers do not receive remuneration, but they are entitled to a social security benefit.

(a) Firstly, confinement entitles the biological mother or transgender pregnant person to 16 weeks of leave. For occupational health reasons, the mother is obligated to take six uninterrupted weeks immediately after delivery. There is also an option to begin the suspension up to four weeks before the anticipated date of birth.

To facilitate the care of a prematurely born or hospitalised newborn, the period of suspension may be calculated from the date of hospital discharge, except for the six weeks following birth, which the biological mother must take. Likewise, to allow for a responsible exercise of family reconciliation, if the newborn child is hospitalised for more than seven days after birth, the suspension period will be extended proportionally, up to a maximum of 13 days.

The right to suspension is neither extinguished nor reduced by the child's death unless the parent requests reinstatement after six weeks of compulsory leave.

The childcare of a minor of 12 months leave is similarly flexible. In cases of confinement, the childcare of a minor of 12 months leave for the other parent is granted on the same terms as the leave for the biological mother, to fulfil the duties of caring for the newborn, as an individual and non-transferable right. The conditions for exercising the right to suspension are quite flexible but the first six weeks must be taken conjointly with the mother to reinforce co-responsibility. After the six weeks have elapsed, it may be distributed in weekly periods, accumulated or interrupted, either on a full-time or part-time basis, until the child is 12 months old, with prior agreement with the employer and 15 days' notice. The employer may limit the simultaneous exercise of the right if both parents work for the same company, providing written notice with well-founded and objective reasons.

In cases of adoption, guardianship for adoption, and foster care, the childcare of a minor of 12 months leave has the same duration of 16 weeks for each adopter, guardian for adoption, or foster carer. This right is also non-transferable and individual. In this case, the six weeks that must be taken on a full-time, uninterrupted basis are those immediately following the judicial decision establishing the adoption or the administrative decision on guardianship for adoption or foster care. The entitlement system is the same, with the same flexibility as that established in the case of suspension for childbirth. However, for obvious reasons, the remaining 10 weeks may be taken within 12 months of the judicial decision on the adoption or administrative decision on foster care. If it is necessary to travel to the adoptee's country of origin beforehand in the case of an international adoption, the leave may begin up to four weeks before the judicial decision on the adoption.

In all cases of birth leave, an additional two weeks are granted for each parent if the child has a disability. This same addition is granted for each subsequent child in cases of birth, adoption, foster care, or multiple fostering. The Law

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acknowledges single-parent families, allocating this extension exclusively to the single parent.

(b) Finally, in the case of risk during breastfeeding, the right to suspension is granted until the infant is nine months old or when the cause preventing the worker from returning to their job disappears. The returning worker is entitled to their previous job or another compatible with their condition.

The current regulation of suspensions significantly contributes to co-responsibility, improving on the minimum standards established by EU law.

4.4 FAMILY CARE LEAVES

The family care leave establishes the right to reserve the job but does not entitle the employee to any social security benefits or salary maintenance. There are three distinct applications of this right.

(a) Firstly, this leave applies to care for a natural or adopted child, or a child in foster care for adoption or permanent foster care after the birth, adoption, or fostering. The leave lasts three years from the date of birth or, where applicable, from the date of the judicial or administrative decision.

(b) Secondly, the leave for attending to family members lasts a maximum of two years, unless extended by collective bargaining. The family members whom this leave covers are the spouse or common-law partner, and family members up to the second degree of consanguinity or affinity, including the common-law partner's blood relatives, who, for reasons of age, accident, illness, or disability, are unable to look after themselves. In any case, these family members must not engage in any remunerated professional activity.

Both leaves can be taken in instalments, but they cannot be accumulated if granted for different relatives. When a new leave starts, it concludes the previous one.

During the abovementioned leaves, the worker retains certain rights. The duration of the leave counts towards their seniority, and within the first year, they are entitled to return to their previous post. In the subsequent years of leave, the worker has the right to return to an equivalent post. Notwithstanding, the right to return to the same post will be extended to 15 months if the worker is part of a large family (more than three minors) and to a maximum of 18 months if they are part of the special category of large families (more than five minors). Co-responsibility is encouraged by extending the right to 18 months when both parents take leave for the same duration and under the same conditions. The Law stresses that "In the exercise of this right, the promotion of co-responsibility between women and men shall be taken into account and, likewise, the perpetuation of gender roles and stereotypes shall be avoided." From our point of view, it would be surprising to find a real case in which two workers are on leave to care for the same relative simultaneously and for the same duration without pay. In short, it is more of a question of making the need for co-responsibility visible than of effectively promoting co-responsibility. Nevertheless, when two employees within the same company apply for leave because of the same relative, the simultaneous exercise of the right may be limited for justified business reasons.

Additionally, during the leave, the employer has to offer training courses to the worker, especially on the occasion of their return.

(c) A newly introduced form of parental leave for caring for children or foster children for more than one year, up to eight years old, brings a different arrangement. Unlike the previous leaves, during its period, the worker has the right to return to their role. The leave is non-transferable and can be taken flexibly but without pay. A 10-days' notice must be given to the company or as established in the collective agreement. The company may limit the time off due to operational requirements but must justify this and offer an alternative solution to the worker.

Despite the considerable effort to encourage co-responsibility in caregiving, some outstanding issues remain. Notably, the duration of this leave does not meet the four-month standard set in Article 5 of the Directive 2019/1158 (2019) and lacks a guarantee of payment. There is a need for further implementation of care leave as stipulated in the directive and highlighted changes in parental leave.

4.5 DISTRIBUTION OF THE WORKING TIME

The regulations guarantee the right of workers to adapt the length and distribution of their working hours, and even the form of working hours, to achieve work-life balance. These adaptations, which may even include remote work, must be reasonably aligned with the worker's needs and the company's operational requirements. The ET (2015) after the Royal Decree-Law 6/2019 (2019) establishes that the right can be requested until the worker's children reach the age of 12, improving the limit of eight years established in the Directive 2019/1158 (2019). The last amendment of the ET (2015) for the Royal Decree-Law 5/2023 (2023) includes additional family members, such as relatives by blood up to the second degree of consanguinity of the worker, as well as other dependants living in the same household, unable to look after themselves for reasons of age, accident, or illness. The Royal Decree-Law 5/2023 (2023) does not specifically refer to the possibility of exercising the right to adapt the working hours in cases of fostering or caregiving. Such inclusions would significantly enhance the effectiveness of these regulations but would require legislative amendments.

The terms for exercising this right must be set in collective bargaining agreements, regardless of discriminatory circumstances. In the absence of such agreements, a negotiation process must be carried out with the company for 15 days. Once the negotiation is completed, the company shall communicate in writing its acceptance or propose a justified alternative. In the event of rejection of the request, it shall state the objective reasons on which it is based. Nevertheless, the wording of the rule appears to weaken this right.

From our point of view, collective bargaining should establish clear criteria and rules for responsibly exercising the right to redistribute working hours; otherwise, in certain circumstances, the worker should not be able to exercise this right freely. Finally, the worker may request a return to the previous working hours at the end of the agreed period when the reasons cease or when he/she considers it appropriate.

Furthermore, as an element that reinforces the protection of work-life balance, Law 3/2007 (2007) necessitates companies with more than 50 employees to have an equality plan, starting with a diagnostic phase that must include, among other things, the measures

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established in the company to guarantee the co-responsible exercise of personal, family, and work rights. These measures are designed to identify inequalities and implement improvements within the company.

Moreover, while not discussed here, Spanish legislation nullifies dismissals resulting from the exercise of any of the reconciliation rights.

In sum, a complex set of rights is formulated in the Spanish labour framework concerning co-responsibility. Nonetheless, continual efforts are crucial, especially in raising awareness among men of their necessary involvement in family care work.

5 CONCLUSIONS AND PROPOSALS FOR IMPROVEMENT

Given the above, it is clear that Spain offers solid mechanisms for promoting equal co-responsibility, effectively transposing EU directives, and bolstering workers' rights beyond EU minimums. However, there are certain deficiencies that still need to be addressed, such as the incorporation of carers' leave and the need to align parental leave with the content of the 2019 Directive.

Overall, the Spanish legal framework has substantially strengthened the right to work-life balance in terms of co-responsibility in recent years. However, we must ask ourselves whether, in practice, this affirmation corresponds to an effective change, i.e., whether care work is actually carried out on a co-responsibility basis.

In this sense, various real-life statistics make us rethink the above assumptions. In fact, the latest available data by the Ministry of Equality referring to 2009/2010 reveals that the time spent by women in family care and homemaking was double that spent by men. According to the data, women spent 11 hours and 26 minutes on personal care, 4 hours and 7 minutes on homemaking and family care, 2 hours and 9 minutes on paid work, and 4 hours and 32 minutes on leisure time. These figures were far from the times men spent on the same activities, with 11 hours and 33 minutes spent on personal care, 1 hour and 54 minutes on homemaking and family care, 3 hours and 25 minutes on paid work, and 5 hours and 23 minutes on leisure activities. More recent data from the National Institute of Statistics (Instituto Nacional de Estadística [INE] 2023) informs us that, in the first quarter of 2023, 94% of people working part-time to care for children or sick, disabled, or elderly adults were women, compared to 6% of men. The same trend, albeit at a lower rate, was maintained when the reason for part-time work was other family or personal activities (68% of women compared to 32% of men).

Other INE (2022) figures show that women's employment rate decreases as the number of children under 12 increases. Thus, in 2022, the employment rate for women aged 25 to 49 without children was 76.9%, falling to 70.4% in the case of having children under 12. This decrease was progressive according to the number of children (72.4% for those with one child, 70.1% for those with two children, and 52.0% for women with three or more children).

Considerably, women are primarily those who cease working after completing their studies to take parental or carer's leave for children (3.6% of women compared to 2.9% of men) (INE 2022). Moreover, women's continued attention to care work is evident when analysing the periods of leave taken. According to the statistics by INE (2022),

the leaves taken by men usually last for a maximum of six months (86.9%); on the other hand, women's periods of leave are more spread out: 49.9% took leave for six months, 20.9% for between six months and one year, 9.4% for between one and two years, and 17.7% for more than two years.

What would be the solution to encourage co-responsibility in care? Undoubtedly, the changes in the legislative framework are decisive but require enhancements. We are aware that the reforms are recent, and it is worth considering whether it is possible to reverse the trend gradually.

Thus, although the legislation recognises these rights, complementary mechanisms are required for an effective shift. Firstly, establishing robust professional public services for caring for children and dependents is imperative. These services are crucial to retaining women in the workforce and must not be hindered by financial constraints. As expressed in Art. 11 c) of the Convention on the Elimination of All Forms of Discrimination against Women (1979), it is necessary to encourage "[...] the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of childcare facilities." In a nutshell, establishing public services would contribute to reducing the number of women dropping out or working part-time. Secondly, there is a need for a cultural shift away from seeing women as the primary carers. Public authorities have a crucial role to play in bringing about this shift. As established in the latest legislative amendments to the Workers' Statute, co-responsibility between women and men must be encouraged, and the perpetuation of gender roles and stereotypes must be avoided. The problem now is deciding how to undertake this task, and although we are on the right track, it remains a considerable challenge for governments and the younger generations.

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REFERENCES

Añón Roig, Mª. J. (2009). ¿Una legislación para transformar la realidad social? A propósito de la Ley para la igualdad efectiva de mujeres y hombres". In AA. VV., *Medidas de conciliación de la vida personal, laboral y familiar. Hacia un respeto igualitario de las reformas parentales* (pp. 11–38). Albacete: Bomarzo.

Case C-104/09, *Pedro Manuel Roca Álvarez v Sesa Start España ETT SA.* (2010). I-08661. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62009CJ0104

Case C-149/10, *Zoi Chatzi v Ypourgos Oikonomikon.* (2010). ECR I-08489. https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62010CJ0149

Case C-303/06, *S. Coleman v Attridge Law and Steve Law.* (2008). ECR I-05603. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62006CJ0303

Charter of Fundamental Rights of the European Union. (2000). https://www.europarl.europa.eu/charter/pdf/text_en.pdf

Convention on the Elimination of All Forms of Discrimination against Women (1979, December 18) https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women

Decision 2001/63. *2001/63/EC: Council Decision of 19 January 2001 on Guidelines for Member States' Employment policies for the year 2001.* (2001). https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:32001D0063

Directive 2000/78. *Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.* (2000). https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32000L0078

Directive 2003/88. *Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time.* (2003). https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32003L0088

Directive 2006/54. *Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast).* (2006). https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32006L0054

Directive 2010/18. *Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC.* (2010). https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32010L0018

Directive 2019/1158. *Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019, on the reconciliation of the working lives of parents and carers, which repeals Council Directive 2010/18/EU.* (2019). https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELLAR%3A4119596d-a475-11e9-9d01-01aa75ed71a1

Directive 75/117. *Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women.* (1975). https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A31975L0117

Directive 76/207. *Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.* (1976). https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31976L0207

Directive 79/7. *Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security.* (1978). https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31979L0007

Directive 86/378. *Council Directive 86/378/EEC of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes.* (1986). https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31986L0378

Directive 92/85. *Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding.* (1992). https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31992L0085

Directive 96/34. *Directive 96/34/EC of 3 June 1996 on the Framework agreement on parental leave concluded by UNICE, CEEP and the ETUC.* (1996). https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31996L0034

Directive 97/81. *Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and ETUC* (1997). https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31997L0081

European Institute for Gender Equality (2015). *Reconciliation of work, family and private life in the European Union Policy review.* Vilnius: Publications Office of the European Union. https://doi.org/10.2839/94734

European Institute for Gender Equality (2021). *Gender inequalities in care and consequences for the labour market*. Luxembourg: Publications Office of the European Union. https://doi.org/10.2839/074

European Institute for Gender Equality (2022). *Gender Equality Index.* Comparing Work scores in 2022. Statistical database. https://eige.europa.eu/gender-equality-index/2022/compare-countries/work/bar

Guerrero Padrón, T., Kovačević, L., & Ribes Moreno, M. I. (2023). Labour Law and Gender. In D. Vujadinović, M. Fröhlich & T. Giegerich (Eds.), *Gender-Competent Legal Education* (pp. 583–630). Springer. https://doi.org/10.1007/978-3-031-14360-1

Instituto Nacional de Estadística of Spain (2022). *Impact on employment due to the existence of children. Leaves data to care for children.* Statistical Database. https://www.ine.es/ss/Satellite?blobcol=urldata&blobheader=application%2Fpdf&blobheadername1=Content-Disposition&blobheadervalue1=attachment%3B+filename%3D1_6_Incidencia_en_el.pdf&blobkey=urldata&blobtable=MungoBlobs&blobwhere=1259925463094%2F607%2F1.6+Incidencia+en+el.pdf&ssbinary=true

Instituto Nacional de Estadística of Spain (2023). *Part-time employees by reason for part-time work, gender and age group.* Statistical Database. https://www.ine.es/jaxiT3/Tabla.htm?t=4181&L=0

International Labour Organisation (1919). *C003 – Maternity Protection Convention, 1919 (No. 3).* https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312148

International Labour Organisation (1952). C103 – *Maternity Protection Convention (Revised), 1952 (No. 103).* https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312248

International Labour Organisation (1952). *R095 – Maternity Protection Recommendation, 1952 (No. 95).* https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R095#:~:text=(2)%20Employment%20of%20a%20woman,woman%20is%20nursing%20her%20child.

International Labour Organisation (1958). *C111 – Discrimination (Employment and Occupation) Convention, 1958 (No. 111).* https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_Ilo_Code:C111

International Labour Organisation (1964). *C122 – Employment Policy Convention, 1964 (No. 122)*. https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312267

International Labour Organisation (1981). *C156 – Workers with Family Responsibilities Convention, 1981 (No. 156)*. https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C156

International Labour Organisation (1981). *R165 – Workers with Family Responsibilities Recommendation, 1981 (No. 165)*. https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R165

International Labour Organisation (2000). *C183 – Maternity Protection Convention, 2000 (No. 183)*. https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID,P12100_LANG_CODE:312328,en:NO

Law 3/1989 of 3 March 1989 extending maternity leave to sixteen weeks and establishing measures to promote equal treatment of women at work. (*Ley 3/1989, de 3 de marzo, por la que se amplía a dieciséis semanas el permiso por maternidad y se establecen medidas para favorecer la igualdad de trato de la mujer en el trabajo*). (1989). https://www.boe.es/buscar/act.php?id=BOE-A-1989-5272

Law 39/1999 of 5 November 1999 to promote the reconciliation of work and family life for workers. (*Ley 39/1999, de 5 de noviembre, para promover la conciliación de la vida familiar y laboral de las personas trabajadoras*). (1999). https://www.boe.es/buscar/act.php?id=BOE-A-1999-21568

Law 4/2023 of 28 February for the real and effective equality of trans persons and for the guarantee of the rights of LGTBI persons. (*Ley 4/2023, de 28 de febrero, para la igualdad real y efectiva de las personas trans y para la garantía de los derechos de las personas LGTBI*). (2023). https://www.boe.es/buscar/act.php?id=BOE-A-2023-5366

Law 6/2018 of 3 July, State Budget Law for 2018. (*Ley 6/2018, de 3 de julio, de Presupuestos Generales del Estado para el año 2018*). (2018). https://www.boe.es/buscar/act.php?id=BOE-A-2018-9268

Lousada Arochena, J. F. (2019ª). La construcción de los derechos de conciliación de la vida personal, familiar y laboral como derechos fundamentales. *Derecho de las Relaciones Laborales*, 8, 783–796.

Lousada Arochena, J. F. (2019b). Maternidad y conciliación en el trabajo por cuenta ajena tras el Real Decreto-ley 6/2019, de 1 de marzo: una primera aproximación. *Revista Derecho social y empresa*, 11, 1–28.

Maneiro Vázquez, Y. (2023). *Cuidadores, igualdad y no discriminación y corresponsabilidad: la ®evolución de los derechos de conciliación de la mano de la Directiva (UE) 2019/1158*. Albacete: Bomarzo.

Ministry of Equality Spain (2009–2010). *Women in figures*. Reconciliation. Uses of time. https://www.inmujeres.gob.es/MujerCifras/Conciliacion/UsosdelTiempo.htm

Organic Law 1/2023 of 28 February amending Organic Law 2/2010 of 3 March on sexual and reproductive health and the voluntary interruption of pregnancy. (*Ley Orgánica 1/2023, de 28 de febrero, por la que se modifica la Ley Orgánica 2/2010, de 3 de marzo, de salud sexual y reproductiva y de la interrupción voluntaria del embarazo*). (2023). https://www.boe.es/buscar/act.php?id=BOE-A-2023-5364

Organic Law 3/2007 of 22 March 2007, on effective equality between women and men (*Ley Orgánica 3/2007, de 22 de marzo, para la igualdad efectiva de mujeres y hombres*). (2007). https://www.boe.es/buscar/act.php?id=BOE-A-2007-6115

Rodríguez Rodríguez, E. (2010). *Instituciones de conciliación de trabajo con el cuidado de los familiares*. Albacete: Bomarzo.

Rodríguez Rodríguez, E. (2021). La conciliación y la corresponsabilidad de los cuidados como pilares del trabajo decente. In E. Rodríguez Rodríguez & N. M. Martínez Yáñez (Eds.), *Conciliación y corresponsabilidad de las personas trabajadoras: presente y futuro* (pp. 31–40). Barcelona: Bosch Editor.

Royal Decree-Law 3/2012 of 10 February urgent measures to reform the labour market. (*Real Decreto-ley 3/2012, de 10 de febrero, de medidas urgentes para la reforma del mercado laboral*). (2012). https://www.boe.es/buscar/act.php?id=BOE-A-2012-2076

Royal Decree-Law 5/2023 of 28 June adopting and extending certain measures in response to the economic and social consequences of the war in Ukraine, supporting the reconstruction of the island of La Palma and other situations of vulnerability; transposing European Union Directives on structural modifications of commercial companies and reconciliation of family and professional life of parents and carers; and implementing and enforcing European Union law. (*Real Decreto-ley 5/2023, de 28 de junio, por el que se adoptan y prorrogan determinadas medidas de respuesta a las consecuencias económicas y sociales de la Guerra de Ucrania, de apoyo a la reconstrucción de la isla de La Palma y a otras situaciones de vulnerabilidad; de transposición de Directivas de la Unión Europea en materia de modificaciones estructurales de sociedades mercantiles y conciliación de la vida familiar y la vida profesional de los progenitores y los cuidadores; y de ejecución y cumplimiento del Derecho de la Unión Europea*). (2023). https://www.boe.es/buscar/act.php?id=BOE-A-2023-15135

Royal Decree-Law 6/2019, of 1 March, on urgent measures to guarantee equal treatment and opportunities between women and men in employment and occupation. (*Real Decreto-ley 6/2019, de 1 de marzo, de medidas urgentes para garantía de la igualdad de trato y de oportunidades entre mujeres y hombres en el empleo y la ocupación*). (2019). https://www.boe.es/buscar/act.php?id=BOE-A-2019-3244

Royal Legislative Decree 2/2015, of 23 October, which approves the revised text of the Workers' Statute Law. (*Real Decreto Legislativo 2/2015, de 23 de octubre, por el que se aprueba el texto refundido de la Ley del Estatuto de los Trabajadores*). (2015). https://www.boe.es/buscar/act.php?id=BOE-A-2015-11430

Treaty of Amsterdam (1997). *Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts.* https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A11997D%2FTXT

Treaty of Rome (1957). *Treaty Establishing the European Economic Community, March 25, 1957.* https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:11957E/TXT

Treaty on the Functioning of the European Union (2007). *Consolidated version of the Treaty on the Functioning of the European Union, December 13, 2007.* https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT

World Economic Forum (2023). 2023 Gender Gap survey. Geneva: World Economic Forum. https://www3.weforum.org/docs/WEF_GGGR_2023.pdf

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Prava žena na radnom mestu: pravo zajedničke odgovornosti u zakonodavstvu EU i Španije

SAŽETAK

Uspostavljanje regulatornog okvira za osiguranje ravnopravnosti žena na mestima rada bio je dug put u Evropskoj uniji (EU) i državama članicama. U Španiji, na početku, nije bilo značajnog podsticaja. Ipak, nekoliko decenija kasnije, unapređenjem zakonodavstva Španija je postala prijatno mesto za život i rad žena, iako još uvek postoje pitanja na kojima treba raditi. Ovaj rad ima za cilj analizu usklađivanja i adekvatnosti španskog radnog zakonodavstva sa normativnim tekovinama EU u oblasti osiguranja ravnoteže rada i života i zajedničke odgovornosti žena i muškaraca, kao osnovnih elemenata za postizanje ravnopravnosti na mestima rada. U tom cilju biće dat detaljan prikaz uvođenja prava u domaći regulatorni okvir. Posledično, studija ima za cilj procenu da li je Španija jedna od država EU koja je dostigla najveće standarde rodne ravnopravnosti u oblasti zapošljavanja i obavljanja zanimanja, koji pak proizilaze iz implementacije i ostvarivanja prava na ravnotežu rada i života, kako bi se rešila pitanja zajedničke odgovornosti i usklađivanja profesionalnih sa porodičnim dužnostima.

KLJUČNE REČI

zajednička odgovornost, ravnoteža rada i života, pitanja usklađivanja, ravnopravnost, prava radnika

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The approach of EU labour law in redressing the problems of working parents and carers

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ABSTRACT

The conflict between employment and family responsibilities, that is, private life in general, is regarded as one of the most pressing concerns of labour law over an extended period. In the context of increasing participation of women in labour markets, ageing of the population and changes in the archetypal forms of employment relationships and families, the issue of reconciling work with family life, i.e. maintaining the work-life balance, affects all social actors: workers, employers and governments. In light of this, the paper first analyses the EU policies and legislative measures related to the special protection of women in relation to pregnancy and maternity, including the right to maternity leave. Additionally, it addresses the special rights of working parents, including the right to parental leave for both men and women workers. Finally, the paper looks at the most recent EU Directive on Work-Life Balance of 2019, providing a critical review of both the newly introduced rights in the Directive, such as paternity and carers' leave, and the already established rights of parental leave and flexible working arrangements.

KEYWORDS

reconciliation of work with family life, pregnancy and maternity rights, rights of working parents and carers, work-life balance

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1 INTRODUCTION

The relationship between work and family life has traditionally been characterized by greater or lesser mutual incompatibility, as meeting the demands of one side makes it difficult to meet the demands of the other (Greenhaus and Singh 2004). If such incompatibility is termed "conflict", a logical concept through which solutions should be sought to reduce or eliminate said conflict is the concept of "*reconciliation*" between work and family life. In that regard, it can be defined as a "dynamic set of policies and legal provisions that address the inherent conflicts in juggling work commitments and family responsibilities" (Caracciolo di Torella and Masselot 2010). If, on the other hand, the incompatibility between work and family responsibilities is termed "imbalance", the usual policy and regulatory responses can be sought through a concept called "*work-family balance*". Regardless of whether the applied conceptual framework emphasizes the notion of "conflict" or "imbalance", the addressed questions remain essentially the same — how to reconcile, i.e. balance the tensions, that is, the problems that professional obligations cause to family responsibilities regarding the care of dependent children and other family members who need care (Hein 2005), which, in turn, may limit preparation, entering, participation and advancement in economic activities (International Labour Organization 2023). However, limiting the scope of the concept of reconciliation, i.e. balance to the relationship between work and family life, would unjustifiably exclude different personal lifestyles of workers (Kalamatiev and Ristovski 2017). Hence, theory and regulatory frameworks are already beginning to replace the narrower term "work-family balance" with the more inclusive term "*work-life balance*", which, in addition to traditional family responsibilities, is also aimed at non-family responsibilities and requirements, such as study, commitment to travel or the like (Brough et al. 2020). Yet, despite the potential to encompass wider non-family responsibilities and demands of working people in general, it seems that the concept of work-life balance still primarily addresses the family responsibilities and demands of working parents and only then of working carers. Hence, this paper, to the greatest extent possible, analyses the issue of reconciliation, that is, the balance between work and family life.

In a historical context, the emergence of the problem of reconciliation, that is, the balance between work and family, is usually associated with the transition from an agrarian to an industrial society and the separation of the house from the workplace (Hein 2005). This leads to drawing clear boundaries between the two spheres of social life: public or employment and private or family. In the dichotomy of the two spheres, men have traditionally dominated the public sphere and employment, while women have traditionally been excluded or marginalised from labour markets and directed to unpaid care work within families (Hayes 2017). Cultural understandings of the role of men, i.e. fathers, and women, i.e. mothers, were embedded in the so-called "gender contract" defined as a normative and material basis around which sex/gender divisions of paid and unpaid labour operate in a given society (Rubery 1998). The gender contract determined the role of *men as family breadwinners* who establish a standard employment relationship and earn a family wage and *women as*

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family caregivers who perform unpaid care work and possibly earn a secondary wage (Vosko 2006). The feminization of labour and the gradual integration of women from unpaid work in families to paid employment in the labour markets which gained momentum during the 60s of the last century, inevitably began to affect the gender contract (Fudge and Owens 2006; Fudge 2014), replacing the traditional "male breadwinner/female caregiver" with a "male and female (double) breadwinners/female caregiver" model (Kalamatiev and Ristovski 2014). However, the situation has, for the most part, remained unchanged because women not only have continued to bear the lion's share of unpaid care within families, but it has also been expected of them to be productive workers who contribute both to the economy of the country and the well-being of the family.

In an EU regulatory context, the issue of reconciliation was first placed on the agenda of the European Communities through the adoption of the Social Action Programme in 1974. For more than two decades, until the entry into force of the Treaty of Amsterdam in 1997, measures and policies for reconciling work with family life in the European Community/European Union were mainly developed within different regulatory contexts, such as the equal opportunities, employment policy, improving labour markets, family relationships and training and education (Bercusson 1996). During this period, several directives were adopted that directly or indirectly affected the issue of reconciling work with family life, including the Directive on Equal Treatment of Men and Women (Directive 76/207 1976), the Pregnant Workers Directive (Directive 92/85 1992), and the Parental Leave Directive (Directive 96/34 1996). A common denominator of these instruments, in essence, is their orientation towards a single direction: to prohibit discrimination against women in employment but also to adapt their work to the traditionally predetermined responsibilities in the family. Hence, two key criticisms are attributed to them: the first refers to the problem of stereotyping the role of women, and the second refers to the tendency to cover only the care of children, but not of other dependent persons, including adult family members (Davies 2009).

After the Amsterdam Treaty, which strengthened the concept of gender equality by transforming policies prohibiting discrimination into policies promoting equal opportunities, reconciliation measures have taken a different course towards a human right that belongs equally to working mothers, fathers and carers in general. Confirmation for such a course can be found in the Charter of Fundamental Rights of the EU (2000 Art. 33, 2), through which the right to reconcile professional and family life has been raised to the level of a fundamental human right. Among other things, various soft law measures, such as the Resolution on the balanced participation of women and men in family and working life from 2000 and the Work-Life Balance Package from 2008[1], but also certain directives, such as the Recast Directive on equal treatment of men and women in matters of employment and occupation (Directive 2006/54 2006)

[1] This Package, among other things, provided for Proposals for amendments to existing directives such as the Directive for self-employed workers (Directive 86/613 1986) and for pregnant workers (Directive 92/85 1992). While amendments to the first Directive were successfully adopted through Directive 2010/41 (2010), attempts to amend the second Directive failed and were withdrawn in 2015.

and the Parental Leave Directive (Directive 2010/18 2010) repealing and replacing the eponymous Directive of 1996, have been adopted. All the while, the affluent case law of the Court of Justice has played a huge role. The most recent stage in the development of measures and policies to reconcile work with family, i.e. private life, was marked by the adoption of the European Pillar of Social Rights (2017). It provided a new impetus in the development of such measures and policies, and under its auspices, a new Directive on Work-Life Balance for Parents and Carers was finally proposed. The new Directive was adopted in 2019, repealing the previous Parental Leave Directive from 2010. Directive 2019/1158 (2019) represents the first legal instrument that explicitly addresses the issue of work-life balance as a stand-alone concept and puts care and care-related responsibilities on the EU agenda (Caracciolo di Torella 2020). However, despite strengthening existing rights (such as parental leave and flexible working arrangements) and introducing new ones (such as paternity and carers' leave), this Directive is not immune to certain criticisms regarding the (un)realized potential for meeting the ideal of substantive gender equality and for more comprehensive regulation of the issue of providing care to a broader scope of dependent persons.

2 SPECIAL PROTECTION OF WOMEN IN RELATION TO PREGNANCY AND MATERNITY

Modern instruments that regulate the protection of women in the field of employment no longer speak of the protection of employed women as a special category of workers in need of special protection because such an approach is now perceived as a form of disguised or "benign" discrimination, having adverse effects on equality of opportunity in employment (Birk 2007). Instead of special measures for their "general" protection as women, female workers enjoy special protection in exceptional cases such as pregnancy and maternity. However, the issue of determining the point where special protection ends and discrimination against women (Grgurev 2014) or violation of equal treatment in relation to men begins is a complex issue. In EU law, pregnancy and maternity rights are addressed through various instruments that establish a complex horizontal linkage. On the one hand, there are the directives in the field of equal treatment and opportunities, of which the Equal Treatment Directive (Directive 76/207 1976), including its amendments by Directive 2002/73 (2002) and Directive 2006/54 (2006), are of particular importance, and on the other hand the Directive 92/85 (1992).

The equality directives have had a significant role in protecting and improving the position of women in employment in cases of pregnancy and maternity, both before and after the adoption of the Pregnant Workers Directive. Their impact is particularly notable in several cases before the Court of Justice concerning pregnant women, related to prohibition of discrimination in entering into employment (e.g. the "Dekker" case, C-177/88 1990), protection in case of non-renewal of a fixed-term employment contract due to pregnancy-related reasons (e.g., the "Melgar" case, C-438/99 2001), etc.

In other cases, the application of the equality directives is interpreted in the direction of limiting such protection. Such are, for example, the cases based on absences from work due to

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pregnancy-related illness, which refer to the admissibility of giving notice of dismissal after the end of maternity leave or the payment of a reduced salary during pregnancy or after returning from maternity leave.[2] The insufficiently clear boundaries and the "built-in conflict" between the right to special protection which pursuits substantial gender equality and the formal equality of treatment of men and women, can also be considered through the prism of the potential clash between the context of safety and health at work (predominantly represented in the Pregnant Workers Directive) and the context of equal treatment (arising from the Equality Directives). In that regard, what is interesting but also contradictory is the approach of the Court of Justice concerning the legal treatment of the said issues related to the protection against dismissal and the payment of women during pregnancy and maternity and especially in cases of absence from work due to illness related to pregnancy. The Court, on the one hand, justifies the special protection of women from dismissal for the duration of the entire period of pregnancy and maternity leave, inter alia, for the purpose of protecting their physical and mental state, including the protection of pregnant women from the risk of voluntary termination of pregnancy that may be caused by the threat of dismissal.[3] However, on the other hand, the Court considers that the stress suffered by the reduction of the worker's salary during pregnancy or maternity leave cannot be compared to the stress related to the termination of her employment contract.

[2] See "Hertz" Case, (C-421/88 1990); "Larsson" Case, (C-400/95 1997); "McKenna" Case, (C-191/03 2005), etc.

[3] See "Brown" Case, (C-394/96 1998).

2.1 SPECIAL PROTECTION OF WOMEN IN RELATION TO PREGNANCY AND MATERNITY UNDER THE EQUALITY DIRECTIVES

The original text of Directive 76/207 (1976) does not provide for special provisions, i.e. positive rights for women in relation to pregnancy and maternity, but rather refers to their protection as an *exception* to the principle of equal treatment of men and women. A more detailed explanation of the justification for such an exception, i.e. different treatment, is given by the Court of Justice in the "Hofmann" case, where it refers to two legitimate goals of the protection of pregnancy and maternity, namely: 1) the protection of a woman's *biological condition* and 2) the protection of the *special relationship between a woman and her child* (C-184/83 1984).

It is also a difficult challenge to "adjust" pregnancy and motherhood as unique conditions in which only women can be found to the usual formula for coping with discrimination based on the existence of a "comparator" (Ellis and Watson 2012). The literal application of the concept of equal treatment by comparing the condition of a pregnant woman who has recently given birth to a similarly situated male comparator is an artificial legal exercise (Barnard 2012).

The first significant judgment through which the Court of Justice addressed this impracticality was the "Dekker" case. The Court ruled that since pregnancy only affects women, decisions made on the ground that a woman is pregnant are a form of sex discrimination without the need to make comparisons. This approach is also confirmed by Directive 2002/73 (2002 Art. 2, 7) and further by Directive 2006/54 (2006 Art. 2, (2), c.). The difference between the Directives

2002/73 (2002) and 2006/54 (2006) is that the former retains a passive approach to regulating the special protection of women during pregnancy and maternity as an exception to the principle of equality using the formula that "*the Directives shall be without prejudice to provisions concerning the protection of women, particularly as regards pregnancy and maternity*", while the latter abandons such a formula by which approaches the ideal of substantial gender equality.

2.2 SPECIAL PROTECTION OF WOMEN IN RELATION TO PREGNANCY AND MATERNITY WITHIN THE FRAMEWORK OF THE DIRECTIVE ON PREGNANT WORKERS

The Pregnant Workers Directive (Directive 92/85 1992) was adopted as the tenth individual directive of Directive 89/391 (1989) on the general framework for the safety and health of workers at work (Blanapin 2013). It is based on the assumption that employed expectant and new mothers must be considered a particularly sensitive risk group and protected against the dangers which specifically affect them. However, despite the principal role of the safety and health regulatory context, the Directive does not neglect the context of equal treatment either (Kenner 2003).

Directive 92/85 (1992) contains definitions for the terms "pregnant worker", "worker who has recently given birth", and "worker who is breastfeeding", but a closer explanation of the concept of "pregnancy" and the personal scope of the Directive can be found in the jurisprudence of the Court of Justice. Thus, in the "Danosa" case (C-232/09 2010), the Court stated that as a (subordinated) worker and in that sense, a "pregnant worker" can also be considered *a member of the board of directors of a company*, who in return for remuneration, provides services to the company, under the direction or control of another body of that company.

In the "Kiiski" case (C-116/06 2007), on the other hand, the Court expands the scope of Directive 92/85/EEC also in relation to "*workers who are on childcare leave*" at the time they seek to rely on the rights granted by the Directive, such as the right to maternity leave. Finally, in the "Mayr" case (C-506/06 2008), in addition to indirectly addressing the question of the personal scope of the Directive, the Court also addressed fundamental questions such as what constitutes pregnancy and when it can be considered to have begun. In this regard, it ruled that the term "pregnant worker" does not include a worker who, despite having had a successful in vitro fertilization (IVF) procedure resulting in the creation of embryos, at the time she requested dismissal protection stating that she was pregnant, the embryos were still not implanted in her uterus. The provisions of the Directive, whose primary and predominant purpose is to protect the health and safety of employed expectant and new mothers, cover a wide range of issues, including, among much else, employers' obligations related to assessment of specific risks, taking occupational health and safety measures and informing the workers and/or their representatives of the results of those activities; adjusting the working conditions including hours of work of the workers, taking necessary measures to move the worker to another job or granting leave in order to protect her safety or health (Art. 3 – 6).

Pregnant workers are also entitled to paid time off in order to attend ante-natal examination (Art. 9). What is

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also interesting is the issue of the regulation/restriction of night work for women in general, that is, for pregnant women and mothers in particular.[4] The Directive does not introduce a general ban on night work for pregnant workers, workers who have recently given birth or are breastfeeding, but in order to protect their safety and health, it requires taking into account their individual medical condition and the lack of constraint to perform such work, if it would constitute a risk for the women or the child (Kovacs and Heissl 2015). In comparative law, the types of regulatory frameworks on night work performed by pregnant workers or mothers vary from the general prohibition or prohibition with broad exceptions to the permission with restrictions (Birk 2007).

One of the most significant rights from the Pregnant Workers Directive is the right to maternity leave during a continuous period of at least 14 weeks (Directive 92/85 1992 Art 8, 1). The Directive implicitly distinguishes two periods of leave resulting from the total maternity leave: compulsory leave of at least two weeks and optional leave up to the remaining 14 weeks. Compulsory leave is considered a non-waivable period of leave, while the use of the optional leave depends on the woman's personal choice, but in any case, the employer is not allowed to put pressure on the woman to waive her right to the full length of leave (Kovacs and Heissl 2015). Member States may provide that the period of maternity leave commences with the date notified by the person concerned to her employer, including the day on which the child is born (C-411/96 1998).

Directive 92/85 (1992) also contains certain rights that are related but, at the same time, can be considered to be beyond the narrower context of safety and health at work. They refer to the *prohibition of dismissal* and the *exercise of employment rights*. The prohibition of dismissal includes the period from the beginning of pregnancy to the end of maternity leave. Exceptions to this prohibition may be allowed only in exceptional cases not connected to the worker's condition and if they are acceptable under national law, and where applicable, followed by consent of competent authority (Art. 10). As "exceptional cases" that justify dismissal, cannot be considered the cases where a pregnant worker *is not available to perform her duties* during the period for which she is needed, regardless of whether the main reason for her initial employment was a replacement for another worker who uses maternity leave (C-32/93 1994) or because the worker concluded a fixed-term employment contract (C-109/00 2001).

Finally, in "Paquay" (C-460/06 2007), the Court extends the protection against dismissal to those cases in which the employer takes preparatory steps for dismissal on the grounds of pregnancy or of birth of a child, such as recruiting a permanent replacement for the concerned employee, before the end of that period. EU Member States are not obliged to provide a specific list of exceptional cases justifying the dismissal of a worker during pregnancy or maternity

[4] Today, the general ban on night work for women cannot be considered an exception to the principle of non-discrimination, but on the contrary, a violation of this principle since night work has equally harmful consequences for workers of both sexes. Only the prohibition that covers women in cases of pregnancy and maternity is considered a permissible exception, based on the assumption that working at night poses a serious risk to their health but not to the health of women in general (Kovačevič 2021).

leave, but examples of such cases could be the following ones: force majeure situation which permanently prevented a person from working, collective redundancy, gross violations of contractual or other legal obligations of the employee, complete and permanent loss of the capacity to perform the agreed work, etc (Ellis and Watson 2012; Kovacs and Heissl 2015).

Concerning *employment rights*, Directive 92/85 (1992) firstly obliges the Member States to guarantee workers who, for reasons related to the protection of safety and health, are forced to work under modified working conditions, to another job, or to be exempted from work, the exercise of the employment rights relating to the employment contract including the maintenance of payment to, and/or entitlement to an adequate allowance. During maternity leave, on the other hand, the workers should receive either *payment or an adequate allowance,* which is at least equivalent to that which they would receive in case of sick leave. In both cases, the exercise of the entitlements may depend on the fulfilment of eligibility conditions, which, by no means, may require previous employment longer than 12 months counted from the date of confinement (Art. 11).

3 THE POSITION OF WORKING FATHERS AND THE RIGHTS OF WORKING PARENTS

For many years, the position and role of fathers in EC/EU policies and measures to reconcile work with family life were essentially neglected. Interestingly, this situation was "bolstered" by certain judgments and interpretations of the Court of Justice that strengthened the gender division of the roles of women (as primary caregivers) and men (as primary breadwinners) even further.[5] However, over time, the Court, has started to examine whether a period of leave is genuinely designed to protect women who have just given birth (Davies 2012), or it refers to the need of longer-term care for children which can be provided by both parents. Thus, in the "Roca Alvarez" case (C-104/09 2010), a subject of assessment by the Court of Justice was a leave scheme for feeding babies in Spain, allowing each parent one hour of leave from work until the child was nine months old. Such a right to leave was granted to all employed mothers (regardless of whether the fathers of the children have the status of employees) but only to the employed fathers (if the mothers of the children have the status of employees). The Court held that such a situation perpetuates a traditional distribution of the roles of men and women regarding their parental duties, and on that view, the leave should be afforded to men on the same terms as it was afforded to women.

The involvement of fathers in policies and measures to reconcile work with family life usually appears in two forms: paternity leave and parental leave (Caracciolo di Torella and Masselot 2010). The right to paternity leave was beyond the regulatory framework of EU labour law for many years.[6]

[5] See "Hofmann" case (C-184/83, 1984); "Abdoulaye" case (C-218/98, 1999).

[6] It should be noted that the first draft of the Pregnant Workers Directive provided for two unpaid days of paternity leave related to the birth of the child. However, such a proposal was not only not included in the adopted and still existing Directive of 1992 but was also not included in the Proposal for its amendment of 2009, which was also never adopted. Paternity leave is for the first time introduced and regulated by Directive 2019/1158 (EU) on Work-Life Balance from 2019.

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It is mentioned only in two instruments in the field of equality – Directive 2002/73 (2002 Art. 2, 7) and Directive 2006/54 (2006 Art. 16). These instruments, however, do not provide for the right to paternity leave as a positive right granted for fathers. They merely provide the same level of protection of paternity and adoption leave compared to maternity leave if Member States have already established such rules in national legal systems. This means that fathers' rights within the framework of the Equality Directives have the status of "optional" and not "individual" and thus mandatory rights for the Member States (Caracciolo di Torella 2017).

On the other hand, parental leave is granted to both parents to enable them to take care of their child (C-519/03 2005). This right was regulated for the first time by the Directive 96/34 (1996). It introduced an individual right to at least three months of parental leave on the grounds of the birth or adoption of a child to both men and women working parents (Clause 2, 1) and provided for the right to take time off in the event of sickness or accident for urgent family reasons to all workers (Clause 3, 1). If Directive 96/34 (1996) is the first directive adopted by means of social dialogue implementing a Framework Agreement between the representative social partners at the Union level, after the amendments to the Agreement of 2009, Directive 2010/18 (2010) (repealing Directive 96/34 1996) also, adopted through social dialogue, is the first directive implementing a revision of a Framework Agreement (Houwerzijl 2015). Directive 2010/18 (2010) has been repealed and replaced by the most recent Work-Life Balance Directive 2019/1158, which will be specifically addressed in the next section of this paper. Considering the continuity between the two directives, below, we refer to the key rights covered by Directive 2010/18 (2010) in the context of reconciling work with family and private life.

The first is the *right to parental leave* for the birth or adoption of a child guaranteed in order to take care of the child. It was provided as a right that is granted to each parent (man or woman worker) for at least a period of four months, with the possibility of being used up to the child's eight-year-old age (Clause 2, 1). On the one hand, in order to promote equality, the Directive defined it as "in principle" non-transferable right, but on the other hand, it stipulated that at least one of the four months is non-transferable in order to encourage equal use of the leave by both parents (Clause 2, 2). The formulation of the right to parental leave as an "in principle" non-transferable right allowed Member States to deviate from the non-transferability rule (of course, with the exception of one of the four months granted to each of the parents) depending on the modalities of application set down at the national level.[7] In none of its provisions, Directive 2010/18 (2010) established that the right to parental leave must be paid.

The second right is the right *to request changes to the working hours and/or patterns* after the return of a worker from parental leave. This right created an obligation for the employer to consider and respond to the worker's request, taking into account both his and the worker's needs (Clause 6, 1). The Directive drew inspiration for the introduction of this right from the statutory right of

[7] The freedom to deviate from the principle of non-transferability may be justified by certain objective reasons, such as when the parents are divorced or separated or when one of them is unable to work or deceased (Houwerzijl 2015).

employees with young children or children with disabilities to request flexible work arrangements in UK employment law (Sargeant and Lewis 2010). In any case, the right to request changes in working hours and/or patterns did not guarantee the worker that the requested changed terms would be approved, but merely that he/she had the right to request them (Barnard 2012). The other limitation stems from the fact that the right to request changes is not a free-standing right, which means that the worker can only exercise it when returning to work after previously taking parental leave (Davies 2012).

Finally, the third right is the *right to time off from work* on grounds of force majeure for urgent family reasons in cases of sickness or accident (Clause 7, 1). Its significance lies in the fact that it applies not only to working parents but to all workers. This means that the right is not only intended for urgent situations related to the care of children by parents but, indirectly, it can also cover other persons (for example, a partner, an elderly, or another dependent relative).

4 WORK-LIFE BALANCE DIRECTIVE AND ITS IMPORTANCE FOR PARENTS AND CARERS

The policies and legal measures for reconciling work with family, i.e. private life, reach their last and most recent stage with the adoption of Directive on Work-Life Balance for Parents and Carers 2019/1158 (Directive 2019/1158 2019). With the explicit mention of "carers" already in its title, this directive no longer views the issue of "reconciliation", i.e. "balance" just as a problem of women or parents, but as something that is expected to affect most workers throughout their professional life (Caracciolo di Torella 2020).[8] The main objective of the work-life balance policies, and therefore, of the Directive itself, remains gender equality which could be achieved, inter alia, by promoting the participation, equal treatment and opportunities of women in employment and the equal parenting between men and women (Recital 6). In that regard, the Directive not only strengthens the existing rights of working parents but also introduces new ones for working fathers and carers in general, with the aim of improving their work-life balance and preventing them from leaving the labour market due to caring responsibilities (Bouget et al. 2017).

Directive 2019/1158 (2019) applies to a broader range of persons compared to previous Directives on parental leave. Its personal scope includes all workers who have an employment contract or employment relationship, *taking into account the case-law of the Court of Justice* (Art. 2). Through such an expression, the application of the Directive can implicitly be extended to the most vulnerable categories of workers including workers performing paid household work, workers performing platform work and other new forms of work, as well as trainees and apprentices. However, the most significant part of the Directive lies in its material scope. In that regard, the Directive contains four individual rights: *the right to paternity leave*, *the right to carers' leave, the right to parental leave, and the right to request flexible working arrangements* (Art. 1). While the first two are rights that are regulated for the first

[8] For the theoretical explanation and the differences between the terms "reconciliation of work with family life", "work-family balance", and "work-life balance", see the introductory part of this paper.

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time by an EU directive, the second two have their roots in the repealed Parental Leave Directives but are simultaneously strengthened and expanded by the new Work-Life Balance Directive.

Paternity leave is a right to be used by fathers or equivalent second parents (if recognized by national legal systems) in case of a child's birth, with the aim of providing care (Art. 3, 1, a). It can amount to 10 working days that can be taken partly before or only after the birth of the child, as well as in flexible ways (Art. 4, 1). Much like maternity leave, it is provided as an unconditional right, the exercise of which shall not be made subject to a previous period of employment, and employers cannot reject or delay the worker's request to use it. Another indicator of the similarity with maternity leave is the amount of its payment or allowance that should be at least equivalent to that which the worker concerned would receive in the event of a sick leave. Such payment or allowance may be subject to a period of previous employment, which must not be longer than six months before the expected date of the child's birth (Art. 8, 2). Holders of the right to paternity leave, in addition to fathers, can also be equivalent second parents (if they are recognized by national legislation), and it should be granted to them irrespective of their marital or family status, in accordance with national law (Art. 4, 3). With such an approach, the Directive acknowledges the plurality of family units in contemporary societies, making it possible for the right to be acquired by families of same-sex parents (commonly referred to as rainbow families) or by persons with constantly changing identities (commonly referred to as fluid families) who take care of children. However, it fails to address or specifically refer to single-parent families, who are arguably in an even more vulnerable position. Other criticisms can also be attributed to the Directive in the context of regulating the right to paternity leave. Thus, despite the fact that it bears the title "work-life balance", not only does it not address the issue of motherhood at all, but it fails to establish more substantial symmetry in the duration of paternity and maternity leave (which remains significantly longer than paternity leave). Another criticism is that, compared to the part of maternity leave which is compulsory, paternity leave does not have the status of compulsory leave at all (Caracciolo di Torella 2020).

Parental leave is a right to be used by both parents in the event of the birth or adoption of a child to take care of that child (Art. 3, 1, b). It is formally structured as an individual right that cannot be transferred from one parent to another, while the age of the child up to which it can be taken is to be specified at the national level, up to the age of eight. However, even the new Directive does not substantially deviate from the determination of (at least) one part of this right as a family right, i.e. a right that can be transferred from one parent to the other. Unlike the repealed Directive 2010/18 (2010), in Directive 2019/1158 (2019), only two of the total four months of parental leave guaranteed for each parent cannot be transferred (Art. 5, 1 and 2). With that, the portion of non-transferable leave between parents increases from one to two months, and if such portion is not used, it is lost. To a certain extent, the new Directive strengthens the right of workers to use parental leave flexibly. It does not explicitly mention and is not limited to the modalities for using parental leave provided for in previous

directives (on a full or part-time basis, on a piecemeal way or in the form of a time-credit system), but it guarantees the right of workers to request to take parental leave in flexible ways while providing an obligation for employers to consider and respond to such requests, taking into account the needs of both the employer and the worker (Art. 5, 6).

The flexibility in the use of parental leave by workers also depends on the established rules for notifying the employers of the intended beginning and end of the period of leave, as well as the possibility of changing pre-agreed periods of leave. This issue was addressed in the aforementioned "Kiiski" case, where the employer refused the request of Ms Kiiski for early termination, i.e. altering the end date of her period of child-care leave despite the fact that she was pregnant and the reason for which she requested such a change was to exercise another right, which is maternity leave. The Court of Justice held that the Community law "precludes a decision by an employer, the consequence of which is that a pregnant worker is not permitted to obtain, at her request, an alteration of the period of her child care leave at the time when she requests her maternity leave and which thus deprives her of the right inherent in that maternity leave" (C-116/06 2007). However, in case of a request to change a pre-agreed period of parental leave for another reason, such a request may be subject to strict conditions for approval in order not to affect the organization of the employer's business (Ellis and Watson 2012).

A similar "justification" in favour of employers can be found in relation to the right of employers to postpone the granting of parental leave requested by the worker, but only for a "reasonable period of time" and due to "serious disturbances of the good functioning of the employer" (Art. 5, 5). An important novelty of Directive 2019/1158 (2019) in the context of exercising the right to parental leave is the requirement from Member States to adapt this right to the needs not only of adoptive parents and parents with children with a disability or a long-term illness but also of parents who themselves have a disability (Art. 5, 8). Finally, one of the most significant elements of parental leave, including the need for equal use of the leave by men and women, are the elements related to its payment or allowance and eligibility. Directive 2019/1158 (2019) stipulates for the first time that the right to parental leave should be paid (Art. 8, 3). For the sake of truth, the Directive sets off the determination of the amount of such payment (for example, in the amount of payment or allowance which the worker concerned would receive in the event of sick leave) and leaves this issue entirely to the national level. However, certain expressions that can serve as an orientation for determining the level of payment and as a sound legal ground for an interpretation by the Court of Justice can be found in the non-binding recitals of the Directive.[9] Even in the new Work-Life Balance Directive, the right to parental leave is not regulated as an automatic and unconditional right of the holders similar to maternity and paternity leave. Its acquisition may be subject to certain conditions of eligibility regulated by national law, such as a "period of work qualification or length of service qualification, which shall not exceed one year" (Art. 5, 4). The difference between the two qualifications is that the first one refers to the previous length of employment

[9] See Recitals 29 and 31.

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of the worker irrespective of the number of employers, while the second one refers to one employer. On the other hand, both qualifications are inclusive of any number of weekly working hours performed by the worker (European Trade Union Confederation 2011).

One of the most significant achievements of the Work-Life Balance Directive is the introduction of *the right to carers' leave*. In fact, the Directive recognizes for the first time the provision of care as a responsibility which does not consist only of the care of children by a working parent but also of personal care or support by the worker (i.e. carer) to a relative (child, parent, spouse or partner in a civil partnership, in accordance with national law) or to a person who lives in the same household as the worker, and who is in need of significant care or support for a serious medical reason (Art. 3, 1, c, d, e). Carers' leave is defined as an individual right of each working carer and amounts to five working days per year (Art. 6, 1). However, compared to maternity, paternity, and even parental leave, this right does not have the status of paid leave from work. The limited duration of 5 working days might be sufficient to provide short-term care or support or to find other and more sustainable options for the dependent person, but it is certainly insufficient to provide regular and continuous help over a longer period of time. The relatively limited range of persons for whose personal care and support the leave can be used is also subject to criticism.[10] The modest quality and quantity of entitlements attached to the right to carers' leave, however, does not call into question its significance for workers who are in need of it, because without this right, they would either depend on the goodwill of their employer or use days from their annual leave or other periods of leave for caregiving (Oliveira et al. 2020). In parallel with the introduction of the new right to leave for carers, Directive 2019/1158 (2019) also retains the "old" right to unpaid time off from work due to force majeure for urgent family reasons from the repealed Directives (Art. 7). Although there are certain similarities between the rights to leave for carers and for urgent family reasons, such as their focus on the family in a wider sense and not just on children, the main difference is that the former is intended for providing long-term care, and the second, to address urgent and immediate situations (Caracciolo di Torella 2017).

Last but not least, in the set of four individual rights is the right to request *a flexible working arrangement*. The most important improvements in the regulation of this right concern the scope of persons (since it is no longer an exclusive right of working parents, but also of all other workers with responsibilities related to providing care), as well as its purpose (since it is no longer based on purely economic motives of employers for flexible employment of workers, but a self-standing right related to the concept of work-life balance) (Caracciolo di Torella 2020). Hence, the right to request flexible working arrangements is intended both for workers with children up to at least eight years of age and for carers for caring purposes (Art. 9, 1). Flexible working arrangements may include the use of remote working arrangements, flexible working schedules, or reduced working hours (Art. 3, 1, f).

[10] For example, in its binding provisions, the Directive does not mention additional persons who may fall under the category of "relatives", such as siblings and grandparents, which, on the other hand, are mentioned in Recital 27 of the Directive.

The worker's request entails the obligation of the employer to consider and respond to such a request within a reasonable period of time and to provide reasons for any refusal or postponement. Hence, even in the new Directive, the right to request flexible working arrangements does not have the status of an absolute right but only the right to request flexible working (Waddington and Bell 2021). When deciding on the request, including a possible negative decision, it is necessary to consider the balancing of interests between the two parties (both the employer and the worker), i.e. to take into account their needs (Art. 9, 2). After the end of the agreed period of flexible working arrangement (if it is limited in duration), the worker has the right to request to return to the original working pattern. The worker is also entitled to request an early return to the original working pattern if such return is justified by a change of circumstances (Art. 9, 3). Regarding the issue of eligibility of its acquisition, Member States are allowed to make the right subject to a period of previous employment, which cannot be longer than six months (Art. 9, 4).

In addition to the regulation and improvements in all four individual rights, the Directive also contains standard provisions ensuring their protection. In that regard, workers retain their rights for the duration of the leaves (Art. 10, 1), and at the end of such leaves, are entitled to return to their jobs or to equivalent posts and to benefit from any improvement in working conditions (Art. 10, 2). It is prohibited to treat workers less favourably due to applying or exercising the rights provided for in the Directive (Art. 11). The same applies to dismissal and all preparations for dismissal of workers (Art. 12, 1). Although claimants or beneficiaries of the rights are protected against discrimination, the Directive does not provide for wider protection against discrimination on grounds of caregiving responsibilities.

5 CONCLUSION

The issue of reconciling work with family, that is, private life, goes through a long and evolutionary process of shaping within the soft and hard law of the EU and the jurisprudence of the Court of Justice. Inspired by the need to improve the equal treatment and opportunities of women in employment and increase their economic contribution to society, the issue of reconciliation was first adjusted to mothers in order to enable them to take care of their young children while continuing to work. However, the double burden they have to bear (to be productive workers and good mothers) contradicts the ideal of substantial gender equality within the framework of which there is an equal place for exercising parental responsibilities for both women and men workers.

With the adoption of the Work-Life Balance Directive (Directive 2019/1158 2019), the issue of reconciliation, i.e. work-life balance, not only extends to fathers and deepens their involvement in parental care but also begins to encompass other caregivers, such as those who care for other dependent persons. Hence, this Directive changes the paradigm of understanding caregiving as an integral and inseparable part of the life of all workers, not just parents with small children. However, an instrument entitled "work-life balance" was expected to address the position of mothers, which continues to be regulated by the Pregnant Workers Directive, adopted more than 30 years ago. Furthermore,

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considering how the way in which the rights to paternity and parental leave are regulated, it can be concluded that mothers still retain the position of primary caregivers for children. A similar conclusion can be drawn in regards to the way of regulating the right to carers' leave because starting from the definitions for carers and conditions of eligibility for providing care, as well as from the overall quality and quantity of elements attached to it, it is questionable whether and what substantial changes this right will cause in the national laws of the EU member states. Finally, the right to request flexible working arrangements can also be subjected to criticism, as this does not yet have the status of an absolute right and is conditional on approval by the employer. Perhaps the new concept of work-life balance and the rights arising from it have not entirely fulfilled their potential, but the general conclusion in regards to them is solitary: they represent a genuine and crucial step on the long road towards achieving substantial gender equality and facing the challenges of ageing societies.

REFERENCES

Barnard, C. (2012). *EU Employment Law* (4th ed.). Oxford University Press.

Bercusson, B. (1996). *European Labour Law*. London: Butterworths.

Birk, R. (2007). *European Social Charter*. Wolters Kluwer.

Blanapin, R. (2013). *European Labour Law*. Wolters Kluwer.

Bouget, D., Saraceno, C., & Spasova, S. (2017). Towards new work-life balance policies for those caring for dependent relatives? In B. Vanhercke, S. Sabato & D. Bouget (Eds.), *Social policy in the European Union: state of play 2017* (pp. 155–175). Brussels: European Trade Union Institute (ETUI) and European Social Observatory. https://www.etui.org/sites/default/files/17%20Social%20policy%20in%20EU%202017%20OSE%20Web%20version.pdf

Brough, P., Timms, C., Chan, X. W., Hawkes, A., & Rasmussen, L. (2020). Work–Life Balance: Definitions, Causes, and Consequences. In T. Theorell (Ed.), *Handbook of Socioeconomic Determinants of Occupational Health* (pp. 1–15). Cham: Springer. https://doi.org/10.1007/978-3-030-05031-3_20-1

Caracciolo di Torella, E., & Masselot, A. (2010). *Reconciling Work and Family Life in EU Law and Policy*. Palgrave MacMillan.

Caracciolo di Torella, E. (2017). An emerging right to care in the EU: a "New Start to Support Work-Life Balance for Parents and Carers". *ERA Forum,* 18, 187–198.

Caracciolo di Torella, E. (2020). One more step along the way: the 2019 Work Life Balance Directive. *Revue de Droit Comparė du Travail et de la Sécuritė Social*, 4, 70–81. https://doi.org/10.4000/rdctss.803

Case C-184/83. *Hofmann v Barmer Ersatzkasse*. (1984, July 24). ECR 3047. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61983CJ0184

Case C-177/88. *Dekker v Stichting Vormingscentrum voor Jong Volwassenen*. (1990, November 8). ECR I–3941. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61988CJ0177

Case C-32/93. *Carole Louise Webb v EMO Air Cargo*. (1994, July 14). I-1963. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61993CJ0032

Case C-400/95. *Handels-og Kontorfunktionærernes Forbund i Danmark, acting on behalf of Helle Elisabeth Larsson v. Dansk Handel & Service, acting on behalf of Føtex Supermarked A/S*. (1997, May 27). I-2757. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61995CJ0400

Case C-394/96. *Mary Brown v. Rentokil Ltd*. (1998, June 30). ECR I-4185. https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:61996CJ0394

Case C-411/96. *Margaret Boyle and Others v Equal Opportunities Commission*. (1998, October 27). I-6401. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61996CJ0411

Case C-218/98. *Oumar Dabo Abdoulaye and Others v Régie nationale des usines Renault SA*. (1999, September 16). I-05723. https://eur-lex.europa.eu/legal-content/GA/ALL/?uri=CELEX:61998CJ0218

Case C-438/99. *Jiménez Melgar* v. *Ayuntamiento de Los Barrios*. (2001, October 4). I-6915. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61999CJ0438

Case C-109/00. *Tele Danmark A/S v Handels- og Kontorfunktionærernes Forbund i Danmark*. (2001, October 4). I-06993. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62000CJ0109

Case 519/03. *Commission of the European Communities v Grand Duchy of Luxemburg*. (2005, April 14). I-03067. https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A62003CJ0519

Case C-191/03. *North Western Health Board v. Margaret McKenna*. (2005, September 2005). ECR I-7631. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62003CJ0191

Case C-116/06. *Sari Kiiski v Tampereen kaupunki.* (2007, September 20). I-07643. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62006CJ0116

Case C-460/06, *Nadine Paquay v Société d'architectes Hoet + Minne SPRL*. (2007, October 11). I-8511. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62006CJ0460

Case C-506/06. *Mayr v. Bäckerei und Konditorei Gerhard Flöckner.* (2008, February 26). I-1017. https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A62006CJ0506

Case C-232/09. *Dita Danosa v LKB Līzings SIA. (*2010, November 11). I-11405. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62009CJ0232_SUM&from=en

Case C-104/09. *Pedro Manuel Roca Álvarez v Sesa Start España ETT SA.* (2010, September 30). I-08661. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62009CJ0104

Charter of Fundamental Rights of the European Union. (2000, December 18). https://www.europarl.europa.eu/charter/pdf/text_en.pdf

Charter of Fundamental Rights of the European Union. (2007, December 14). https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2007:303:FULL&from=EN

Davies, A. C. L. (2009). *Perspectives on Labour Law* (2nd ed.). Cambridge University Press.

Davies, A. C. L. (2012). *EU Labour Law*. Edward Elgar Publishing Limited.

Directive 76/207. *Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.* (1976, February 9). https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31976L0207

Directive 92/85. *Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding.* (1992, October 19). https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31992L0085

Directive 96/34. *Council Directive 96/34/EC on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC.* (1996, June 19). https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31996L0034

Directive 2006/54. *Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast).* (2006, July 26). https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32006L0054

Directive 2010/18. *Council Directive 2010/18/EU implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC* (2010, March 8). https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32010L0018

Directive 2019/1158. *Directive (EU) 2019/1158 of the European Parliament and of the Council on work-life balance for parents and carers and repealing Council Directive 2010/18/EU.* (2019, July 12). https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32019L1158

Ellis, E., & Watson, P. (2012). *EU Anti-Discrimination Law* (2nd ed.). Oxford University Press.

European Commission (2008). *Work-life balance package 2008*. MEMO. https://ec.europa.eu/commission/presscorner/detail/en/MEMO_08_603

European Trade Union Confederation (2011). *The Revised Parental Leave Framework Agreement*. An ETUC Interpretation Guide. ETUC/CES. https://www.etuc.org/sites/default/files/The_Revised_Parental_Leave_Framework_Agreement_EN_1.pdf

Fudge, G., & Owens, R. (2006). Precarious Work, Women, and the New Economy: The Challenge to Legal Norms. In J. Fudge & R. Owens (Eds.), *Precarious Work, Women, and the New Economy: The Challenge to Legal Norms* (pp. 3–29). Hart Publishing.

Fudge, G. (2014). Feminist Reflections on the Scope of Labour Law: Domestic Work, Social Reproduction, and Jurisdiction. *Feminist Legal Studies*, 22(1), 1–23.

Greenhaus, J., & Singh, R. (2004). Work and Family, Relationship between. In C. D. Spielberger (Ed.), *Encyclopedia of Applied Psychology* (pp. 687–697). Elsevier. http://dx.doi.org/10.1016/B0-12-657410-3/00682-6

Grgurev, I. (2014). Diskriminacija trudnih radnica: kako uspješno pomiriti trudnoću sa zahtjevima tržišta? In Ž. Potočnjak, I. Grgurev & A. Grgič (Eds.), *Perspektive Antidiskriminacijskog Prava* (pp. 133–153). Zagreb: Sveučilište u Zagrebu, Pravni fakultet.

Hayes, LJB. (2017). *Stories of Care: A Labour of Law, Gender and Class at Work*. London: Palgrave MacMillan. https://doi.org/10.1057/978-1-137-49260-9

Hein, C. (2005). *Reconciling work and family responsibilities: Practical ideas from global experience*. Geneva: International Labour Office.

Houwerzijl, M. (2015). 2010/18/EU: Parental Leave. In M. Schlachter (Ed.), *EU Labour Law: A Comentary* (pp. 491–517). Wolters Kluwer.

Interinstitutional Proclamation on the European Pillar of Social Rights (2017, December 13). https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017C1213(01)&rid=2

International Labour Organization. (2023). *Achieving gender equality at work*. Geneva: International Labour Office.

Kalamatiev, T., & Ristovski, A. (2014). How Do the Working Time Regulations Influence Gender Inequalities. *Radno i Socijalno Pravo*, 18(2), 1–25.

Kalamatiev, T., & Ristovski, A. (2017). Labour legislation and policies aimed at reconciling employee's professional commitments with their personal and family life. *Aktualni Problemi na Trudovoto i Osiguritelnoto Pravo*, 9, 100–112.

Kenner, J. (2003). *EU Employment Law: From Rome to Amsterdam and Beyond*. Hart Publishing.

Kovacs. E., & Heissl, C. (2015). 92/88/EEC: Maternity Protection. In M. Schlachter (Ed.), *EU Labour Law A Comentary* (pp. 283–321). Wolters Kluwer.

Kovačevič, Lj. (2021). *Zasnivanje radnog odnosa*. Beograd: Univerzitet u Beogradu, Pravni fakultet.

Oliveira, A., De la Corte-Rodríguez, M., & Lütz, F. (2020). The new Directive on Work-Life Balance: towards a new paradigm of family care and equality? *European Law Review*, 45(3), 295–323.

Rubery, J. (1998). *Women in the Labour Market: A Gender Equality Perspective*. Paris: OECD Directorate for Education, Employment, Labour and Social Affairs.

Sargeant, M., & Lewis, D. (2010). *Employment Law*. Pearson Education Limited.

Vosko, F. L. (2006). Gender, Precarious Work, and the International Labour Code: The Ghost in the ILO. In J. Fudge & R. Owens (Eds.), *Precarious Work, Women, and the New Economy: The Challenge to Legal Norms* (pp. 53–77). Hart Publishing.

Waddington, L., & Bell, M. (2021). The right to request flexible working arrangements under the Work-life Balance Directive – A comparative perspective. *European Labour Law Journal*, 12(4), 508–528. https://doi.org/10.1177/20319525211038270

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Pristup radnog prava EU rešavanju problema zaposlenih roditelja i negovatelja

SAŽETAK

Sukob između profesionalnih dužnosti i porodičnih dužnosti, tj. privatnog života, uopšte, već duže vreme se smatra jednim od najozbiljnijih problema radnog prava. U uslovima povećanog učešća žena na tržištima rada, starenja stanovništva i promena u arhetipskim oblicima radnog odnosa i porodice, pitanje pomirenja rada s porodičnim životom, tj. očuvanja ravnoteže između profesionalnog i porodičnog života utiče na mnoge društvene činioce: radnike, poslodavce i vlade. U tom smislu, u članku se prvo analiziraju strateške i pravne mere EU koje se odnose na posebnu zaštitu žena u slučaju trudnoće i materinstva, uključujući pravo na materinsko odsustvo. Nakon toga, članak ukazuje na posebna prava zaposlenih roditelja, uključujući pravo na roditeljsko odsustvo (odsustvo s rada radi nege deteta) za radnike muškog i ženskog pola. Konačno, članak daje osvrt na nedavno usvojenu Direktivu EU o ravnoteži rada i porodičnog života od 2019. godine, uz kritičko preispitivanje novouvedenih prava, poput prava roditelja i negovatelja na odsustvo i na fleksibilne oblike rada.

KLJUČNE REČI

pomirenje profesionalnog i porodičnog života, prava za slučaj porođaja i materinstva, prava zaposlenih roditelja i negovatelja, ravnoteža rada i porodičnog života

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Transition from work of seasonal workers to permanent labour immigration — the case of Serbia

Mario Reljanović [1]

ABSTRACT

The current deficit of workers in the Serbian labour market is a consequence of several complementary factors. Among them, a few important challenges can be singled out: labour migrations of domestic workers, decrease in the number of working-age residents, as well as an increase in the amount of new jobs. At the same time, there is a large number of domestic workers who do not want to work in unfavourable working conditions and forms of work engagement, which leads to high rates of inactivity in the labour market. The effect of these circumstances led to an attempt to transform the regime of employment of foreign workers. The current system was created in the conditions of a self-sufficient labour market, where the presence of foreign labour was short-term and limited to specific jobs. Today, however, there is a need to facilitate the permanent immigration of workers to Serbia.

The research followed the efforts to standardise the new employment regime for foreigners, which enabled foreign workers to have easier access to the labour market and long-term work engagement. The quality of the undertaken or announced measures, their consequences for the labour market, labour rights of foreign workers, and the quality of supervision over the application of the legal framework were all examined in an attempt to show how the new normative framework is intended for the permanent settlement of immigrant workers, instead of the short-term seasonal use of foreign labour. The issue of integration of foreign workers and their families was considered a special challenge, that is, whether it was enough to change the regime of work permits in order to attract a larger number of workers who will successfully integrate into social life and the community in Serbia.

The basic starting hypothesis was that Serbia's labour market needs a larger number of workers from abroad but also that partial changes in regulations would not

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necessarily lead to the creation of conditions for their permanent settlement. The normative analysis method was used in the research.

KEYWORDS

labour migrations, labour market, employment of foreigners, single permit, working conditions

Tranzicija od rada sezonskih radnika ka trajnoj radnoj imigraciji – slučaj Srbije

SAŽETAK

Aktuelni deficit radnika na tržištu rada Srbije posledica je radnih migracija domaćih radnika, smanjenja broja radno sposobnih stanovnika, kao i povećanog broja novih poslova. Delovanje ovih okolnosti dovelo je do pokušaja transformacije režima zapošljavanja radnika iz inostranstva. Aktuelni sistem nastao je u uslovima samodovoljnog tržišta rada, gde je prisustvo strane radne snage bilo kratkoročno i ograničeno na specifične poslove. Danas, međutim, postoji potreba omogućavanja trajnih imigracija radnika u Srbiju.

Istraživanje prati napore za normiranje novog režima zapošljavanja stranaca, koji omogućava lakši pristup stranih radnika tržištu rada, ali i njihov dugoročni radni angažman. Ispituje se kvalitet preduzetih ili najavljenih mera, njihove posledice po tržište rada, ali i radnopravni položaj stranih radnika, kao i kvalitet nadzora nad primenom pravnog okvira. Kao poseban izazov se razmatra pitanje integracije stranih radnika i njihovih porodica, odnosno da li je dovoljno izmeniti režim radnih dozvola da bi se privukao veći broj radnika koji će se uspešno uklopiti u društveni život i zajednicu u Srbiji.

Osnovne polazne pretpostavke jesu da je tržištu rada Srbije potreban veći broj radnika iz inostranstva, ali i da parcijalne izmene propisa neće nužno dovesti do stvaranja uslova za njihovo trajno nastanjenje. U radu je korišćen metod normativne analize.

KLJUČNE REČI

radne migracije, tržište rada, zapošljavanje stranaca, jedinstvena dozvola, uslovi rada

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1 UVODNA RAZMATRANJA

Stanje na tržištu rada u Srbiji doživelo je značajne promene u prethodnoj deceniji. Više procesa koji se odvijaju istovremeno, i koji na mnogo načina deluju komplementarno, uticali su na drastično smanjenje ponude radne snage, kao i na nepovoljnu strukturu nezaposlenih na tržištu rada. Visok stepen radne neaktivnosti, kao i slaba zapošljivost lica koja se formalno vode kao nezaposlena, uz kontinuirane loše demografske trendove i veliki odliv radne snage na tržište drugih zemalja, prvenstveno Evropske unije, doveli su do nedostatka radnika[1] u više obrazovnih profila. Tržište rada, dakle, odlikuje visok nivo emigracije radne snage i neformalne zaposlenosti, nedovoljno razvijen privatni sektor i postojanje premije zarada u javnom sektoru (Zvezdanović Lobanova, Lobanov i Zvezdanović 2021). Takođe, trebalo bi napomenuti da su i dalje prisutne posledice procesa koji su delimično još uvek aktuelni, a koji su od 2000. godine uneli značajne promene na tržište rada kada je reč o razvoju novih tehnologija, krahu određenih industrijskih grana i stvaranju strukturnih neusklađenosti u privredi (Milošević 2017). Ovi procesi su svakako omogućili neke od posledica kao što je niska konkurentnost teško zapošljivih radnika na tržištu rada, ali i mogućnosti fleksibilnog radnog angažovanja domaćih radnika na stranim tržištima rada. Matijević ovu pojavu naziva „prikrivenim odlivom mozgova", odnosno „virtuelnom emigracijom", naglašavajući da se lica koja se bave poslovima koji se mogu obavljati na daljinu, fizički nalaze u Srbiji ali rade za strane poslodavce i ne pojavljuju se na domaćem tržištu rada (Matijević 2021). Jandrić i Molnar (2017) dodaju u ovu slagalicu još jedan važan deo, nesigurnost zaposlenja: „relativno visoko učešće ranjive zaposlenosti, visoka stopa neformalne zaposlenosti i niže učešće zaposlenih radnika koji imaju ugovore na neodređeno vreme".

Trebalo bi napomenuti i da je struktura novih poslova u prethodnoj deceniji neprivlačna, budući da se u velikoj većini radi o jednostavnim, manuelnim poslovima u lošim uslovima rada i sa fleksibilnim, nesigurnim ugovornim statusom zaposlenog ili radno angažovanog lica. Iako je tržište rada pokazalo određenu izdržljivost na krizu izazvanu pandemijom virusa COVID-19 (Mihajlović Marjanović 2022), indikativno je da je u prvom talasu otpuštanja radnika upravo bilo najviše onih koji se nalaze u najnepovoljnijem položaju: radnici van radnog odnosa, radnici na faktičkom radu, zaposleni preko agencija za privremeno zapošljavanje. Teret kontinuirane proizvodnje u tom periodu često je ostvarivan na osnovu smanjene sigurnosti radnika, pa se dešavalo da radne prostorije postanu pandemijska žarišta (videti: Reljanović 2020b, 2020c). Istovremeno, određenim kategorijama radnika koji su bili od naročitog značaja za očuvanje sistema zdravstvene i socijalne zaštite nametane su nezakonite i neustavne radne obaveze (Bradaš, Reljanović i Sekulović 2020; Reljanović 2020d). Ovaj primer pokazuje da se teret krize (zdravstvene u konkretnom slučaju, ali i ekonomske, finansijske ili političke) veoma lako prevaljuje sa poslodavca na radnike, koji su nezadovoljni ovakvim statusom i traže sigurnije oblike angažovanja i bolje uslove rada,

[1] U ovom istraživanju termin „radnik" se upotrebljava za svako lice koje učestvuje u procesu rada, bez obzira na to da li je pravni osnov učešća ugovor o radu ili drugi ugovor o radnom angažovanju van radnog odnosa. Termin „zaposleni" podrazumeva lice koje radi u radnom odnosu, a termin „radno angažovano lice", lice koje radi van radnog odnosa.

koje po pravilu pronalaze na inostranim tržištima rada.

Iako je prisutan duže vreme, nedostatak radne snage u Srbiji naročito je uočljiv u prethodnih pet godina. Takav trend koincidira i sa naglim povećanjem broja izdatih radnih dozvola. Dok je u 2017. godini izdata 2701 dozvola, u 2018. godini se beleži prvi nagli skok i broj od 8283 radne dozvole (Vlada Republike Srbije 2017, 2018). Trend progresivnog rasta radnih dozvola nastavljen je i u narednim godinama, tako da je u 2022. godini izdato ukupno 35.180 radnih dozvola (Nacionalna služba za zapošljavanje 2022). Reakcija države na ovakva dešavanja na tržištu rada nije bila naročito efikasna. Kroz takozvanu populacionu politiku probalo se pronaći dugoročno demografsko rešenje. Međutim, sa brzom aktuelizacijom izražene krize na tržištu rada, država se ipak odlučila za drugačije korake koji bi trebalo da zadovolje potrebu za radnom snagom na kratak rok. U tom smislu se razmišljalo o promeni načina dovođenja stranih radnika, njihovom radnom angažovanju i mogućnostima trajnijeg boravka i rada. Jedan od važnijih koraka ka ostvarivanju opisane taktike jeste usvajanje izmena i dopuna Zakona o strancima iz 2018. godine (2023) i Zakona o zapošljavanju stranaca iz 2014. godine (2023).

Istraživanje prati ove izmene, koje podrazumevaju temeljnu transformaciju režima boravka i zapošljavanja stranaca[2]. Kritički osvrt na usvojene normativne intervencije ima pre svega za cilj da pokaže da li će one biti dovoljne da se zadovolji aktuelna potreba za radnicima, kakav će biti položaj stranih radnika u Srbiji, kako će i da li će pojačano dovođenje stranih radnika uticati na uslove rada domaćih radnika. Konačno, jedna od teza koje će biti razmatrane odnosi se na pristup zakonodavca prilikom usvojenih izmena i dopuna zakona – da li je napravljen raskid sa prethodnom tezom samodovoljnog tržišta rada na kojem se povremeno pojavljuju strani sezonski radnici, i da li je dovoljno oblikovano novo tržište rada koje je spremno da primi imigrantsku radnu snagu na duži period, uključujući i trajni ostanak radnika u Srbiji.

U skladu sa navedenim, najpre se pravi osvrt na postojeće stanje na tržištu rada i faktore koji deluju na ponudu i potražnju za radnicima. Potom se analiziraju intervencije načinjene u normativnom okviru, da bi se na osnovu ove analize pristupilo dubljem sagledavanju kako bi moglo tržište rada da izgleda na srednji rok. Na kraju istraživanja data su pojedina zapažanja u vezi sa samim politikama dovođenja strane radne snage, uspešnosti njihove realizacije i preporukama za poboljšano sagledavanje ovih procesa na duži rok. U radu je korišćen metod normativne analize.

2 STANJE NA TRŽIŠTU RADA SRBIJE

Više faktora utiče na nepovoljno stanje na tržištu rada u Srbiji, koje karakteriše veća potražnja od ponude za određenim zanimanjima, visok udeo radno neaktivnog stanovništva, kao i veliki broj teško zapošljivih lica.

Broj stanovnika u Srbiji, prema popisu stanovništva iz 2022. godine u odnosu na popis iz 2011. godine, manji je za 539.859 lica (uporediti: Republički zavod za statistiku 2011 i 2022). U odnosu na rezultate iz 2002. godine, broj stanovnika manji je za 857.736 (uporediti: Republički zavod za statistiku 2022 i Penev

[2] Termin „stranci" u ovom istraživanju upotrebljen je u značenju koje ima u Zakonu o strancima i Zakonu o zapošljavanju stranaca, i podrazumeva lica sa stranim državljanstvom, odnosno lica bez državljanstva.

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2018). Na ovu okolnost uticala su dva procesa koji se istovremeno dešavaju: odseljavanje stanovnika u druge zemlje, prvenstveno države Evropske unije, kao i nepovoljan prirodni priraštaj, koji je negativan godinama unazad (Republički zavod za statistiku 2023b). Ukoliko bismo poredili samo radno sposobno i radno aktivno stanovništvo, umanjenje u odnosu na 2011. godinu bilo bi i daleko veće, pre svega zbog takozvanih „cikličnih (kružnih) radnih migracija"[3], stanovnika Srbije koji borave i rade u drugim državama bez odgovarajućih dozvola, kao i onih koji i dalje formalnopravno imaju veze sa matičnom državom (prijavu boravka, ličnu kartu i pasoš Republike Srbije), ali se nalaze u dužem periodu u inostranstvu (na takozvanom „privremenom boravku" koji je prepoznat u Zakonu o prebivalištu i boravištu građana (2011), koji nije uvek uredno prijavljen u skladu sa zakonskom obavezom). Problem sa neodjavljivanjem prebivališta u Srbiji prepoznat je i u Strategiji o ekonomskim migracijama Republike Srbije za 2021–2027. godinu (2020). Sva ova lica se u popisu vide kao građani Srbije, ali se neće pojaviti na tržištu rada, pa je u tom smislu njihov formalni status irelevantan. Isti je slučaj i sa pomenutim „virtuelnim migracijama", licima koja se fizički nalaze u Srbiji i posmatraju kao neaktivna na tržištu rada, dok rade na daljinu za strane poslodavce.

Na negativne trendove na tržištu rada nisu, s druge strane, značajnije uticali sporije napuštanje tržišta konstantnim uvećanjem granice za ostvarivanje prava na starosnu penziju kod žena koje se sprovodi od 2015. godine, kao ni činjenica da 15% korisnika starosne penzije i dalje radi (Penzin 2021).

[3] Prema jednom istraživanju, oko 60% radnika iz Srbije koji borave u Evropskoj uniji, pripadaju kružnim migracijama radnika (Nastevski 2022).

Tržište rada u Srbiji ne karakterišu, međutim, samo slab priliv i veliki odliv radne snage, koji dovode do veće potražnje u odnosu na ponudu. I drugi faktori, koji deluju komplementarno, utiču na ukupnu sliku. Kao što je već napomenuto, godinama unazad je izražena visoka stopa radno neaktivnog stanovništva. Stopa zaposlenosti i stopa nezaposlenosti su niske, što ukazuje na veliki broj lica koja se ne pojavljuju na tržištu rada. Na osnovu ankete o radnoj snazi, u prvom kvartalu 2023. godine stopa zaposlenosti bila je 49,6% a nezaposlenosti 10,1% (Republički zavod za statistiku 2023a). Stopa radno aktivnog mlađeg stanovništva je takođe niska. Stopa nezaposlenosti mladih uzrasta 15 do 24 godine starosti u prvom kvartalu 2023. godine iznosila je 24,9% (Republički zavod za statistiku 2023a). Prema poslednjim dostupnim podacima, udeo radnika koji rade bez pravnog osnova (takozvani „rad na crno") u ukupnoj zaposlenosti iznosi 12,6% (Republički zavod za statistiku 2023a; za poređenje stopa aktivnosti, neaktivnosti, kao i aktivnost mladih sa podacima Evropske unije, videti: Ognjenović, Pavlović i Kuzmanov 2021), ali su ovo anketni podaci dok predstavnici sindikata smatraju da je taj udeo i značajno viši, posebno u pojedinim delatnostima (na primer, u poljoprivredi 51,5%, u građevini oko 33%; videti: Portal 021 2022). Pojedine profesije ostale su bez većeg broja radnika zbog njihovog masovnog iseljavanja. Istovremeno, i podzaposlenost jeste jedna od ozbiljnih anomalija na tržištu rada kojoj se ne posvećuje dovoljno pažnje (Bradaš 2017).

Sve navedeno dovodi do manjka radne snage u Srbiji, ali i do loše strukture kvalifikacija nezaposlenih koji su u potrazi za poslom, što za posledicu ima veliki broj sistemski nezaposlenih i izuzetno teško zapošljivih lica. U kategorijama

koje su strateškim dokumentima označene kao teže zapošljive, udeo sistemske nezaposlenosti u 2021. godini varirao je od 60 do 90% (Reljanović, Bradaš i Šćekić 2023).

Imajući sve navedeno u vidu, a budući da drugi pristupi nisu dali efekte ili nisu dovoljno efikasni da pokažu efekte na kratak rok, čini se da se kao dominantno rešenje rešavanja problema nedostatka radnika nametnulo njihovo dovođenje iz drugih zemalja. Zbog toga su tokom 2022. godine izrađene izmene i dopune Zakona o strancima 2018 (2023) i Zakona o zapošljavanju stranaca 2014 (2023), koje bi trebalo da doprinesu lakšem angažovanju strane radne snage.

3 IZMENE REGULISANJA ZAPOŠLJAVANJA STRANACA

Izmena zakonskog okvira zapošljavanja stranaca svakako jeste legitiman pokušaj da se utiče na analizirana nepovoljna kretanja na tržištu rada. U fokusu ovih izmena su tri zakona: Zakon o strancima iz 2018. godine (2023), Zakon o zapošljavanju stranaca iz 2014. godine (2023) i Zakon o državljanstvu iz 2004. godine (2018). Prva dva su izmenjena i dopunjena u značajnoj meri jula 2023. godine, dok su izmene i dopune Zakona o državljanstvu i dalje u skupštinskoj proceduri za usvajanje (stanje na dan 8. 8. 2023. godine).

Najznačajnija novina u izvršenim izmenama dva zakona jeste postupak dobijanja boravišne i radne dozvole za strance. Odnos zakonodavca prema mehanizmu dobijanja dozvole za rad u Republici Srbiji značajno je izmenjen. Dok je prethodna procedura podrazumevala nužno dug i relativno komplikovan postupak, novo zakonsko rešenje je prilagođeno dinamici potreba na tržištu rada. Objedinjeni su postupci za dobijanje boravišne i radne dozvole, a ceo proces se može sprovesti elektronskim putem. U cilju veće efikasnosti i redovnog savladavanja priliva zahteva za izdavanje jedinstvene dozvole (kako je nazvana objedinjena dozvola za boravak i rad), rokovi za odlučivanje po zahtevu su drastično skraćeni. Ukupan rok za odlučivanje po zahtevu za izdavanje jedinstvene dozvole iznosi 15 dana od dana prijema zahteva. Bezbednosna procena, kao i test tržišta rada, moraju se završiti u roku od 10 dana od dana prijema zahteva (Zakon o strancima iz 2018. godine (2023), član 46g). Dodatno, članom 16a Zakona o zapošljavanju stranaca iz 2014. godine (2023), uređen je rok od četiri dana u kojem se mora okončati test tržišta rada. Već na prvi pogled jasna je namera da se poslodavci privole na angažovanje strane radne snage time što će period dolaska stranca i otpočinjanja njegovog rada biti skraćen, a samim tim i troškovi poslodavca u tom smislu značajno umanjeni.

Postupak za dobijanje jedinstvene dozvole, pojednostavljeno gledano, sastoji se u tome da poslodavac podnosi elektronskim putem dokumentaciju koja je potrebna i za dozvolu boravka i za radnu dozvolu, koja se sada izdaje kao jedinstvena dozvola. U radnopravnom smislu od značaja je da, u okviru davanja saglasnosti na zapošljavanje stranca, Nacionalna služba za zapošljavanje sprovodi test tržišta rada, koji bi trebalo da pokaže da li u Srbiji postoje radnici koji mogu obavljati iste poslove.

Zakonom o strancima iz 2018. godine (2023) maksimalno trajanje dozvole produženo je sa jedne godine, koliko je najduže trajala radna dozvola, na tri godine, koliko može trajati jedinstvena dozvola (u okviru koje se nalazi i dozvola za rad). Stranac može biti angažovan u radnom odnosu, direktno ili preko agencije za privremeno zapošljavanje – kada

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će biti primenjen i Zakon o agencijskom zapošljavanju (2019), ali i u režimu rada van radnog odnosa, na osnovu nekog od postojećih ugovora o radnom angažovanju. Ovim zakonima se ne ulazi u režim rada koji je regulisan Zakonom o pojednostavljenom radnom angažovanju na sezonskim poslovima u određenim delatnostima (2018), kojim je predviđeno angažovanje stranaca bez izdavanja radne dozvole.

Pored navedenih rešenja, još jedno privlači pažnju kao primer dobrog normiranja i pokušaja da se reše problemi koji su do sada postojali u praksi. Reč je o odredbi iz člana 9 stava 5 Zakona o zapošljavanju stranaca iz 2014. godine (2023), prema kojem strancu koji izgubi posao na osnovu kojeg je dobio jedinstvenu dozvolu, ova dozvola ne prestaje da važi automatski već to lice ima rok od 30 dana da nađe novo zaposlenje. U dosadašnjoj praksi se dešavalo da strani radnici dođu u Srbiju nakon što su dogovorili (a najčešće i ugovorili) sa poslodavcem obavljanje poslova pod određenim uslovima rada, a da nakon dolaska – odmah ili nakon nekog vremena – budu premešteni na druge poslove, pod značajno lošijim uslovima rada (neretko i ispod zakonskog minimuma). Nesavesni poslodavci su zloupotrebljavali rešenje prema kojem je radna dozvola zavisila od održavanja radnog odnosa povodom kojeg je izdata. Sa prestankom radnog odnosa prestalo bi i važenje radne dozvole, što je predstavljalo značajan ucenjivački potencijal za poslodavce. Kovačević ovo naziva problemom „kvaka 22", jer se radi o uslovljavanju izdavanja odobrenja za boravak posedovanjem dozvole za rad, uz istovremeno uslovljavanje izdavanja dozvole za rad posedovanjem odobrenja za boravak (Kovačević 2020). Strani radnici su u takvim situacijama pristajali i na manje povoljne uslove rada. Ovo naročito važi za strance koji nisu dolazili iz susednih već iz dalekih zemalja Azije ili Afrike, i koji nisu imali ni dovoljno sredstava da se samostalno vrate u zemlju iz koje su došli, ili neku drugu zemlju u kojoj bi mogli da nastave radno angažovanje. Izmenom zakona je otklonjena takva opasnost, tako da radnik koji nije zadovoljan uslovima rada može i na svoju inicijativu da raskine ugovor o radu i zaposli se kod drugog poslodavca. Međutim, čini se da je loše rešenje period koji je ostavljen strancu za tako nešto. Ukoliko prestanak radnog odnosa nije inicirao sam radnik zbog toga što je pronašao drugog poslodavca, biće mu jako teško da u kratkom roku od 30 dana pronađe odgovarajuće zaposlenje (naročito ako se uzme u obzir nepoznavanje jezika, sistema zapošljavanja i tržišta rada). Imajući to u vidu, velike su šanse da taj radnik prihvati bilo kakav posao samo u pokušaju da ostane u Srbiji, odnosno sačuva jedinstvenu dozvolu, čak i takve koji su manje povoljni po njega od onih na kojima je prethodno radio.

Još neka rešenja su usmerena na otklanjanje dosadašnje loše prakse. Ona se pre svega odnose na takozvane posebne slučajeve zapošljavanja stranaca, i to pre svega upućene radnike i radnike koji se kreću kroz privredno društvo, koji su regulisani članovima 19. i 21. Zakona o zapošljavanju stranaca iz 2014. godine (2023). U pitanju su dve kategorije radnika koje privremeno dolaze na rad u Srbiju, a da im tom prilikom ne prestaje radni odnos kod matičnog poslodavca u inostranstvu. Samim tim, oni se nisu nalazili u redovnom režimu dobijanja radne dozvole. Dosadašnja tumačenja odredbi Zakona o zapošljavanju stranaca iz 2014. godine (2023), čak i ona koja su proistekla od nadležnih državnih organa, bila su veoma nepovoljna po ove radnike. Zahvaljujući činjenici da ovi radnici ostvaruju prava iz radnog

odnosa kod matičnog poslodavca, dakle u inostranstvu, poteklo je pogrešno tumačenje da se na njih ne odnose propisi Republike Srbije kada je reč o uslovima rada, dok se propisi koji se odnose na bezbednost i zdravlje na radu nesmetano primenjuju. U više slučajeva ovo tumačenje je upotrebljeno na štetu radnika (ASTRA 2022; Reljanović 2020a). Njime je, između ostalog, zanemareno i opšte načelo univerzalnosti delovanja inspekcije rada, odnosno tumačenja njene nadležnosti na način koji će obuhvatiti što više radnika i što više nadziranih subjekata (videti o načelu univerzalnosti: Kovačević 2022). Nije sasvim jasno kako i zašto su se postojeće norme tumačile na ovaj način, ali se izmenama i dopunama zakona svaka nedoumica u vezi sa primenom domaćeg prava eliminiše. Na upućene radnike, kao i radnike koji se kreću kroz privredno društvo, primenjivaće se pravo države u kojoj su zaposleni, osim u slučajevima kada domaće zakonodavstvo predviđa povoljnije uslove rada – u tim situacijama primenjivaće se nacionalni propisi Srbije. Ovo rešenje je suštinski i do sada bilo normirano, ali ne na ovako izričit način – očigledno je da je zakonodavac smatrao da je potrebno da se stane na kraj pogrešnim tumačenjima koja su davala veoma loše rezultate u praksi, dovodeći veliki broj radnika u situaciju da postanu žrtve trgovine ljudima.

Konačno, predložene izmene Zakona o državljanstvu iz 2004. godine (2018) mogu se posredno povezati sa prethodnom opisanim intervencijama na tržištu rada. Međutim, rešenje koje je predviđeno Predlogom zakona o izmenama i dopunama Zakona o državljanstvu nailazi na dosta kritika. Reč je o normi prema kojoj će stranac, koji radi u Republici Srbiji bar godinu dana, moći da aplicira za državljanstvo Srbije. Aktuelno rešenje iz člana 14 stava 1 tačke 2 i stava 3 Zakona o državljanstvu iz 2004. godine (2018) pretpostavlja minimalni legalni boravak od tri godine u Srbiji (bez obzira na to da li lice radi), uz ispunjenje nekih dodatnih uslova među kojima je svakako najvažniji da postoji otpust iz stranog državljanstva, odnosno da se lice odreklo državljanstva matične države. Ovaj uslov nije predviđen potencijalnim novim rešenjem, što znači da će strani radnik moći da zadrži oba državljanstva.

Drugi uslovi koji su predviđeni potencijalnim novim rešenjem (da u državljanstvo Republike Srbije može biti primljen stranac koji najmanje jednu godinu boravi u Srbiji, završio je srednje ili visoko obrazovanje u Srbiji ili mu je priznata strana visokoškolska diploma, i koji da izjavu da Republiku Srbiju smatra svojom državom) takođe ne moraju da predstavljaju neku naročitu prepreku, tako da je izvesno da će veći broj stranih radnika koji to žele moći posle samo godinu dana rada (i to rada koji podrazumeva bilo kakav rad, u radnom odnosu ili van radnog odnosa) moći da aplicira za državljanstvo i da pri tome zadrži svoje matično državljanstvo zemlje porekla. Koliko je ovo rešenje liberalno i koliko je u nesrazmeri sa ostalim rešenjima koja su predviđena izmenama i dopunama ovog zakona pokazuje i činjenica da se prema istim izmenama člana 15 supružnik lica koje na ovaj način stekne državljanstvo i samo prima u državljanstvo jednostavnim davanjem izjave da smatra Republiku Srbiju svojom državom. Istovremeno, predviđenim izmenama člana 17 pooštravaju se uslovi za prijem u državljanstvo supružnika domaćih državljana i zahteva se potpuno iracionalni uslov trajanja braka od bar 10 godina. Ovakva praksa može značajno ugroziti liberalni vizni režim Evropske unije prema Srbiji, budući da se njome stvara

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mogućnost da državljani trećih zemalja kojima je ulaz u Evropsku uniju veoma ograničen zloupotrebe takvu zakonsku odredbu kako bi prikrili pravu zemlju porekla i ušli na teritoriju Evropske unije kao državljani Republike Srbije (Radišić 2023; Bogdanović 2023).

Trebalo bi pomenuti i da analizirane izmene nisu jedine koje će doprineti većem prilivu stranih radnika. Inicijativa „Otvoreni Balkan" je već dovela do potpisivanja više međudržavnih sporazuma sa Albanijom i Severnom Makedonijom, među kojima su za tržište rada svakako interesantni oni koji se odnose na slobodu kretanja i međusobno priznavanje visokoškolskih kvalifikacija (Zakon o potvrđivanju Sporazuma o slobodi kretanja sa ličnim kartama na Zapadnom Balkanu 2023; Zakon o potvrđivanju Sporazuma o priznavanju kvalifikacija u visokom obrazovanju na Zapadnom Balkanu 2023). Ukoliko se realizuju i navedeni sporazumi o slobodnom zapošljavanju bez radnih dozvola, svakako se može očekivati veći priliv radnika iz ove dve države.

4 POTENCIJALNI IZAZOVI U SPROVOĐENJU NOVOG PRAVNOG OKVIRA

Na osnovu analiziranih normativnih izmena može se jasno zaključiti nekoliko ciljeva koji se žele postići njihovom primenom:

– postupak dovođenja stranih radnika olakšan je, automatizovan i skraćen, čime se dovođenje stane radne snage čini pristupačnijom i isplativijom opcijom poslodavcima;

– usvajanjem izmena i dopuna, umesto samodovoljnog i izolovanog tržišta rada na koje se ulazi iz inostranstva samo u izuzetnim slučajevima, Srbija je dobila liberalizovani model dovođenja stranih radnika karakterističan za tržište rada koje se u velikoj meri oslanja na radnu snagu iz inostranstva;

– veliki broj pojedinačnih mera ukazuje na pokušaje da se u što većoj meri umanji razlikovanje domaćih od stranih radnika;

– ukupnost izvršenih i najavljenih izmena usmerena je ka tome da se umesto privremenih, sezonskih radnika privuku radnici koji će ostati u Srbiji u dužem periodu, pa i trajno.

Očekivani efekti izmena zakona se dakle mogu svesti na to da se cilja preobražaj dovođenja stranih radnika od onih koji su po pravilu angažovani kratkotrajno, na privremenim ili sezonskim poslovima, ka onima koji će biti trajna radna imigracija u Srbiji. Strategija o ekonomskim migracijama Republike Srbije za 2021–2027. godinu (2020) prepoznaje ovu taktiku, tako da su strani radnici označeni kao jedna od ključnih ciljnih grupa, a privlačenje stranaca različitih obrazovnih profila jedan od postavljenih ciljeva upravljanja ekonomskim migracijama. Predložena mera u okviru ostvarivanja tog cilja je i „razvoj programa za privlačenje i uključivanje stranaca različitih obrazovnih profila na tržište rada (po tipu kombinovana: regulatorna i podsticajna)". Može se zaključiti da će regulatorni deo biti izvršen predloženim, odnosno usvojenim izmenama zakona. Opšte podsticajne mere još uvek nisu aktuelizovane.

Iako je većina izmena urađena pažljivo i u skladu sa trenutnim potrebama na tržištu rada, na njih bi trebalo gledati pažljivo i kritički, jer postoji više faktora o kojima se nije dovoljno razmišljalo a koji će oblikovati tržište rada u Srbiji na srednji rok, nakon prvog velikog talasa radnih imigracija koji je praktično započeo i pre početka primene novih zakonskih rešenja.

Jedan od osnovnih nedostataka u postavljenom sistemu jeste faktičko odustajanje od „privlačenja" specijalizovanih stručnjaka iz inostranstva. Naime, izvršene izmene, po svemu sudeći, neće biti atraktivne za visokokvalifikovane radnike, koji takođe nedostaju na tržištu rada. Pored toga, specijalizovana lica nedostaju u profesijama u institucijama u javnom sektoru (naročito u zdravstvu), koje neće koristiti analizirane mehanizme. Činjenica je da će dovođenje stranih radnika, kao i do sada, pre svega služiti za popunu nedostajućih radnika u privatnom sektoru, kao i da će poslodavci veći upliv strane radne snage videti kao šansu za snižavanje cene rada, a ne kao priliku da integrišu nove radnike u postojeće uslove ili da ih unaprede za ona zanimanja koja su deficitarna. To otkriva i paradoks u postupanju države, koja se ne ponaša tržišno – kada je manjak radne snage uslovio poskupljenje rada u mnogim delatnostima u kojima je teško doći do radnika, umesto poboljšanja opštih uslova rada (pre svega, intervencija u Zakonu o radu (2005) i povećanja minimalne cene rada, kao i intenzivnog pospešivanja granskog kolektivnog pregovaranja) došlo je do svojevrsnog „dampinga" radne snage, uvoza radnika sa drugih tržišta po istoj ili još nižoj ceni rada. Ipak, ovakvo postupanje je kratkog daha jer će radnici koji dođu u Srbiju, bez obzira na uslove rada koje su imali u matičnoj državi, biti nezadovoljni njima kada ih uporede sa uslovima rada u državama Evropske unije – tako se rizikuje da Srbija postane samo „protočni sud" za strane radnike na putu ka zaposlenju u Evropskoj uniji. U tom smislu se koraci koji su učinjeni ka zadržavanju radnika nakon njegovog dovođenja ne čine adekvatnim jer je ukupna klima postupanja prema radnicima izrazito negativna, naročito u poređenju sa geografski bliskim državama koje su članice Evropske unije. Trebalo bi, naravno, imati u vidu i ekonomske troškove neprestanog odliva radne snage, naročito visokoškolskih kadrova u koje je uloženo dosta javnih sredstava (Božić Miljković, Pavlović i Despotović 2023).

Drugi problem koji nije rešen, niti se o potencijalnom rešenju za sada govori kada je reč o nadležnim državnim organima, jeste odgovor na pitanje šta je potrebno izmeniti da bi se strani radnici potpuno i trajno integrisali u društvo u Srbiji. Pomenuto rešenje sa ubrzanim dobijanjem državljanstva nije adekvatno. Ne samo što može ugroziti našu poziciju prema politikama bezbednosti granica Evropske unije, već neće uticati povoljno ni na same strane radnike. Stranci u Srbiji nailaze na niz zakonskih i administrativnih prepreka kada je reč o osnovnim životnim pitanjima – zaključenje braka, nasleđivanje, podizanje kredita, kupovina nekretnina, obrazovanje dece ili odraslih. Urdarević pravilno primećuje i činjenicu da spajanje porodica stranih radnika može dovesti do problema sa zapošljivošću bračnog druga ili partnera, pa je potrebno osmisliti posebne programe u okviru kojih bi se radilo na unapređenju zapošljivosti sa ovim ljudima (Urdarević 2019). Sticanjem državljanstva će se neka od njih nužno rešiti, ali ovo ne može biti jedina mera koja će se primeniti kada je reč o njihovom uklapanju u novu zajednicu, koja može biti potpuno kulturološki različita od one u kojoj su prethodno živeli. Ili drugim rečima, radnik koji nakon godinu dana dobije državljanstvo Srbije neće rešiti pitanje na kojem jeziku će se školovati njegovo dete koje je naknadno pristiglo nakon spajanja sa porodicom. U Strategiji o ekonomskim migracijama Republike Srbije za 2021–2027.

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godinu (2020) ovaj problem je prepoznat kao „nedostatak posebnih programa i mehanizama integracije povratnika iz inostranstva i strane radne snage", ali se čini da za sada nije u većoj meri zaokupio pažnju donosilaca odluka.

5 ZAKLJUČAK

Tržište rada je složeni mehanizam na koji u svakom trenutku deluje niz faktora. Od privredne aktivnosti i privrednog rasta države zavisi da li će postojati kontinuirana povećana potreba za radnicima. Od strukture delatnosti zavisi da li će određeni stručni profili biti više ili manje traženi. S druge strane, kako demografski tako i migracioni faktori utiču na postojanje (zadovoljavajuće) ponude radnika. Svi ovi, kao i mnogi drugi faktori koji su pomenuti u prethodnoj analizi gotovo nikada nisu stabilni u dužem vremenskom periodu. U tom smislu se ponuda i potražnja za radnom snagom neprestano menjaju. Ipak, kada u određenom vremenskom periodu postoje okolnosti koje dovode do smanjenja raspoložive radne snage i povećanja tražnje za istom, tržište rada ne može ostati relativno izolovano kao što je bio slučaj u Srbiji. Zakon o zapošljavanju stranaca iz 2014. godine (2023), kao i njegov normativni prethodnik, nije pretpostavljao postojeće potrebe za dovođenjem stranih radnika. Naprotiv, parametri u kojima je zakon donet ukazivali su na dugoročnu stabilnost ponude na tržištu rada, dok je potražnja bila relativno niska. Promene u prethodnih deset godina dovele su do toga da se više ne može računati na samodovoljnost unutrašnjeg tržišta rada, već je potrebno da se liberalizuje način dovođenja stranih radnika.

Otuda su opisane normativne intervencije logične i očekivane. Otvaranje tržišta rada za strane radnike po jednostavnijim procedurama je, međutim, samo jedan od aspekata koje bi trebalo sagledati. Drugi element reformi koje su izvršene (i koje će se nastaviti izmenama Zakona o državljanstvu iz 2004. godine (2018), potencijalno i drugim normativnim intervencijama u budućnosti) jeste pokušaj da se strana radna snaga privuče da trajno (ili makar na duži rok) ostane u Srbiji.

Nije, međutim, realno očekivati da će takve izmene odgovoriti na sve izazove koji postoje na tržištu rada. Najpre, jasno je da se na ovaj način neće rešiti deficit u svim profesijama i zanimanjima. Potom, izvesno je da ovakve izmene neće na duži rok stvoriti gotovo nikakve pozitivne rezultate ako se ne radi kontinuirano na poboljšanju uslova rada svih radnika u Srbiji, kako stranih tako i domaćih. Ovome u prilog idu rezultati istraživanja koji pokazuju da zarada nije uvek glavni razlog napuštanja posla, odnosno migriranja na druge poslove, uključujući i one u inostranstvu.

Mogućnost usklađenosti porodičnih (privatnih) i profesionalnih dužnosti, kao i zdrava radna sredina i kvalitetni međuljudski odnosi, visoko su plasirani na listi argumenata za ostanak na poslu, odnosno prelazak kod drugog poslodavca (Janković 2022). Mere koje su preduzete predstavljaju jednostavniji put ka rešavanju aktuelnih problema sa nedostatkom radnika ali na duži rok neće dati zadovoljavajuće rezultate, naročito ukoliko se nastavi porast potražnje za radnicima u drugim evropskim državama, naročito državama Evropske unije sa kojima za sada Srbija ne može biti konkurentna kada je reč o kvalitetu uslova rada. Ne samo što će se nastaviti odliv domaćih državljana u inostranstvo, već će Srbija poslužiti samo kao privremena stanica stranim radnicima koji žele da nastave da rade u državama koje nude

daleko bolje uslove rada. Potvrdu za ovu tvrdnju možemo naći i u istraživanjima o razlozima zbog kojih radno sposobno stanovništvo napušta Srbiju. Kako navodi Urdarević, oni se mogu poređati po važnosti u odnosu na subjektivne i objektivne potrebe radnika koje oni smatraju nezadovoljenim u Srbiji:

> Redosled pojedinačnih faktora koji utiču na donošenje odluke o preseljenju u Republici Srbiji je sledeći: (1) sistem vrednosti koji je uspostavljen u Republici Srbiji (prosečan skor na tvrdnji 4,22); (2) veća zarada (prosečan skor na tvrdnji 4,20); (3) bolji životni standard (prosečan skor na tvrdnji 4,19); (4) veće vrednovanje sposobnosti i znanja od političke pripadnosti (prosečan skor na tvrdnji 4,10); (5) bolji uslovi rada (prosečan skor na tvrdnji 4,07); i (6) veća ekonomska stabilnost (prosečan skor na tvrdnji 4,01). (…) Najznačajniji zaključak proistekao iz ovog istraživanja je da migracije, ili kako se to danas popularno naziva 'odliv mozgova', nisu kategorija povezana isključivo sa uslovima rada i zaradom, već i sa širim društvenim kontekstom, gde rad predstavlja samo jedan njegov aspekt (Urdarević 2023: 94).

Konačno, kao što je napomenuto u prethodnoj analizi, strani radnici i njihove porodice moraju biti predmet posebnih usluga koje bi učinile njihovu tranziciju u drugi društveni, jezički, kulturološki i pravni sistem što jednostavnijom i bržom. Nije dovoljno dati državljanstvo nekom licu da bi ono počelo da posmatra državu u kojoj živi kao svoju domovinu, u kojoj želi da nastavi da živi i radi. Treba razmišljati i o potencijalnim otporima ovakvim rešenjima od strane desno orjentisanih političkih partija. Istraživanja koja su obavljena u toku izražene migrantske krize iz prethodnog perioda, kada je Srbija uglavnom predstavljala tranzitnu državu ovih lica, pokazuju da preko jedne trećine ispitanika u Srbiji nije želeo njihovo trajno naseljavanje (Petrović i Pešić 2017). Iako situacija sa stranim radnicima nije istovetna, trebalo bi biti oprezan u promišljanju kako će lokalno stanovništvo prihvatiti masovni dolazak radnika iz dalekih i nepoznatih država, imajući u vidu narative desničarskih političkih opcija u drugim državama kojima se u okviru izrazito negativnih antiimigracionih stavova plasiraju teze o okupaciji, krađi poslova, ili asimilaciji domaćeg stanovništva od strane pridošlica (videti: McLaren 2003; Czeranowska 2018; Esses 2021).

Dalje, rešenje prema kojem će državljani raznih država moći izuzetno jednostavno da dobiju državljanstvo Srbije, komplikuje odnos Srbije sa Evropskom unijom i stvara rizik od promene viznog režima Evropske unije prema Srbiji. Umesto toga, trebalo bi dakle osmisliti programe u kojima će se stranci koji dolaze na rad u Srbiju upoznati sa zemljom u kojoj su se našli pre svega iz ekonomskih razloga, a sa kojom svakako pre toga nisu morali da budu upoznati kada je reč o kulturi, jeziku, načinu života i osnovnim društvenim vrednostima. Ovakav pristup nije samo očekivan i human, nego je i pragmatičan – strani radnik koji se integriše u zajednicu lakše će se snaći u slučaju gubitka posla, potrage za novim poslodavcem, ukoliko reši da nastavi da se obrazuje i stručno usavršava, i slično. On će, dakle, biti i korisniji na samom tržištu rada (videti: Kovačević 2020).

Dakle, za stvaranje trajnijih rešenja potrebno je da se stvore kompleksni mehanizmi istovremenog delovanja na više negativnih faktora na tržištu rada, kao i da se rad sa stranim radnicima ne

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ograniči na lakše dobijanje jedinstvene dozvole ili državljanstva. Za sada se ne vide tragovi takvog sistema. Zakon o zapošljavanju stranaca možda i nije pravo mesto da se o takvim normativnim rešenjima razmišlja. Ali svakako bi se moglo raditi na osmišljavanju mera koje će stabilizovati ponudu i potražnju na tržištu rada. U protivnom će se dešavati više slučajeva u kojima postoje ozbiljne indicije da je došlo do trgovine ljudima, poput onog na gradilištu Linglonga (ASTRA 2022), a to svakako neće stvoriti odgovarajući ambijent za uspeh ideja koje su izražene kroz izvršene izmene i dopune zakona.

Rad je nastao kao rezultat naučnoistraživačkog rada Instituta za uporedno pravo, koji finansira Ministarstvo nauke, tehnološkog razvoja i inovacija Republike Srbije prema Ugovoru o realizaciji i finansiranju naučnoistraživačkog rada NIO u 2023. godini (evidencioni broj: 451-03-47/2023-01/200049 od 3. 2. 2023).

LITERATURA

ASTRA (2022). *Would you really buy this?* Beograd: Anti Trafficking Action (ASTRA) https://drive.google.com/file/d/1LUZR7VYImVYW5IE7YOvU421oqVyZ9Leu/view

Bogdanović, N. (2023). *Srbija tvrdi da bezvizni režim nije ugrožen, nakon upozorenja EU*, https://www.slobodnaevropa.org/a/srbija-eu-bezvizni-rezim-drzavljanstva/32415910.html

Božić Miljković, I., Pavlović, G., & Despotović, D. (2023). Ekonomske i društvene konsekvence migracija visokoobrazovane radne snage u Republici Srbiji. In P. Veselinović & N. Lojanica (Eds.), *Institucionalne promene kao determinanta privrednog razvoja Republike Srbije* (pp. 183–202). Kragujevac: Univerzitet u Kragujevcu, Ekonomski fakultet.

Bradaš, S. (2017). *Statistika i dostojanstven rad*. Beograd: Fondacija Centra za demokratiju. http://www.centaronline.org/userfiles/files/publikacije/fcd-analiza-statistika-i-dostojanstven-rad.pdf

Bradaš S., Reljanović, M., & Sekulović, I. (2020). *Uticaj epidemije COVID-19 na položaj i prava radnika i radnica u Srbji*. Beograd: Fondacija Centra za demokratiju. https://serbia.un.org/sites/default/files/2020-09/UTICAJ%20EPIDEMIJE%20COVID-19%20NA%20POLOŽAJ%20I%20PRAVA%20RADNICA%20I%20RADNIKA%20U%20SRBIJI%20OHCHRFCD%202020.pdf

Czeranowska O. (2018). Attitudes towards immigrants of other race or ethnic origin – Polish dataset from round 7 of the European social survey (Working Papers, No. 109/167). Warsaw: Centre of Migration Research, University of Warsaw. https://www.econstor.eu/bitstream/10419/213947/1/1027666337.pdf

Esses, V. M. (2021). Prejudice and discrimination toward immigrants. *Annual Review of Psychology*, *72*(1), 503–531. https://doi.org/10.1146/annurev-psych-080520-102803

Jandrić, M., & Molnar, D. (2017). *Kvalitet zaposlenosti i tržište rada u Srbiji: Koliko je Srbija daleko od EU?*. Beograd: Friedrich-Ebert-Stiftung.

Janković, N. (2022). Masovno napuštanje radnih mesta – zahtevi zaposlenih i izazovi za poslodavce. *Branič*, *2*, 133–148.

Kovačević, Lj. (2020). Zapošljavanje radnika migranata – pretpostavke, uslovi, ograničenja. *Strani pravni život*, 64(2), 5–25. https://doi.org/10.5937/spz64-25648

Kovačević, Lj. (2022). Delotvornost radnog zakonodavstva i uloga inspekcije rada u svetlu standarda Međunarodne organizacije rada. *Strani pravni život*, 66(1), 1–41. https://doi.org/10.5937/spz66-36661

Matijević, B. M. (2021). Između mobilnosti i migracije: prikriveni odliv mozgova u Srbiji. In S. Stojčin, M. Šljukić, & J. Čikić (Eds.), *Društveni razvoj i demografske promene* (pp. 107–121). Beograd: Srpsko sociološko društvo, Institut za političke studije, Filozofski fakultet. https://doi.org/10.18485/ssd_sddc.2021.ch7

McLaren, L. M. (2003). Anti-Immigrant Prejudice in Europe: Contact, Threat Perception, and Preferences for the Exclusion of Migrants. *Social Forces*, *81*(3), 909–936. https://doi.org/10.1353/sof.2003.0038

Mihajlović, V., & Marjanović, G. (2022). Efekti pandemije COVID-19 na tržište rada i zaposlenost u Republici Srbiji. In M. Todorović, K. Borisavljević, N. Lojanica, N. Tomić & M. Stamenković (Eds.), *Izazovi ekonomije i poslovanja u Republici Srbiji izazvani pandemijom COVID-19* (pp. 99–112). Kragujevac: Univerzitet u Kragujevcu, Ekonomski fakultet.

Milošević, G. B. (2017). Faktori promena na tržištu radne snage Srbije. *Zbornik radova Pravnog fakulteta u Novom Sadu*, *51*(3), 713–733. https://doi.org/10.5937/zrpfns51-15249

Nacionalna služba za zapošljavanje (2022). *Izveštaj o radu za 2022. godinu*. https://www.nsz.gov.rs/sadrzaj/izvestaj-i-program-rada-nsz/4109

Nastevski, A. (2022, June 12). Najveći broj Srba koji odu u inostranstvo radi posla zemlju ne napušta trajno, https://nova.rs/vesti/drustvo/najveci-broj-srba-koji-odu-u-inostranstvo-radi-posla-zemlju-ne-napusta-trajno/

Ognjenović, K., Pavlović, D., & Kuzmanov, L. (2021). Ostvareni rezultati i osvrt na novi ciklus politika zapošljavanja u Srbiji. In M. Zec, M. Arsić, & O. Radonjić (Eds.), *Ekonomska politika u Srbiji i svetu u 2021. – u susret globalnim šokovima i rastućoj neizvesnosti* (pp. 89–110). Beograd: Službeni glasnik.

Penev, G. (2018). Srbija 2017. godine: rekordno negativan prirodini priraštaj. *Demografski pregled*, *68*. Beograd: Ministarstvo za rad, zapošljavanje, boračka i socijalna pitanja. https://www.minrzs.gov.rs/sites/default/files/2019-01/demografski_pregled_68.pdf

Penzin (2021, October 4). Većina penzionera u Srbiji prima penziju manju od prosečnog iznosa. Neki od njih se, očigledno iz nužde, odlučuju da se ponovo zaposle. Sa druge strane, pobornici aktivnog starenja promovišu što dužu radnu angažovanost ljudi. Bez obzira da li su zaposleni iz nužde ili želje, važno je znati koji penzioneri mogu da rade. https://www.penzin.rs/zaposleni-penzioneri-iz-nuzde-ili-zelje-koji-penzioneri-mogu-da-rade/

Petrović, J., & Pešić, J. (2017). Između integracije, bezbednosti i humanitarnosti: stavovi građana Srbije o migrantima. *Stanovništvo*, *55*(2), 25–51. https://doi.org/10.2298/STNV1702025P

Portal 021 (2022, August 10). *Svaki treći građevinski radnik u Srbiji radi na crno.* https://www.021.rs/story/Info/Srbija/313749/Svaki-treci-gradjevinski-radnik-u-Srbiji-radi-na-crno.html

Radišić, N. (2023, July 28). *EK zabrinuta zbog izmena srpskog Zakona o državljanstvu – rizik za bezbednost EU.* https://n1info.rs/vesti/ek-zabrinuta-zbog-izmena-srpskog-zakona-o-drzavljanstvu-rizik-za-bezbednost-eu/

Reljanović, M. (2020a, January 27). Dole suverenitet, živela eksploatacija! https://pescanik.net/dole-suverenitet-zivela-eksploatacija/

Reljanović, M. (2020b, May 22). Investitor non grata. https://pescanik.net/investitor-non-grata/

Reljanović, M. (2020c, July 16). Koronarna otpuštanja. https://pescanik.net/koronarna-otpustanja/

Reljanović, M. (2020d, June 29). Radna obaveza u redovnom stanju. https://pescanik.net/radna-obaveza-u-redovnom-stanju/

Reljanović, M., Bradaš, S., & Šćekić, V. (2023). *Ex post analiza efekata primene Zakona o zapošljavanju i osiguranju za slučaj nezaposlenosti.* Izveštaj u fazi objavljivanja. Beograd: Ministarstvo za rad, zapošljavanje, boračka i socijalna pitanja.

Republički zavod za statistiku (2011). *Popis 2011.* https://www.stat.gov.rs/sr-latn/oblasti/popis/popis-2011/

Republički zavod za statistiku (2022). *Popis 2022*. https://popis2022.stat.gov.rs/sr-latn/

Republički zavod za statistiku (2023a). *Anketa o radnoj snazi I kvartal 2023*. https://www.stat.gov.rs/sr-latn/oblasti/trziste-rada/anketa-o-radnoj-snazi/

Republički zavod za statistiku (2023b). *Rođeni i umrli.* https://www.stat.gov.rs/oblasti/stanovnistvo/rodjeni-i-umrli/

Strategija o ekonomskim migracijama Republike Srbije za 2021–2027. godinu (2020, March 6) https://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/vlada/strategija/2020/21/1

Šarić, M. (2022). *Međunarodne kružne radne migracije*. Zadar: Univerzitet u Zadru.

Urdarević, B. (2019). Zaštita prava radnika migranata u međunarodnom radnom pravu. U B. Ristivojević (Ur.), *Pravni aspekti migracija u regionu – balkanska ruta* (91–105). Novi Sad: Pravni fakultet.

Urdarević, B. (2023). Implikacije radnih migracija na evropsko tržište rada – radnopravni aspekti. *Stanovništvo*, 61(1), 91–106. https://doi.org/10.2298/STNV2301091U

Vlada Republike Srbije (2017). *Migracioni profil Republike Srbije* za 2017. godinu. https://kirs.gov.rs/media/uploads/Migracije/Publikacije/migracioni%20profil%202017.pdf

Vlada Republike Srbije (2018). *Migracioni profil Republike Srbije* za 2018. godinu. https://kirs.gov.rs/media/uploads/Migracije/Publikacije/Migracioni_profil_2018.pdf

Zakon o agencijskom zapošljavanju (2019, December 6). https://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/skupstina/zakon/2019/86/15/reg

Zakon o državljanstvu iz 2004. godine (2018, March 26). https://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/skupstina/zakon/2004/135/4/reg

Zakon o pojednostavljenom radnom angažovanju na sezonskim poslovima u određenim delatnostima (2018, June 29). https://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/skupstina/zakon/2018/50/2/reg

Zakon o potvrđivanju Sporazuma o priznavanju kvalifikacija u visokom obrazovanju na Zapadnom Balkanu (2023, April 28). http://www.parlament.gov.rs/upload/archive/files/cir/pdf/zakoni/13_saziv/344-23.pdf

Zakon o potvrđivanju Sporazuma o slobodi kretanja sa ličnim kartama na Zapadnom Balkanu (2023, April 28). http://www.parlament.gov.rs/upload/archive/files/cir/pdf/zakoni/13_saziv/343-23.pdf

Zakon o prebivalištu i boravištu građana (2011, November 21). https://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/skupstina/zakon/2011/87/1/reg

Zakon o strancima iz 2018. godine (2023, July 27). https://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/skupstina/zakon/2018/24/1/reg

Zakon o zapošljavanju stranaca iz 2014. godine (2023, July 27), https://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/skupstina/zakon/2019/31/4

Zvezdanović Lobanova, J., Lobanov, M., & Zvezdanović, M. (2021). Problemi i perspektive razvoja tržišta rada u Srbiji na nacionalnom i regionalnom nivou. *Zbornik Matice srpske za društvene nauke*, *179*(3), 413–434. https://doi.org/10.2298/ZMSDN2179413Z

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How to regulate minimum wage in light of contemporary social change: A case study of Slovenia

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ABSTRACT

Minimum wage stands as a fundamental right for workers and one of the oldest and most universal labour law standards in the world. Understanding the impact of labour market changes, demographic trends, and migration on minimum wage regulation could offer valuable insights into the future development of labour law institutes. This study focuses on how these trends affect the basic legal concept of the minimum wage and how they are affected by the legal regulation of the minimum wage. It draws upon a case study of minimum wage regulation in the Republic of Slovenia, with particular focus on social dialogue. In Slovenia, the minimum wage is legally determined, granting all employed individuals the right to receive it without differentiation based on domestic or foreign employment and irrespective of age. The right to a minimum wage has also been extended to cover certain non-standard forms of employment. An analysis of the minimum wage framework in Slovenia has shown that, even in the changed landscape of the labour market, traditional labour law institutions remain an important civilisational achievement and value.

KEYWORDS

labour market, minimum wage, non-standard forms of employment, demography, migration

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1 INTRODUCTION AND BACKGROUND OF THE STUDY

There is a long history of legally determining the minimum acceptable remuneration for work. The minimum wage is a fundamental right of workers and one of the most important international labour law standards (Guzi 2021; International Labour Organization [ILO] 2017; Bomba 2022). Nevertheless, the minimum wage is still one of the more topical and controversial issues, persistently occupying the thoughts of politicians, experts, and the general public (Dube 2019; Luebker and Schulten 2022; Eurofound 2022; Niedzwiadek 2023). Social partners play a special role in these processes (Guardiancich and Molina 2017; ILO 2022; European Commission 2023).

As a labour law institute, the minimum wage is directly impacted by changes in the labour market, with the rise in non-standard and new forms of employment, demographic trends (particularly population ageing), and migration being the most notable. These are phenomena with numerous micro and macro effects on both individuals and companies (OECD 2019; Fialho and Høj 2020; Agyei 2020) and, as such, warrant broader attention from the scientific community. This attention should extend to traditional labour law institutes, such as the minimum wage.

Understanding the impact of labour market changes, demographic trends, and migration on minimum wage regulation could provide insights into the future development of labour law institutes in a dynamic labour market. This study delves into how these trends affect the core legal concept of the minimum wage and how they are affected by the legal regulation of the minimum wage. Our research builds upon a case study of the legal framework in Slovenia and its recent modifications, with particular emphasis on the issue of social dialogue.

This paper will be structured around three key research questions:

i) How do the rise in non-standard and the emergence of new forms of employment affect minimum wage regulation?
ii) What are the implications of demographic trends (population ageing) for minimum wage regulation? and
iii) What is the composition of the migrant workforce, and how have adjustments to minimum wage regulation occurred in the context of labour migration? Answering these research questions will help to determine whether traditional labour standards, such as the minimum wage, are still up to the challenges of modern labour markets. The paper will first present a comprehensive theoretical framework and methodology, followed by the results of Slovenia's case study, a discussion, and a synthesis of the findings in the conclusion.

1.1 ORIGINS, DEVELOPMENT, AND PURPOSE OF THE MINIMUM WAGE

The International Labour Organisation (ILO) defines the minimum wage as the lowest remuneration an employer must pay wage earners for their work over a specific period, which cannot be reduced through collective agreements or individual contracts (ILO 2017). The fundamental purpose of minimum wage policies is to ensure that workers have the right to a minimum income that allows for a decent living for themselves and their families (Luebker and Schulten

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2022). Establishing the minimum wage can be the result of either collective bargaining or a government decision. It can be set as a uniform figure or can vary across different industries and occupations (ILO 2005). Despite the emphasis on the importance of collective bargaining, in most countries, a uniform and universally applicable minimum wage is established by governmental legislation in collaboration with social partners (Eyraud and Saget 2005; ILO 2017).

The earliest instances of minimum wage regulation date back to the end of the 19th century, with New Zealand and Australia pioneering such measures in 1884 as part of an effort to prevent and settle disputes and strikes (Starr 1993; Dube 2019). Other developed countries quickly followed suit, with Great Britain in 1909, France in 1915, Norway and Austria in 1918, among others. In the territory of the Republic of Slovenia, which was then part of the Kingdom of Yugoslavia, the first minimum wage was set in 1937 through the Minimum Wage Decree (Kresal 2015). Initially, minimum wage legislation covered a very limited number of workers or specific sectors. National minimum wage regulation was followed by international minimum wage regulation. From a European perspective, the most important are the activities of the ILO, the Council of Europe, and the European Union (EU). The ILO has included the importance of fair wages in its foundational documents since its establishment in 1919 (Marinakis 2009). The Minimum Wage-Fixing Machinery Convention, No. 26, (International Labour Organization 1928) which covered production and trade, was adopted in 1928 and remains one of the most important and influential conventions (Kresal 2015), having been ratified by 105 member states to date. In 1951, the ILO adopted the Minimum Wage Fixing Machinery (Agriculture) Convention, No. 99, (ILO 1951) followed by the more detailed ILO Convention concerning Minimum Wage Fixing, No. 131, in 1970 (ILO 1970), with special reference to developing countries, which remains the core international legal instrument in this field today.

In 1961, the Council of Europe adopted the European Social Charter (Council of Europe 1961), which, in Article 4(1), explicitly sets out the right of workers to fair remuneration for their work, enabling them and their families to maintain a decent standard of living. The same provision is retained in the 1996 Revised European Social Charter (Council of Europe 1996). Fair remuneration for workers was also explicitly mentioned in the 1989 Community Charter of the Fundamental Social Rights of Workers (European Communities 1989). However, the fundamental Treaty establishing the European Community and the subsequent Treaty on the European Union did not address the issue of minimum wages. European initiatives to regulate minimum wages gained momentum with the adoption of the European Pillar of Social Rights in 2017 (European Parliament, European Council and European Commission 2017), which explicitly highlighted fair remuneration for work that enables workers and their families to maintain a decent standard of living (Luebker and Schulten 2022). Following years of deliberation with the European Parliament and social partner representatives at the European level, the Directive on Adequate Minimum Wages in the European Union (European Union 2022) was adopted at the end of 2022. This directive serves as a "procedural directive" that establishes a framework for setting adequate minimum wages, making access

to and protection of minimum wages more effective for workers, and promoting collective bargaining in this field.

1.2 CHANGES IN THE LABOUR MARKET

The labour market has experienced intense changes in recent years, driven by factors such as globalisation, technological developments, demographic shifts, and changing values and preferences among key stakeholders (Aloisi and De Stefano 2020). The rise in non-standard and the emergence of new forms of work are some of the responses to this changing economic environment (Laporšek, Franca and Arzenšek 2018; Lenaerts, Kilhoffer and Akgüç 2018). Non-standard work arrangements differ in their characteristics from standard full-time permanent employment contracts, while new forms of work exhibit changing patterns in working conditions, contractual relationships, work locations, durations, schedules, and increased use of information and communication technologies (ICT) (Eurofound 2020). In many cases, however, these characteristics also extend to existing standard and non-standard forms of work.

Non-standard forms of work typically encompass fixed-term or part-time employment, agency work, work arrangements involving more than two parties, disguised employment relationships, and dependent self-employment (ILO 2016). New forms of work typically include job sharing, employee sharing, voucher-based work, interim management, casual work or on-demand work, mobile work, platform work, and portfolio work (Eurofound 2022; Florin and Pichault 2020). While non-standard forms of work still presuppose a certain bilateral relationship between the worker and the employer, albeit covert, the new forms of work are more akin to business cooperation among independent entities and are largely carried out with the aid of modern information and communication technologies. The right to a minimum wage and its protection can still be guaranteed to a certain extent in non-standard forms of work. However, implementing these protections becomes considerably more challenging within new forms of work. Non-standard and new forms of work can present novel opportunities for workers and employers, but they also bring with them a number of challenges (Aloisi and De Stefano 2020; OECD 2019; Standing 2018).

Population ageing is becoming increasingly pronounced in Europe and will have a major impact on employment, working conditions, living standards, and the sustainability of welfare states (Bonoli and Natali 2012; EU-OSHA et al. 2017). The median age of the EU population is increasing by 0.3 years each year, having already reached 44.4 years in 2022. The old-age dependency ratio has risen by 22% over the last decade (Eurostat 2023b). Similar trends are evident in Slovenia. However, the ageing population will impact the labour market not only in terms of ensuring adequate and, more importantly, sufficient numbers of workers, but also in terms of reallocating workers and other resources across various sectors and occupations. It will affect not only the labour market and social security systems but also, for example, savings and investment behaviour, interest rates, and even inflation (OECD 2017; Radulović and Kostić 2021). In terms of remuneration for work, a smaller size of the working-age population, combined with undiminished demand for labour, will put upward pressure on wages (Kaufman 2010). This, however, will not

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directly affect the level of the minimum wage itself, as it is usually not directly or exclusively linked to overall wage growth, but typically (Eurofound 2022; ILO 2017) follows a broader set of economic (GDP, employment, productivity, inflation) and social indicators (risk of poverty, minimum cost of living, disposable income).

Rapid geopolitical, technological, and environmental changes in recent years have also had a major impact on labour migration. In 2019, there were 169 million labour migrants in the world (ILO 2021). Their number has increased by 12.7% since 2013. Migrant workers are defined by the ILO (2021) as individuals who are capable or working, whether actively employed or not, residing in a given country, and born outside that country or of foreign nationality. On average, migrant workers make up 4.9% of the workforce in the country where work is performed. In the most developed countries, which employ just under two-thirds of all migrant workers, the percentage is much higher. Of these workers, two-thirds are employed in the service sector, a quarter in manufacturing, and less than a tenth in agriculture. The importance of labour migration in modern societies and labour markets is on a notable upswing, yet not all aspects of the integration and socialisation of these individuals are keeping pace, despite the evident benefits for specific companies, sectors, or even entire countries (McGahan 2020). Attracting suitably skilled labour is becoming a pivotal concern for most developed countries (Beerli, Indergand and Kunz 2022). Labour migration can also have an indirect positive or negative impact on the level of remuneration or the minimum wage in the host country, contingent on the volume and composition of the migrant workforce and the structure of the host country's economy (Agyei 2020).

1.3 SOCIAL DIALOGUE

The ILO (2022) defines social dialogue as all forms of negotiation, consultation, or straightforward information sharing among representatives of governments, employers, and workers on issues of common interest. It can take the form of tripartite social dialogue, in which government representatives participate alongside workers' and employers' representatives, or bipartite social dialogue, which exclusively involves workers' and employers' representatives. Both methods are used to set the minimum wage. Social dialogue can be informal or formal (institutionalised) and occur at various levels. One of the most important forms of social dialogue is collective bargaining between workers' and employers' representatives (ILO 2018). According to the ILO (2022), the following are key prerequisites for successful social dialogue:

(i) strong and independent organisations of workers' and employers' representatives with adequate technical and substantive capabilities;
(ii) political endorsement and a commitment to adhering to social dialogue;
(iii) respect for the fundamental rights of freedom of association and collective bargaining;
(iv) suitable institutional support.

Social dialogue in the 21st century confronts both longstanding and emerging challenges. From a procedural perspective, it suffers from declining support and membership of trade unions and employers' associations, an undefined role of the state, an inadequate transition from the national to the supranational or even transnational sphere, and the deregulation of the labour

market and related structures (Aghion, Algan and Cahuc 2011; Guardiancich and Molina 2017). Substantively, issues of inequality, poverty, new forms of employment, decent work, and addressing the needs of vulnerable groups have not yet been resolved or are even being exacerbated (ILO 2018; Doherty and Franca 2020). In the area of minimum wages, social dialogue faces similar challenges in many countries (Eurofound 2022; ILO 2017). Traditionally, social partners and social dialogue have played an important role in determining remuneration for work. Nevertheless, partly due to the reasons described above, in most cases, the government now plays a key role in setting the minimum wage (Aghion, Algan and Cahuc 2011; Eurofound 2022). Even when the minimum wage is legislatively determined, the state usually at least consults with the social partners if they are not already directly involved in the process (ILO 2017).

2 METHODOLOGY AND RESEARCH QUESTIONS

A review of the existing literature and an analysis of the broader theoretical context of this study have confirmed the importance of the interplay between key labour market trends and their appropriate regulation. Based on this, it is possible to examine the regulation of various labour law institutes in the context of prevailing trends in the labour market. Using the minimum wage as a litmus test of effects seems reasonable and appropriate, as it is one of the oldest and most universal labour law standards in the world (Marinakis 2009; Zobavnik and Zeilhofer 2016). Through an inductive approach, abstraction, and synthesis, it will be possible, taking into account methodological limitations, to generalise the results related to the minimum wage and extend their applicability to other labour law institutes, thus contributing to the universality of scientific advances (Creswell 2009).

Qualitative research on the interplay between minimum wage regulation and the rise in non-standard and new forms of work, demographic trends (population ageing), and migration will adopt a non-linear approach with a sufficiently flexible research structure that will allow insight into the research material from various perspectives and not limit itself to one aspect (Neuman 2014). This approach is essential for ensuring greater validity and reliability of the results (Webley 2010). The research structure follows the standard sequence of qualitative research steps. The analysis of the literature and the broader context of labour market developments has established a relationship between various variables and key assumptions about their interaction. These assumptions are further explored in a case study of minimum wage regulation in Slovenia. The choice of a case study enables a multifaceted examination of the highlighted variables within their natural context (Neuman 2014).

The aim of the survey was to answer the following research questions:

(i) How do non-standard and new forms of work affect minimum wage regulation?
(ii) What are the implications of demographic trends (population ageing) for minimum wage regulation?
(iii) What is the composition of labour migration and how has it affected adjustments in minimum wage regulation?

A case study of the interplay between minimum wage regulation in Slovenia and

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contemporary labour market trends will help answer the research questions and shed light on the relationships between specific variables. These findings, in conjunction with broader theoretical knowledge, will help to draw conclusions about the interconnectedness and impact of contemporary labour market trends on traditional labour law institutes. Taking into account methodological limitations (Harrison et al. 2017), additional research will make it possible to generalise these findings to other areas of labour law and labour market regulation.

3 THE INTERACTION BETWEEN MINIMUM WAGE REGULATION AND LABOUR MARKET CHANGES IN THE REPUBLIC OF SLOVENIA

In this section, we will delve into the intricate dynamics between the effects of minimum wage regulation and the rise in non-standard and emergence of new forms of work, demographic shifts (population ageing), and labour migration in Slovenia. We will commence with an overview of the legal regulation of the minimum wage in Slovenia. Subsequently, we will elucidate its role and interaction in relation to the rise in non-standard and emergence of new forms of work, demographic shifts (population ageing), and migration.

3.1 MINIMUM WAGE

The minimum wage in the Republic of Slovenia is established and regulated by the Minimum Wage Act – ZMinP (*Zakon o minimalni plači*) (Republic of Slovenia 2010a). This act mandates a national minimum wage that all employers must comply with when compensating their workers. Wages are determined through the process of collective bargaining. Remuneration for work performed in Slovenia is regulated by the Employment Relationships Act – ZDR-1 (*Zakon o delovnih razmerjih*) (Republic of Slovenia 2013a), which stipulates that employers must pay at least the minimum wage specified by law or by a collective agreement that binds the employer. Collective agreements, negotiated at various levels and freely bargained between workers' and employers' representatives (Republic of Slovenia 2006), form the basis for wage regulation across various levels of job complexity. They also autonomously decide on the amounts of initial or baseline salaries for various levels of job complexity (Kresal 2001). The ZMinP was adopted towards the end of 2009 and entered into force in 2010. The act was adopted with the support of trade unions but faced strong opposition from employers. The act underwent amendments in 2015 and 2018, gradually excluding allowances, job performance bonuses, and business performance bonuses from the minimum wage amount. It also established a connection to the minimum cost of living (Smole 2021; Klarič 2019).

The ZMinP stipulates that every full-time worker employed in Slovenia is entitled to the minimum wage, while part-time workers are entitled to a proportionate share of the minimum wage. Various allowances provided for by laws, regulations, and collective agreements, as well as the portion of wages allocated for job performance and business performance specified in a collective agreement or employment contract, do not count towards the minimum wage. The minimum wage is determined based on a calculation of the minimum cost of living, in accordance with social legislation (Republic of Slovenia 2010b), which provides for such a calculation to

be carried out at least every six years using a comparable methodology. The minimum wage must be set at a level of least 120% of the calculated minimum cost of living. However, it can also be established at a higher rate, taking into account factors such as rising consumer prices, wage trends, economic conditions, growth, and employment trends, provided that it does not exceed 140% of the calculated minimum cost of living. The minimum wage is set by the minister responsible for labour, in consultation with social partners, within three months of any change in the minimum cost of living. The minimum wage is adjusted annually, at the very least in line with the growth in consumer prices, and may also take into account the other criteria mentioned above. The adjustment of the minimum wage is determined by the minister responsible for labour after consultation with social partners, by 31 January of the current year, and it applies to work done from 1 January onwards. The Labour Inspectorate of the Republic of Slovenia (IRSD) is tasked with overseeing the implementation of the ZMinP.

In 2023, the minimum wage in Slovenia stands at €1,203, putting the country in line with the most developed EU Member States and ranking it seventh among EU Member States with a legally defined minimum wage. The highest minimum wage is found in Luxembourg (€2,387) and the lowest in Bulgaria (€399). In neighbouring Croatia, it is set at €700 and in Hungary at €579. In Germany, the last country to introduce a legal minimum wage, it is set at €1,987. Over the last five years, the minimum wage has grown by 36% in Slovenia, 14% in Luxembourg, 39% in Bulgaria, 38% in Croatia, 25% in Hungary, and 27% in Germany (Eurostat 2023c).

With the adoption of the ZMinP in 2010 and its subsequent amendments, Slovenia has, to a large extent, established a modern and relatively simple legal framework for determining and validating minimum wage. This framework aligns with the principles outlined in the European Social Charter and the ILO's Minimum Wage Fixing Convention, No. 131 (ILO 1970), a convention to which Slovenia is a signatory. Some key issues from the past related to the definition of the minimum wage, its setting, and indexation have been effectively addressed (Leskošek et al. 2008; Poje 2009). The linkage of the minimum wage to the minimum cost of living establishes a logical connection between the income of active (employed) and passive (unemployed) individuals. Furthermore, by fixing the minimum wage at a level of at least 20% above the minimum cost of living, it partially embodies the concept of a decent living wage (Bennett 2012; Guzi 2021).

However, one lingering shortcoming remains within the regulations, a concern that the expert community began highlighting towards the end of the last century (Kresal 2001; Poje 2009). The absence of a direct correlation between the minimum wage and the basic wages of the pay grades established by collective agreements results in basic wages falling below the minimum wage. In 2023, the basic wages of the pay grades in all collective agreements of extended validity in Slovenia were, in the vast majority of cases, below the minimum wage. Furthermore, most allowances (bonuses), whether mandated by law or negotiated in collective agreements, are also calculated based on the basic wage, further reducing workers' incomes (Laporšek, Vodopivec and Vodopivec 2017; Malačič 2019).

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3.2 THE RISE OF NON-STANDARD AND THE EMERGENCE OF NEW FORMS OF WORK

As the new millennium began, Slovenia, much like other developed nations, witnessed a rise in the adoption of more flexible and new forms of employment. However, it is important to note that the choice of the legal form of work in Slovenia is not left to the discretion of the involved parties but is instead determined and defined by law, with the elements of an employment relationship playing a key role in this context (Murgia et al. 2020; Poglajen et al. 2021). When determining the existence of an employment relationship, it is therefore the actual circumstances that reveal how the contractual arrangement is carried out in practice that are relevant, not the parties' description of the relationship or their status.

The rise in non-standard and the emergence of new forms of work in Slovenia, in the first phase, akin to other countries, primarily impacted certain marginalised groups in the labour market, such as young people and migrants. However, over time, some of these trends began to affect the general population as a whole (Leskošek et al. 2008). Non-standard forms of work in Slovenia are largely represented by fixed-term employment contracts, part-time work, temporary and casual work opportunities for students, and agency work (Kresal Šoltes, Strban and Domadenik 2020). New forms of work (Eurofound 2020) gained momentum in Slovenia after 2012, mirroring global trends, often taking the legal form of non-standard work arrangements, manifesting as self-employed individuals, one-person limited liability companies, temporary and casual work for students, and other civil relationships (Laporšek, Franca and Arzenšek 2018; Kresal Šoltes, Strban and Domadenik 2020).

However, it is noteworthy that some of this work is carried out in the informal economy and cannot be captured analytically (Dieuaide and Azaïs 2020). It is important to highlight the unclear legal status of such workers and their relationship with the employer or with the client commissioning the work. It is a fundamental question of labour law whether or when and under what terms an employment relationship is established, whether the person performing the work is an employee, and identifying the employer in this context (Aloisi and De Stefano 2020; Harmon and Silberman 2019). The use of contemporary information and communication technologies in this type of work further blurs the lines in fundamental employer-employee (worker) or client-contractor relationships. In the case of new forms of work, it is therefore also necessary to examine the specific work circumstances and the relationship between the worker and the employer and, on this basis, to assess the elements of the employment relationship (Murgia et al. 2020). The ZDR-1 mandates the use of an employment contract if the elements of an employment relationship exist in Slovenia, making it unlawful to perform work based on civil law contracts.

The adoption of the ZMinP coincided with the intensive growth of non-standard forms of work and the emergence of new forms of work. However, the ZMinP established a minimum wage exclusively for traditional employment relationships. The act does not regulate the minimum wage in non-standard or new forms of work, nor did the 2015 and 2018 amendments address this issue. Nevertheless, the new minimum wage

legislation did encourage the regulation of minimum allowed remuneration for work in the context of non-standard forms of work. For instance, in 2012 (Republic of Slovenia 2014), a legal minimum hourly wage was introduced for temporary and casual work for students. This wage cannot be lower than the ZMinP minimum wage calculated per hour of the average full-time monthly work. A similar regulation was adopted in 2013 (Republic of Slovenia 2013b) for temporary and casual work carried out by pensioners.

The importance of ensuring adequate remuneration for work in the context of other forms of work was also recognised by the ZDR-1, which was adopted in 2013. In the case of economically dependent self-employed persons, the ZDR-1 provided, as part of the limited labour law protection, a guaranteed remuneration for the contractually agreed work as comparable for the type, volume, and quality of the work undertaken, taking into account the collective agreements and the general acts binding the client, as well as the obligations to pay taxes and contributions. Collective agreements in Slovenia apply only to employed individuals and do not extend to other legal forms of work. In this context, the initiative by the Mladi Plus (Youth Plus) Trade Union in 2023 to enter into a collective agreement for the food delivery service carried out by contract workers for various online platforms is also worth highlighting (Mladi Plus Trade Union 2023).

3.3 DEMOGRAPHIC TRENDS (POPULATION AGEING)

According to the European Commission's EUROPOP2023 baseline scenario demographic projections, the birth rate in Slovenia will increase slightly by 2100 and will be higher than the EU average in all years. The mortality rate in the first year after birth, which is already one of the lowest, is expected to decrease further in the coming years and remain well below the EU average. Life expectancy is projected to increase and will be slightly higher than the EU average. Net migration is expected to gradually decrease. Despite a slight increase in fertility, the trends of declining mortality and increasing life expectancy, coupled with a modest decline in net migration, will contribute to the significant ageing of the Slovenian population. The old-age dependency ratio is projected to rise from today's 33.8% to 53.7% in 2050 and to 58.5% in 2100 (Eurostat 2023a).

The intensive ageing of the population will lead to a decline in the working-age population and an increase in the number of older people in Slovenia. According to the findings of the Institute of Macroeconomic Analysis and Development – IMAD (Kajzer and Fajič 2016), the consequences of such demographic trends will be visible primarily in the labour market, education, public expenditure, housing, spatial planning, and regional development. The decline in the number of people of working age will become a limiting factor for economic growth over the next 10 years (Fialho and Høj 2020). Even with the assumption of increased participation in the workforce by both younger and older individuals, the number of available workers will not be sufficient to meet the demands of the job market (Perko and Rogan 2023). An ageing population will lead to a simultaneous decline in public revenues and an increase in public expenditure, especially in social protection expenditure (Kajzer and Fajič

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2016). As Mramor and Sambt (2020) point out, the rapid ageing of the population represents the most important current challenge for Slovenian society.

The ZMinP does not provide for different minimum wage levels according to the age of workers, despite the existence of such practice in some EU Member States (Eurofound 2022). Age-based discrimination in remuneration for work is also unacceptable under the ZDR-1. At this point, however, it is important to highlight the institute of seniority (length of service) bonuses, which is a right of workers under the ZDR-1, with further regulation left to sectoral-level collective agreements. It should be noted that in Slovenia, the ZDR-1 defines the seniority bonus as a right that applies to the entire length of service of an individual, but at the level of sectoral collective agreements, this bonus may be limited to the length of service accumulated with the most recent employer. Although allowances and bonuses are excluded from the minimum wage calculation, the length-of-service bonus, as a universal right of workers, significantly impacts workers' final remuneration. The OECD has issued warnings that the current length-of-service bonus framework may hinder older workers' mobility and their motivation to learn, while at the same time compelling employers to pay wages higher than the actual productivity of older workers in comparison to younger workers. This situation can also contribute to a high ratio of the minimum wage to the median or average wage (Fialho and Høj 2020), although the high ratio of the minimum wage to the median wage or average wage in Slovenia is more a result of the compressed wage structure and the relatively low value added in the economy (Rogan 2020) rather than the minimum wage being excessively high. Furthermore, the minimum wage in Slovenia has remained lower than the current at-risk-of-poverty threshold (Statistical Office of the Republic of Slovenia 2023b, 2023c; Ministry of Labour Family, Social Affairs and Equal Opportunities 2023) in all the years since the ZMinP came into force.

3.4 LABOUR MIGRATION

Slovenia has never had a comprehensive, formally adopted population policy, with only time-limited, partial measures introduced in specific areas (Malačič 2015). The same applies to migration in general and labour migration. Demographic changes in Slovenia are already reducing the available workforce and directly affecting economic development (Fialho and Høj 2020). Without intensive net migration, the employment rate is projected to turn negative in the coming years (Kajzer and Fajič 2016). The historically highest number of employees and the lowest number of unemployed individuals, together with the low volume of the available and potentially employable workforce, are already generating circumstances in which Slovenian companies are facing labour shortages (Perko and Rogan 2023). The arrival of foreign workers to Slovenia in recent decades has not been the result of a comprehensive strategy or measures to attract workers in short supply. Rather, it has been the result of various initiatives by employers in high-growth sectors (Kajzer and Fajič 2016). This does not imply that the government has not regulated and controlled these processes, but it has certainly not been an initiator or proactive participant in these labour migration efforts (Malačič 2017).

In 2022, according to the Statistical Office of the Republic of Slovenia (2023a), 120,958 foreign nationals were in employment in Slovenia, accounting for 13.4% of the total working population. This number has increased by almost 48% in the last five years. Foreign workers make up a little over 13% of the total workforce. While the share of EU nationals in the total population has remained relatively stable at around 2% in 2022, the share of non-EU nationals has surged by almost 40% over the last five years to reach just over 11% in 2022. The number of all individuals in employment in Slovenia increased by 5.9% from 2018 to 2022, according to SORS data, but the bulk of this increase was accounted for by foreign workers.

Foreign workers are most often employed in the construction sector, where they account for nearly half of the total workforce, as well as in transportation and storage, where they account for just under a third of all workers, and in various other business activities, including labour brokerage or agency work, where they account for a quarter of all workers. According to the Ministry of the Interior of the Republic of Slovenia (2021), at the end of 2021, more than three quarters of all foreign nationals in the country were citizens of former Yugoslav republics, almost half of them Bosnia and Herzegovina nationals, followed by nationals of Kosovo, Serbia, and North Macedonia. Data from the Employment Service of the Republic of Slovenia (2023) provides a more detailed insight into the educational and age structure of workers from Bosnia and Herzegovina who hold valid work permits, offering some insights into the characteristics of the overall foreign worker population. More than three-quarters of these workers had completed lower or secondary vocational education, and just over two-thirds were under 40 years of age, out of which more than half were under 30.

The basic legal framework for labour migration in the Republic of Slovenia is provided by the Resolution on the Migration Policy of the Republic of Slovenia (Republic of Slovenia 2002), the Foreigners Act (Republic of Slovenia 2021a) and the Employment, Self-employment and Work of Foreigners Act – ZZSDT (*Zakon o zaposlovanju, samozaposlovanju in delu tujcev*) (Republic of Slovenia 2021b), as well as the employment agreements concluded with Bosnia and Herzegovina (Republic of Slovenia 2012) and the Republic of Serbia (Republic of Slovenia 2019). None of these legal acts define the remuneration for work, with the exception of the provisions of the ZZSDT relating to workers posted in associated companies. However, employment agreements concluded with Bosnia and Herzegovina and the Republic of Serbia explicitly provide for equal treatment of foreign and domestic workers, including in terms of wages. The ZMinP does not distinguish between domestic and foreign workers in terms of the right to minimum remuneration for work. In some cases, the remuneration of foreign workers is even under greater scrutiny by the IRSD from the perspective of indirect control, due to the verification of other circumstances of employment and work than in the case of domestic workers. As the competent supervisory authority, the Labour Inspectorate of the Republic of Slovenia (2021) has not detected any specific deviations in recent years concerning the minimum wage payment to foreign workers.

The structure of foreign workers in Slovenia, which in terms of occupation, education, age, and nationality could indicate pressure on the level of pay

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for work performed (Eurofound 2022), does not reach a sufficient volume to displace better paid domestic workers or to intensify employers' pressure on the minimum wage due to the limitation on the number of work permits. The key reason for this is likely to be the overall labour shortage, linked to demographic factors that require employers to improve working conditions if they are to meet the demand for workers. The highest wage growth in 2022, for instance, was recorded by the industries with the largest labour shortages and a relatively high share of foreign workers (IMAD 2023).

4 DISCUSSION

In terms of content, the ZMinP follows modern trends in minimum wage regulation, which can also be seen from the alignment of the solutions of the more than 12-year-old law with the Directive on adequate minimum wages in the EU adopted in October 2022 and the alignment with the relatively new concept of a decent living wage (Guzi 2021). Procedurally, however, it is burdened by the absence of constructive social dialogue, which affects wage regulation at the level of collective agreements as well. One notable issue is that the gap between the statutory minimum wage and the basic wages of the pay grades under collective agreements is widening and, along with the flattening of the wage structure, is generating a number of other negative effects such as inefficiency of remuneration systems, the payment of (too) low allowances, and a lack of motivation for further education or training, which collectively challenge the entire wage system. To address these challenges, the minimum wage should become the lowest basic wage in all collective agreements in both the public and private sectors. The establishment of a new wage model is necessary in view of the changed labour market circumstances and the fact that the private sector wage model has not changed significantly for more than 30 years, and some of its elements date back to the previous socio-political system. Negotiations to overhaul the public sector wage system started in 2022, and similar initiatives have been taking place in the private sector, so far without success. Establishing meaningful social dialogue on the minimum wage and wages in general remains a challenging task in Slovenia.

The intensive growth of non-standard forms of work at the beginning of the new millennium triggered a series of legislative and other initiatives that have resulted in greater flexibility in employment contracts, as well as achieving comparable cost structures between different forms of work and more comparable labour law protections in Slovenia (IMAD 2014). For instance, the protection of the minimum remuneration for work performed under an employment contract, established by the ZMinP, has been extended to certain non-standard forms of work. However, it is important to consider the underlying reasons for the rise in non-standard and the emergence of new forms of work. The standard employment contract still seems to offer an adequate balance between flexibility and security (Aloisi and De Stefano 2020). Overemphasis on flexibility at the expense of job security inevitably leads to various negative phenomena both for individuals and society in general, often captured by the term "precarity" (Poglajen et al. 2021; Standing 2018). Given the fundamental purpose of the minimum wage, which is

to ensure a decent standard of living for workers and their families, differentiating between workers in various forms of work seems unacceptable from the point of view of the right to a minimum wage. Indeed, if we consider the minimum wage a fundamental human right (Eyraud and Saget 2005; Kresal 2015), then this right should be guaranteed to all workers, regardless of the legal form, method, or other circumstances of their work. The introductory provisions of the ZMinP should therefore be revised and expanded to cover all workers who perform remunerative work under any legal basis.

Slovenia is expected to face intensive population ageing in the coming years (Kajzer and Fajič 2016). The decline in the number of people of working age will become a limiting factor for economic growth over the next 10 years (Fialho and Høj 2020). In line with classical economic theories of supply and demand, a reduction in the volume of workforce supply should lead to wage increases. This should, to some extent, be followed by an increase in the minimum wage. On the other hand, there is also pressure to reduce or de-emphasise age- or long-service-related remuneration (Eurofound 2019). This shift reflects a move away from long-term career-focused approaches towards shorter-term, productivity-focused models that may neglect factors like skills specialisation, investment in training, productivity gains, and worker loyalty (Böckerman, Skedinger and Uusitalo 2018; Pfeifer 2013). Further "dilution" of the universal length-of-service bonus would hit minimum wage workers hardest. Due to the specific relationship between the ZMinP and the basic wages set out in collective agreements, most of these workers have been paid the minimum wage for their entire careers, and the only increase in their income has actually been from the length-of-service bonuses. Such an approach would also seem unreasonable at a time when efforts are being made to incentivise workers to prolong their working lives.

Labour migration is one of the responses to the shrinking size of the working-age population and the shortage of adequate labour, but it is also a sensitive political and social issue (Hansen and Randeria 2016). In terms of labour migration, Slovenia has mainly relied on labour migration from former Yugoslav republics, particularly Bosnia and Herzegovina. The characteristics of foreign workers, such as lower education levels, younger age, and employment in labour-intensive sectors, could suggest a higher presence of foreign workers among minimum wage earners. However, the issue of foreign workers has never been raised in the context of the minimum wage debate, either by trade unions or by employers, either from the perspective of guaranteeing and protecting the minimum wage or from the perspective of labour costs. This could be due to the fact that wage growth in recent years has been strongest in sectors with a higher labour shortage, where the representation of foreign workers is also relatively high (IMAD 2023). Nonetheless, in the event of a disproportionate increase in the number of foreign workers in the future, the willingness of foreign workers to accept lower pay (Agyei 2020) could become a limiting factor for the growth of the minimum wage in Slovenia. On the other hand, significantly higher minimum wages in certain other neighbouring EU Member States are already becoming a limiting factor for the inflow of foreign workers into Slovenia.

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The issue of remuneration for work and the minimum wage is one of the central themes of social dialogue. The role of the state in this respect varies considerably from country to country and, reflecting socio-political developments and the autonomy and capacity of social partners to reach appropriate agreements at the bipartite level (Aghion, Algan and Cahuc 2011; Kohl and Platzer 2007). The decline in trade union membership, the disorganisation or ineffectiveness of employers' associations, the absence or presence of formal social dialogue structures, globalisation, and technological developments are undermining the ability of social partners to reach binding agreements at the bipartite level, increasing the need for state intervention. This is particularly characteristic of Central European and Eastern EU Member States (Aghion, Algan, and Cahuc 2011; Franca 2017; Kohl and Platzer 2007). Similar processes can be observed in Slovenia, where the bipartite wage agreements of the 1990s, which were subsequently verified by the state through a legal act, were replaced by the state's legal regulation of the minimum wage with prior consultation with the social partners (Kresal 2015; Poje 2009). Contemporary mega-trends in the labour market and the opportunities and challenges they bring are also key issues for social dialogue. Social dialogue has proven successful in addressing highly complex issues during the economic crisis and the COVID-19 pandemic (European Commission 2023; ILO 2022). The issues of the rise in non-standard and emergence of new forms of work, demographic changes (population ageing), and labour migration cannot be adequately addressed without effective social dialogue.

5 CONCLUSION

Labour law institutes, as the cornerstone of the regulation of employment relationships, one of the most important aspects of human life, and a vehicle for socio-economic autonomy, represent an important civilisational achievement and value, even in the changed circumstances of work. The specific format, incidence, or prevailing technologies of performing work may change over time, but they do not play a particular role in the regulation of labour interrelationships (Aloisi and De Stefano 2020; Standing 2018). Understanding the purpose of various labour law institutes at the level of the worker and the employer, as well as at the level of society, is crucial. This understanding should serve as the basis for regulating contemporary worker-employer relations. With this approach and appropriate guarantees and support from the government, social partners should act as guardians of these fundamental ideas and values and ensure that they are implemented in the changing world of work.

This study, conducted on minimum wage regulation in the Republic of Slovenia, provides a detailed examination of a traditional labour law institute in the context of a modern labour market within one EU Member State. Methodological limitations of case studies must be taken into account (Harrison et al. 2017) and a cautious position adopted when generalising the results to other countries or other labour law institutes (Webley 2010). In this context, future research could focus on a comparative review of specific labour law institutes or a set of labour law institutes in a structured sample of selected countries and test their effectiveness within or across selected countries.

REFERENCES

Aghion, P., Cahuc, P., & Algan, Y. (2011). Civil Society and the State: The Interplay Between Cooperation and Minimum Wage Regulation. *Journal of the European Economic Association*, 9(1), 3–42. https://www.jstor.org/stable/25836055

Agyei, S. A. (2020). *The migrant pay gap: Understanding wage differences between migrants and nationals*. Geneva, Switzerland: International Labour Office. https://ec.europa.eu/migrant-integration/sites/default/files/2020-12/Themigrantpaygap_ILOReport.pdf

Aloisi, A., & De Stefano, V. (2020). Regulation and the future of work: The employment relationship as an innovation facilitator. *International Labour Review*, 159(1), 1–23. http://dx.doi.org/10.1111/ilr.12160

Bennett, F. (2012). The 'living wage', low pay and in work poverty: Rethinking the relationships. *Critical Social Policy*, 34(1), 46–65. https://doi.org/10.1177/0261018313481564

Böckerman, P., Skedinger, P., & Uusitalo, R. (2018). Seniority rules, worker mobility and wages: Evidence from multi-country linked employer-employee data. *Labour Economics, 51*, 48–62. https://doi.org/10.1016/j.labeco.2017.11.006

Bomba, K. (2022). Minimum Wage as an Instrument to Provide Dignity at Work. *E-Journal of International and Comparative Labour Studies*, 10(3)-11(1), 26–41. https://ejcls.adapt.it/index.php/ejcls_adapt/ article/view/1169

Bonoli, G., & Natali, D. (Eds.) (2012). *The Politics of the New Welfare State* (online edition). Oxford: Oxford Academic. https://doi.org/10.1093/acprof:oso/9780199645244.001.0001

Council of Europe (1961). *European Social Charter (ETS No. 035)*. https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=035

Council of Europe (1996). *European Social Charter (revised) (ETS No. 163)* https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=163

Creswell, J. W. (2009). *Research design: Qualitative, quantitative, and mixed methods approaches* (3rd ed.). Los Angeles: Sage Publications.

Dieuaide, P., & Azaïs, C. (2020). Platforms of Work, Labour, and Employment Relationship: The Grey Zones of a Digital Governance. *Frontiers in Sociology*, 5, 2. https://doi.org/10.3389%2Ffsoc.2020.00002

Doherty, M., & Franca, V. (2020). The (non/) response of trade unions to the "gig" challenge. *Italian Labour Law e-Journal*, 13(1), 125–140. https://doi.org/10.6092/issn.1561-8048/10762

Dube, A. (2019). *Impacts of minimum wages: review of the international evidence*. London, United Kingdom: HM Treasury.

Employment Service of Slovenia (2023). *Labour Market figures*. https://www.ess.gov.si/partnerji/trg-dela/trg-dela-v-stevilkah/

EU-OSHA, Cedefop, Eurofound, & EIGE (2017). *Joint report on Towards age-friendly work in Europe: a life-course perspective on work and ageing from EU Agencies*. Luxembourg: Publications Office of the European Union.

Eurofound (2019). *Seniority-based entitlements: Extent, policy debates and research*. Luxembourg: Publications Office of the European Union. https://www.eurofound.europa.eu/en/publications/2019/seniority-based-entitlements-extent-policy-debates-and-research

Eurofound (2020). *New forms of employment: 2020 update, New forms of employment series*. Luxembourg: Publications Office of the European Union. https://www.eurofound.europa.eu/en/publications/2020/new-forms-employment-2020-update

Eurofound (2022). *Minimum wages in 2022: Annual review, Minimum wages in the EU series*. Luxembourg: Publications Office of the European Union. https://www.eurofound.europa.eu/en/publications/2022/minimum-wages-2022-annual-review

European Commission (2023, January 25). *Commission sets out concrete actions for greater involvement of social partners at national and EU level*. News. https://ec.europa.eu/social/main.jsp?langId=en&catId=85&furtherNews=yes&newsId=10501

European Communities (1989). *Community Charter of Fundamental Social Rights of Workers*. https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=legissum:c10107

European Parliament, European Council & European Commission (2017*). Interinstitutional Proclamation on the European Pillar of Social Rights (2017/C 428/09)*. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017C1213%2801%29

European Union (2022). *Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union*. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022L2041

Eurostat (2023a). *EUROPOP2023 – Population projections at national level (2022–2100)*. https://ec.europa.eu/eurostat/databrowser/explore/all/popul?lang=en&subtheme=proj.proj_23n&display=list&sort=category&extractionId=proj_23naasfr

Eurostat (2023b, February 22). *Half of EU's population older than 44.4 years in 2022*. News Articles. https://ec.europa.eu/eurostat/web/products-eurostat-news/w/DDN-20230222-1

Eurostat (2023c). *Monthly minimum wages – bi-annual data*. https://ec.europa.eu/eurostat/databrowser/view/earn_mw_cur/default/table?lang=en%22

Eyraud, F., & Saget, C. (2005). *The Fundamentals of Minimum Wage Fixing*. Geneva, Switzerland: International Labour Office.

Fialho, P., & Høj, J. (2020). Labour market institutions for an ageing labour force in Slovenia. Paris: OECD Publishing (OECD Economics Department Working Papers, No. 1648). https://dx.doi.org/10.1787/9eca1535-en

Florin, P., & Pichault, F. (2020). Emerging Forms of Precariousness Related to Autonomy at Work: Toward an Empirical Typology. *Frontiers in Sociology*, 5, 34. https://doi.org/10.3389/fsoc.2020.00034

Franca, V. (2017). Bodo od evropskega socialnega dialoga ostali samo še nezavezujoči dogovori?: Pregled in analiza obstoječih praks. *Delavci in delodajalci*, 17(4), 475–493.

Franca, V., Laporšek, S., & Arzenšek, A. (2018). How to Tackle New Form of Works for a Greater Employment Protection. Paper presented at "*MIC 2018: Management International Conference Bled, Slovenia 30 May–2 June*", University of Primorska. https://www.hippocampus.si/ISBN/978-961-7023-92-3/226.pdf

Guardiancich, I., & Molina, O. (Eds.) (2017). *Talking through the crisis: social dialogue and industrial relations trends in selected EU countries*. Geneva: International Labour Office.

Guzi, M. (2021). *Cost of Living, Living Wages, and Minimum Wages in EU-27 countries*. Bratislava: CELSI.

Hansen, R., & Randeria, S. (2016). Tensions of refugee politics in Europe. *Science*, 353(6303), 994–995. https://www.jstor.org/stable/44710496

Harison, H., Birks, M., Franklin, R., & Mills, J. (2017). Case Study Research: Foundations and Methodological Orientations. *Forum Qualitative Sozialforschung Forum: Qualitative Social Research*, 18(1). https://doi.org/10.17169/fqs-18.1.2655

Harmon, E., & Silberman, M. S. (2019). Rating Working Conditions on Digital Labor Platforms. *Computer Supported Cooperative Work*, 28, 911–960. https://doi.org/10.1007/s10606-018-9313-5

IMAD (2014). *Poročilo Delovne skupine za spremljanje učinkov sprememb v regulaciji trga dela*. Ljubljana: Vlada RS in IMAD. http://84.39.218.201/MANDAT13/VLADNAGRADIVA.NSF/18a6b9887c33a0bdc 12570e50034eb54/74754c5472139832c1257cc40026954e/$FILE/VLADA2304_podpisano.pdf

IMAD (2023). *Ekonomsko ogledalo št. 2, letnik XXIX*. Ljubljana: IMAD.

International Labour Organization (1928). *C026 – Minimum Wage-Fixing Machinery Convention, 1928 (No. 26)*. https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C026

International Labour Organization (1951). *C099 – Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99)*. https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C099

International Labour Organization (1970). *C131 – Minimum Wage Fixing Convention, 1970 (No. 131)*. https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C131

International Labour Organization (2017). *Minimum wage policy guide*. Geneva: International Labour Office.

International Labour Organization (2021). *Global Estimates on International Migrant Workers, Results and Methodology* (3rd. ed.). Geneva: International Labour Office.

International Labour Organization (2022). *Social Dialogue Report 2022: Collective bargaining for an inclusive, sustainable and resilient recovery*. Geneva: International Labour Office.

Kajzer, A., & Fajić, L. (Eds.) (2016). *Demografske spremembe ter njihove ekonomske in socialne posledice*. Ljubljana: IMAD.

Kaufman, B. (2010). Institutional Economics and the Minimum Wage: Broadening the Theoretical and Policy Debate. *Industrial and Labor Relations Review*, 63(3), 427–453. https://www.jstor.org/stable/40649711

Klarič, M. (2019, December 13). Katastrofične napovedi delodajalcev glede dviga minimalne plače je preteklost vedno znova postavila na laž. *Zveza Svobodnih sindikatov Slovenije*. https://www.zsss.si/katastrof-napoved-delodajalci-1312/

Kohl, H., & Platzer, H. W. (2007) The role of the state in Central and Eastern European industrial relations: the case of minimum wages. *Industrial Relations Journal* 38:6, 614–635. https://doi.org/10.1111/j.1468-2338.2007.00466.x

Kresal Šoltes, K., Strban, G., & Domadenik, P. (Eds.) (2020). *Prekarno delo, Multidisciplinarna analiza*. Pravna fakulteta, Ekonomska fakulteta, Univerza v Ljubljani.

Kresal, B. (2001). *Pravna ureditev plače*. Ljubljana: Bonex.

Kresal, B. (2015). Minimalna plača v stališčih Evropskega odbora za socialne pravice in nadzornih teles Mednarodne organizacije dela. *Delavci in delodajalci* 15(2–3), 187–208.

Labour Inspectorate of the Republic of Slovenia (2021). *The 2021 Work Report of the Labour Inspectorate of the Republic of*. Ljubljana: Labour Inspectorate of the Republic of Slovenia.

Laporšek, S., Franca, V., & Arzenšek, A. (2018). Kako dostojne so nove oblike dela v Sloveniji? *Economic and Business Review*, 20(4), 129–145. http://dx.doi.org/10.15458/85451.77

Laporšek, S., Vodopivec, M., & Vodopivec, M. (2017). *Development of Reform Strategies for Social Protection in Slovenia, Component 3: Social and Economic Effects of the Minimum Wage Increase in Slovenia*. Ljubljana: Evropska komisija in Ministrstvo za delo, družino, socialne zadeve in enake možnosti.

Lenaerts, K., Kilhoffer, Z., & Akgüç, M. (2018). Traditional and new forms of organisation and representation in the platform economy. *Work Organisation, Labour & Globalisation*, 12(2), 60–78. http://dx.doi.org/10.13169/workorgalaboglob.12.2.0060

Leskošek, V., Kresal, B., Rihter, L., Smolej, S., Boškič, R., Zaviršek, D., … Jeseničnik, N. (2008). *Vzroki in obseg pojava zaposlenih revnih*. Ljubljana: Fakulteta za socialno delo, Univerza v Ljubljani.

Luebker, M., & Schulten, T. (2022). WSI Minimum Wage Report 2022, Towards a New Minimum Wage Policy in Germany and Europe. Düsseldorf, Germany: Institute of Economic and Social Research (WSI) of the Hans Böckler Foundation (WSI Report No. 71e). https://www.boeckler.de/en/faust-detail.htm?sync_id=HBS-008280

Malačič, J. (2015). Prebivalstvena politika Slovenije: Od pasivnega prilagajanja spremembam k aktivnemu oblikovanju vzdržnega obnavljanja prebivalstva. *Anali PAZU HD*, 1(1), 19–26. https://doi.org/10.18690/analipazuhd.1.1.19-26.2015

Malačič, J. (2017). Migracijska kriza in migracijska politika v Evropi: od demografskih neravnovesij ter ekonomske in politične nestabilnosti do naraščajočih migracijskih tokov. *Dve domovini – Two Homelands*, *46*, 119–133. https://doi.org/10.3986/dd.2017.2.08

Malačič, J. (2019). Dileme in protislovja ekonomike in politike minimalne plače v Sloveniji. *Posvet Domino učinek zakona o minimalni plači*. Ljubljana, Slovenia: Gospodarska zbornica Slovenije. https://www.gzs.si/Portals/Regija-Primorska-Sever/Vsebine/dogodki-priponke/Vabilo%20-%20Posvet%20o%20minimalni%20pla%C4%8Di%20-%20GZS%20-%2023.5.2019.pdf

Marinakis, A. (2009). *The role of ILO in the development of minimum wages*. Santiago: International Labour Office.

McGahan, A. M. (2020). Immigration and Impassioned Management Scholarship. *Journal of Management Inquiry*, 29(1), 111–114. http://dx.doi.org/10.1177/1056492619877617

Ministry of Labour, Family, Social Affairs and Equal Opportunities (2023). *Minimum wage*. https://www.gov.si/teme/minimalna-placa/

Ministry of the Interior of the Republic of Slovenia (2021). *Report on the work of the Migration Directorate for 2021*. https://www.gov.si/assets/ministrstva/MNZ/Dokumenti/DM/porocilo-DM-2021/Porocilo-o-delu-Direktorata-za-migracije-za-leto-2021.pdf

Mramor, J., & Sambt, J. (2020). Ali ima slovenski socialno tržni model možnost preživetja? In J. Giacomelli (Ed.), *Pogledi 2020* (pp. 26–39). Ljubljana: Združenje Manager. https://www.zdruzenje-manager.si/assets/Uploads/Pogled-2021.pdf

Murgia, A., Bozzon, R., Digennaro, P., Mezihorak, P., Mondon-Navazo, M., & Borghi, P. (2020). Hybrid Areas of Work Between Employment and Self-Employment: Emerging Challenges and Future Research Directions. *Frontiers in Sociology, 4,* 86. https://doi.org/10.3389%2Ffsoc.2019.00086

Neuman, W. L. (2014). *Social Research Methods: Qualitative and Quantitative Approache* (7th ed.). Edinburgh Gate: Pearson Education Limited.

Niedzwiadek, N. (2023, March 22). The minimum wage fight that will define the decade. *Politico*. https://www.politico.com/news/2023/03/22/progressives-new-minimum-wage-20-00087966

OECD (2017). Future of Work and Skills. Paper presented at the "2nd Meeting of the G20 Employment Working Group", Hamburg, Germany: OECD. https://www.oecd.org/els/emp/wcms_556984.pdf

OECD (2019). *Policy Responses to New Forms of Work*. Paris: OECD Publishing. https://doi.org/10.1787/0763f1b7-en

Perko, M., & Rogan, D. (2023). *Kratke analize: Kakšen je obseg razpoložljivih kapacitet na trgu dela?* Ljubljana: IMAD. https://www.umar.gov.si/fileadmin/user_upload/publikacije/kratke_analize/2023_1_Perko_Rogan/Kaksen_je_obseg_razpolozljivih_kapacitet_na_trgu_dela_3.pdf

Pfeifer, C. (2013). Adjustments of wage-tenure profiles with respect to entry age. *Journal of Business Economics*, 83(2), 171–191. http://dx.doi.org/10.1007/s11573-012-0651-3

Poglajen, Č., Tekavčič, M., Kanjuo Mrčela, A., & Turk, D. (Eds.) (2021). *Študije o prekarnosti: Interdisciplinarni pogledi*. Ljubljana: Ekonomska fakulteta, Založništvo.

Poje, A. (2009). *Minimalna plača in njen vpliv na zaposlovanje v Republiki Sloveniji*. Magistrsko delo. Ljubljana: Ekonomska fakulteta Univerze v Ljubljani.

Radulović, M., & Kostić, M. (2021). Does population ageing impact inflation? *Stanovništvo*, 59(2), 107–122. https://doi.org/10.2298/STNV2102107R

Republic of Slovenia (2002). *Resolution on the Migration Policy of the Republic of Slovenia*. http://www.pisrs.si/Pis.web/pregledPredpisa?id=RESO20

Republic of Slovenia (2006). *Collective Agreements Act*. http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4337

Republic of Slovenia (2010a). *Minimum Wage Act*. http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5861

Republic of Slovenia (2010b). *Social Assistance Payment Act*. http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5609

Republic of Slovenia (2012). *Act ratifying the Agreement between the Government of the Republic of Slovenia and the Council of Ministers of Bosnia and Herzegovina on the Employment of Citizens of Bosnia and Herzegovina in the Republic of Slovenia and the Protocol on the Implementation of the Agreement between the Government of the Republic of Slovenia and the Council of Ministers of Bosnia and Herzegovina on the Employment of Citizens of Bosnia and Herzegovina*. http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO6526

Republic of Slovenia (2013a). *Employment Relationships Act*. http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5944

Republic of Slovenia (2013b). *Act Amending the Labour Market Regulation Act*. http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO6524

Republic of Slovenia (2014). *Act Amending the Fiscal Balance Act*. http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7048

Republic of Slovenia (2019). *Act ratifying the Agreement between the Government of the Republic of Slovenia and the Government of the Republic of Serbia on the Employment of Citizens of the Republic of Serbia in the Republic of Slovenia and the Protocol on the Implementation of the Agreement between the Government of the Republic of Slovenia and the Republic of Serbia on the Employment of Citizens of the Republic of Serbia*. http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7993

Republic of Slovenia (2021a). *Foreigners Act*. http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5761

Republic of Slovenia (2021b). *Employment, Self-employment and Work of Foreigners Act*. http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO6655

Rogan, D. (2020). Minimalna plača v Sloveniji v obdobju krize in konjunkture. *UMAR Kratke analize.* Ljubljana: IMAD. https://www.umar.gov.si/fileadmin/user_upload/publikacije/kratke_analize/Minimalna_placa_v_Sloveniji_v_obdobju_krize_in_konjunkture/Minimalna_placa_v_Sloveniji_v_obdobju_krize_in_konjunkture.pdf

Sindikat Mladi Plus (2023, May 12). Izjava Sindikata dostavljavcev – Sindikata Mladi plus ob prvi stavki dostavljavcev Wolt in Glova. *Sindikat Mladi Plus*. https://www.mladiplus.si/2023/05/12/izjava-sindikata-dostavljavcev-sindikata-mladi-plus-ob-prvi-stavki-dostavljavcev-wolt-in-glova/

Smole, J. (2021). Zakon o minimalni plači vztrajno ruši razmerja na trgu dela. *Pravna praksa*, 17–18.

Standing, G. (2018). *Prekariat: nevarni novi razred*. Ljubljana: Založba Krtina.

Starr, G. (1993). *Minimum Wage Fixing: An International review of Practices and Problems*. Geneva: International Labour Office.

Statistical Office of the Republic of Slovenia (2023a). *Persons in employment (excluding farmers) by citizenship category, industry (Standard Classification of Activities 2008), and gender, Slovenia, annually*. https://pxweb.stat.si/SiStatData/pxweb/sl/Data/-/0775325S.PX

Statistical Office of the Republic of Slovenia (2023b). *More residents below the at-risk-of-poverty threshold*. https://www.stat.si/StatWeb/en/News/Index/10898

Statistical Office of the Republic of Slovenia (2023c). *New in the SiStat Database: final data on the 2021 structure of earnings statistics*. https://www.stat.si/statweb/News/Index/11030

Webley, L. (2010). Chapter 38 Qualitative Approaches to Empirical Legal Research v 2010). In P. Cane & P. Kritzer (Eds.), *Oxford Handbook of Empirical Legal Research* (pp. 927–950). Oxford: Oxford University Press

Zobavnik, I., & Zeilhofer, N. (2016). *Minimalna plača, primerjalni pregled*. Ljubljana: Državni zbor Republike Slovenije.

Data availability statement

Majority of used data are available in the manuscript; additional data are also available from the authors upon request.

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Kako regulisati minimalnu zaradu u kontekstu savremenih društvenih promena – Studija slučaja Slovenije

SAŽETAK

Minimalna, odnosno garantovana zarada jeste fundamentalno pravo radnika i jedan od najstarijih univerzalnih standarda rada. Promene na tržištu rada, demografski trendovi i migracije mogu imati značajan uticaj na razvoj radnopravnih instituta u budućnosti. S tim u vezi, u radu se sagledavaju implikacije navedenih fenomena na pravni i konceptualni okvir instituta minimalne zarade, kao i *vice versa* odnosno na koji način pozitivna pravna regulativa o minimalnoj zaradi utiče na njih. Istraživanje je zasnovano na analizi pravnog okvira minimalne zarade u Republici Sloveniji, sa posebnim fokusom na socijalni dijalog. U Republici Sloveniji je minimalna zarada utvrđena zakonom, kojim se svim zaposlenim licima garantuje pravo na minimalnu zaradu. Zakon ne pravi razliku između domaćih i stranih radnika niti pak predviđa različitost tretmana uzimajući u obzir starosni kriterijum, s tim da utvrđuje pravo na minimalnu zaradu za određene kategorije radnika angažovanih u nestandardnim formama rada. Analiza normativnog okvira minimalne zarade u Republici Sloveniji pokazala je da, čak i u promenjenim okolnostima na tržištu rada, nastalim kao posledica socijalnih i demografskih promena, tradicionalni radnopravni instituti i dalje predstavljaju značajno civilizacijsko dostignuće i važnu opštečovečansku vrednost.

KLJUČNE REČI

tržište rada, minimalna zarada, nestandardne forme rada, demografija, migracije

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Legal aspects of artificial intelligence in the employment process

Helga Špadina [1]

ABSTRACT

The introduction of artificial intelligence in all domains of life is the most transformative process in recent history. It is also a highly dynamic process, and due to the pace of technological development, a very limited legal framework is available to address issues of human rights, ethics, transparency, privacy, safety and accountability.

During the last few years, artificial intelligence started to reshape employment processes. Positive aspects of the introduction of AI in the employment process are efficiency and quality in job matching, digitalisation and acceleration of the process, ability to process large data and match job seekers to available vacancy announcements, the alleviation of administrative burdens of employees of employment agencies and giving them strategic and innovative roles. All these are indispensable in present times when demographic challenges in European countries are leading to increased labour migrations and require changes in the recruitment process.

The paper explores the current challenges of AI, i.e. how to achieve human-centred values and fairness of AI use during the employment process, preventing algorithmic bias and discriminatory application of AI tools. In order to harness the maximum benefits of AI, we need to develop a regulatory framework that would be enforceable, inclusive and adaptive (OECD), particularly knowing that most AI solutions are privately owned and developed for commercial purposes.

KEYWORDS

artificial intelligence, employment, digitalisation, non-discrimination

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1 INTRODUCTION

Employment and work have been rapidly changing in the last several decades. The ILO outlined four major forces for change in the workplace: demographic change, technological change, globalization and climate change (International Labour Office 2017). Of those four changes, technological innovations and digitalisation of the recruitment process are probably the quickest. We witness progress in that area on a daily basis, and it is sometimes quite difficult to catch up with the pace of technological advancement, particularly in the area of artificial intelligence. This creates issues with the regulatory framework, which is of a more responsive nature or aimed at creating an enabling environment rather than *ex ante* regulation of AI.

In this paper, the OECD's definition of artificial intelligence is used. According to the OECD, an AI system is a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations or decisions influencing real or virtual environments. It uses machine and/or human-based inputs to perceive real and/or virtual environments; abstract such perceptions into models (in an automated manner, e.g. with machine learning or manually); and use model inference to formulate options for information or action. AI systems are designed to operate with varying levels of autonomy (OECD 2022). Artificial intelligence is the ability of machines or software or evolutionary machine learning algorithms to perform tasks that normally require human intelligence, such as reasoning, learning, decision-making, and communication.

The ILO has identified six 'disruptive' technologies, where 'disruptive' denotes the disruption of existing labour relations and the creation of new processes. These include the 'Internet of Things' — a network of physical objects that have an IP address and internet connectivity and communication; 'big data' — a massive volume of structured or unstructured data, sometimes derived from commercial or personal transactions to predict behaviour or drive complex algorithms for such functions as language translation; 'cloud computing' — a network of remote servers to store, manage and process data, used instead of local computers; robotics — goods- or service-producing computers that, mechanically, behave in some way like humans would, 3D printers — creating three-dimensional objects based on computer programs; machine learning — giving computers the ability to learn autonomously, without being explicitly programmed (creating what is known as artificial intelligence) (International Labour Office 2017).

The introduction of artificial intelligence into the recruitment procedures resulted in the reshaping of the recruitment landscape. Now, for the very first time, big data, algorithms and outcome predictions of any process — in this case the recruitment process — have become active, intelligent participants in shaping the human-technology-world relationship (Hershock 2020). The OECD emphasised that the impact of AI on the workplace will depend on the type of AI, how it is deployed, and contextual factors, including policies and institutions (Lane and Williams 2023).

The paper explores the most recent literature and policy documents on the use of artificial intelligence in recruitment procedures. It also examines the EU's General Data Protection

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Regulation in all aspects relevant to the topic, including the right not to be subject to decisions based solely on automated processing, consent, transparency and privacy.

2 METHOD

The main research question of this paper analyses how AI can be used in the employment process for the mutual benefit of job seekers and employers. The first sub-question examines how to harness the maximum benefits from the introduction of AI in the employment process. The second sub-question addresses how to minimise the negative aspects of the employment process digitalisation, ensure the non-discriminatory application of AI in the employment process, and prevent algorithmic bias. The third sub-question investigates the advantages of introducing a regulatory framework to the already fully functional and privately developed digital tools to facilitate employment.

The main method employed in this paper is qualitative research. The paper aims to delve into the complex set of factors surrounding the central phenomenon of AI and discover the varied perspectives of its use in employment. It involves research of general theoretical questions about the application of AI and the employment process and issues related to the application of legal principles surrounding the use of AI in employment. This method was selected because it allows a comprehensive interpretation of various aspects of using AI in recruitment. The main research question and sub-questions are tested against several different criteria in order to explore if the application of AI in recruitment procedures could bring about negative results.

3 HARNESSING THE BENEFITS OF INTRODUCING ARTIFICIAL INTELLIGENCE IN THE EMPLOYMENT PROCESS

Job matching is a complex process involving numerous steps (job applications, screening, interviews, verification of education credentials, background reference checks, and many more) as well as a number of actors. Matching covers private recruitment by firms, but it can also refer to the activities of public and private employment services and those of job boards and platforms. In addition, matching can occur within and between organisations, and it could even involve acquiring certain skills to meet the requirements of a specific vacancy (Broecke 2023).

There are many relevant benefits of introducing AI in the recruitment process, so much so that it would be difficult to list them all. However, five benefits concerning machine learning and big data application are crucial for the employment process: recruitment process optimisation, the ability to process large amounts of data and efficiently match job seekers to available vacancy announcements, quality in job matching, digitalisation and acceleration of the process, and alleviating the administrative burden of employees of employment agencies.

3.1 OPTIMISATION OF THE RECRUITMENT PROCESS

AI (machine learning and software) can be used to optimise several key aspects of every recruitment procedure — job descriptions; search engines for online recruitment; identification of applicants' skills, qualifications and responsibilities typically associated with a certain job

title; the readability of individual job advertisements, as well as the uniformity of language and branding used across multiple job advertisements (Broecke 2023). Software solutions can further facilitate the recruitment process by selecting suitable applicants based on job and organisational requirements (selection), identifying suitable jobs for applicants and correct job rotation with respect to organisational requirements and job classification, and determining the salary and benefits for the applicants based on their qualifications (Saidi Mehrabad and Fathian Brojeny 2007). Examples of such programs include PeopleRecruit, PeopleForce, Work.ua, Robota.ua and HeadHunter, all allowing employers to post vacancies, add candidates to the directory, involve other human resource managers and specialists in the assessment of potential employees, screen applications and schedule interviews.

3.2 ABILITY TO PROCESS LARGE DATA AND EFFICIENTLY MATCH JOB SEEKERS TO AVAILABLE VACANCY ANNOUNCEMENTS

Human resources represent a paramount strategic resource for society and so forth for every type of organisation; therefore, offering reasonable and intelligent service to employees of an organisation is essential (Saidi Mehrabad and Fathian Brojeny 2007). In practice, the efficiency and quality of the matching process can be reduced by a number of internal and external factors, while recruitment is a lengthy and expensive process, and it is not always easy to identify skills needs or the right candidate because the information is limited (Broecke 2023).

"People analytics" (i.e. the use of data, statistical and quantitative analysis to drive human resources decisions) have been used for years to help companies automate, accelerate, and improve various stages of human resources management, including recruitment, and with the goal of achieving efficiencies and cost savings, faster and better matches, a reduction of human bias and error, as well as improvements in the quality of jobs of the workers involved in matching (Broecke 2023).

The use of AI in the employment process significantly increases efficiency in job matching because software can rapidly analyse large amounts of data to select the best-fitting job candidates, thus achieving unparalleled efficiency and saving time. Essentially, recruiting is the task of predicting — based on resumes, cover letters, LinkedIn profiles, tests and interview transcripts — which subset of applicants will perform best in the job, so a number of AI applications substitute capital for labour by automating prediction tasks, while still leaving the decision tasks to the human (Agrawal, Gans and Goldfarb 2019).

AI can be applied to recruitment and selection through the utilisation of datasets, algorithms, natural language (the ability of a computer program to understand human speech as it is spoken or written) and machine learning processing to analyse resumes, source candidates, match candidates to jobs, conduct and analyse interviews, and provide feedback. AI models can carry out human-like cognitive tasks (e.g., recognition, event detection, forecasting), learn from data, or even evolve and/or acquire abilities from interacting with data (Broecke 2023).

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3.3 QUALITY IN JOB MATCHING

Labour market matching is costly, time-consuming, and suffers from imperfect information as well as bias and discrimination (Broecke 2023). Improvements in the efficiency and quality of this process are crucial to employers because their final goal is to find the best-suited candidate whose skills correspond to the job and who will remain sufficiently long in the position for which he/she was recruited. Applicants benefit from digitalised job searches because algorithmic software can shortlist available job openings and offer tailored job opening recommendations. The state also has a profound interest in high-quality job matching because, if done well, it decreases unemployment and social risks. Good labour market performance depends in part on the efficiency and the quality of labour market matching — i.e., the process by which workers are matched to jobs (Broecke 2023). This process involves a range of steps—from writing job descriptions and vacancies all the way to making offers and salary negotiations, passing through the application, shortlisting and interview stages (Broecke 2023).

OECD reports on artificial Intelligence increasingly being used in labour market matching, whether by private recruiters, public and private employment services, or online job boards and platforms. Applications range from writing job descriptions, applicant sourcing, analysing CVs, chatbots, interview schedulers, and shortlisting tools, all the way to facial and voice analysis during interviews (Broecke 2023). The quality of matching and jobseeker experience are the main features of advocating for the use of AI in job matching. It is often claimed that AI can mitigate human bias and prejudices in job matching and could potentially bring benefits to marginalised job seekers.

3.4 ACCELERATION OF THE PROCESS AND COST EFFICIENCY

Over the past decades, the recruitment process has increasingly digitalised due to the desire of employers to expand the pool of applicants beyond those who might find job advertisements in the employment agency or in local newspapers. The need to enlarge the reach of vacancy adverts is gradually being met by a number of websites specialising in online recruitment. Initial simple matching between employers and job applicants gradually evolved to include applicable filters to shortlist only jobs that are of interest to the applicant or those that correspond to his/her qualifications, then the options of predicting job adverts being displayed

to the job seeker and the optimisation of the matching, application and selection process were introduced and from that point on, numerous more sophisticated options aimed at improving and accelerating the job matching process.

The digitalisation of the job matching process and subsequent recruitment procedures have opened unprecedented possibilities for both employers and applicants. Their interaction has shifted to the digital sphere, reaching levels that were once difficult to imagine. This shift includes the integration of various platforms and web-based services to advance recruitment, such as professional social networks like LinkedIn, social media background checks done on Instagram or Facebook accounts of job applicants, or the possibility of communicating during recruitment procedures through applications or chatbots. Digitalisation has not only facilitated faster and far less expensive recruitment procedures but has also enabled the expansion of the pool of candidates, better matching of candidates' skills with job requirements and significant expansion of abilities to screen resumes in order to shortlist the candidates for interviews.

Job matching with AI is efficient and cost-effective because numerous tasks of recruiters have been outsourced to digital tools or applications that significantly reduce the necessary working hours that human resources employees would spend on screening and selecting resumes or job applications. In cases where applications do not correspond to the job vacancy, digital tools and software can easily detect gaps and eliminate unsuitable applications, while this task would require the use of many working hours for human employees.

3.5 ALLEVIATING THE ADMINISTRATIVE BURDEN OF EMPLOYEES OF EMPLOYMENT AGENCIES

Proponents of the integration of AI technology in the recruitment process highlight that wider use of digital tools and software could alleviate the administrative burden of employment agencies, eliminate repetitive and technical work such as screening a large number of job applications, perform checks on the submitted background documents, organise applications and schedule tests and interviews. The wider use of algorithmic operations allows employers to take on more strategic and innovative roles. Instead of screening a large number of job applications, employees can simply use available software and applications and consequently dedicate more time to strategic planning for the reduction of unemployment, activation measures or labour market gaps. Recruiters can also invest more time in higher-value tasks like rapport-building, interviewing and negotiating (Broecker 2023). If AI successfully reduces administrative burdens from recruiters, and if other aspects of the recruitment procedure improve, it could yield numerous benefits for employers, the labour market and job seekers.

4 REQUIRED PRECONDITIONS TO PREVENT ALGORITHMIC BIAS AND DISCRIMINATORY APPLICATION OF AI TOOLS

The European Commission has taken steps to facilitate trust and has focused on issues relating to ethics, safety, and fundamental rights, including the right not to be discriminated against, liability, the regulatory framework, innovation,

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competition, and intellectual property (IP) (European Commission 2021). To that end, it formulated Ethics Guidelines for Trustworthy Artificial Intelligence endorsed within the Communication on Building Trust in Human-Centric Artificial Intelligence of 2019 and an Assessment List for Trustworthy AI (European Commission 2020). The Ethics Guidelines identified key principles and requirements for Trustworthy AI, and the Assessment List provided an operational framework to support the application of ethical guidelines by AI developers and users.

4.1 HUMAN-CENTRED VALUES — HUMAN RIGHTS AND ETHICS

Recent discussions surrounding the use of AI in recruitment procedures have inevitably raised issues concerning the dehumanisation of employment and potential risks to human-centred values (Broecke 2023).

The European Union has emphasised the importance of promoting the development of human-centric, sustainable, secure, inclusive and trustworthy artificial intelligence (European Commission 2021). Two crucial ecosystems identified by the European Commission are the ecosystem of excellence and the ecosystem of trust, both compliant with EU rules, including the rules protecting fundamental rights and consumers' rights, particularly those involving AI systems operated in the EU that pose a high risk. Building an ecosystem of trust should give citizens the confidence to embrace AI applications and give companies and public organisations the legal certainty to innovate using AI. The Commission has acknowledged and expressed willingness to address public concerns regarding the protection of fundamental rights, especially when citizens encounter information asymmetries in algorithmic decision-making, unintended effects or even potential malicious purposes. The Commission strongly supports a human-centric approach, as outlined in the Communication on Building Trust in Human-Centric AI and will also take into account the input obtained during the piloting phase of the Ethics Guidelines prepared by the High-Level Expert Group on AI (European Commission 2020).

The EU Ethics Guidelines put forward a set of seven key requirements that AI systems should meet in order to be deemed trustworthy. A specific assessment list aims to help verify the application of each of the key requirements: (1) human agency and oversight; (2) technical robustness and safety; (3) privacy and data governance; (4) transparency; (5) diversity, non-discrimination and fairness; (6) societal and environmental well-being and (7) accountability (European Commission 2020).

4.2 DISCRIMINATORY ALGORITHMIC DECISIONS

Algorithmic decisions are based on extensive input data selected for their ability to generate predictions of the most suitable outcome or the best possible result. The final results or decisions of the algorithm are entirely dependent on the quality of the input data. The input data itself is not discriminatory; discrimination can appear during the interpretation process due to erroneous, prejudicial or partial data (Sanchez 2021). Profiling job seekers in order to classify them according to parameters introduced in the algorithm may lead to discriminatory decisions, even when this is not overtly apparent (Sanchez 2021).

Machine logic does not always take into consideration the whole range of decisive factors which are crucial for making unbiased and non-discriminatory decisions. Algorithms can exclude certain population subgroups from targeted job advertisements, but they can also adopt subtler forms of exclusion. The more complex the algorithm, the harder it is to identify the source of discrimination or even its existence. Even more concerning may be AI tools in the hands of individuals or organisations actively seeking to enrich themselves in ways that have little concern for the rights or privacy of individual workers, consumers or citizens. (Peetz 2019).

According to O'Neil, algorithms are not neutral or unbiased; there are many examples of discrimination being unexpectedly built into decision-making processes through the use of algorithms (O'Neil 2016). She further claims that the models used could be opaque, unregulated, and incontestable, even when they're wrong and can easily become a "toxic cocktail for democracy" unless they are developed responsibly and regulated (O'Neil 2016).

In order to reduce discriminatory outcomes of algorithmic decisions, we need to apply so-called 'algorithmic equality' of the talent acquisition software to reduce algorithmic bias, which is the involvement of human expertise and human judgment, the ability to interrelate information and assess properly all competency-based examinations and verbal and nonverbal behaviour displayed during the recruitment process.

Promoting transparency in the use of AI in matching, e.g. by requiring recruiters and other organisations to inform job seekers and to obtain consent before using AI. One particular challenge in this area is acquiring consent that is meaningful, given the unbalanced power relationships that exist. Guaranteeing privacy, both in terms of collecting new data by AI tools as well as protecting individuals from having their personal information inferred by AI from social media and other types of big data. Combating bias and discrimination involves a range of instruments such as anti-discrimination law; data protection legislation (and, in particular, the right to transparency, to an explanation, and to contest automated decision-making); consumer protection legislation; and the continued monitoring of AI throughout its lifetime (Broecke 2023).

5 REGULATORY FRAMEWORK FOR ARTIFICIAL INTELLIGENCE

The artificial intelligence software developed for the employment process was created by private IT companies that recognised the labour market's need for the application of AI and promptly responded by providing tools for job matching, selection, and recruitment. Private IT providers developed commercial products and, in the absence of a specific applicable legal framework, were not primarily guided by the privacy infringements, protection and confidentiality of sensitive personal data, protection of fundamental rights or any other of the seven EC key requirements outlined for AI systems to be deemed trustworthy — human agency and oversight, technical robustness and safety, privacy and data governance, transparency, diversity, non-discrimination and fairness, societal and environmental well-being and accountability (European Commission 2020). The pace of AI development proved too fast for the regulatory framework to encompass all key elements of managing personal data and protecting

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job seekers from privacy breaches. In this situation, the only possible way forward was *ex-post* regulation of applying AI solutions in employment.

Both the USA and the EU were trying to establish principles for regulating AI, being aware that failure to do so might have long-lasting consequences and create legal havoc. Thus, in November 2020, the USA released a set of government-wide policy principles for regulating AI, including a call for engaging in developing regulatory approaches through international cooperation (Broadbent 2021). A key feature of the initiative was a directive to agencies to initiate "dialogues" to promote compatible regulatory approaches to AI and US AI innovation while protecting privacy, civil rights, civil liberties, and US values (Broadbent 2021). The US perspective was that innovation would flourish in a transparent and predictable regulatory environment. At the same time, the EU embarked on putting in place an aggressive regulatory regime for AI through *ex-ante* regulatory procedures that require government permission upfront before innovative technologies are deployed. This approach was assessed as overly prescriptive and too generalised since AI has too many applications and forms for a one-size-fits-all regulation (Broadbent 2021). Moreover, there is a question of how such legislation would include previously developed innovative technologies.

Currently, efforts are underway to adapt existing and/or introduce new legislation to regulate AI more broadly, as well as collective agreements and attempts at national or international standard setting and other self-regulatory approaches, discussed extensively in OECD reports on the ethical risks of using AI in the workplace (del Pero, Wyckoff and Vourc'h 2022) and on AI and social dialogue (Krämer and Cazes 2022).

Questions of privacy, personal data protection, transparency and explainability became cornerstones of developing regional and national regulatory frameworks for AI. Privacy matters regarding the use of AI in recruitment are very contentious due to the personal information job applicants have to share when applying for a job and the fact that they have to accept the terms and conditions of IT companies that own recruitment platforms or programs or applications. Recruitment algorithm solutions, applications, and programs are predominantly privately owned, especially those that are the most successful and well-known. While private ownership over technological companies implies adherence to national, regional and international privacy legislation, the fast pace of the development of machine intelligence has outpaced those laws and regulations, leaving technological or virtual privacy insufficiently regulated. Thus, privately owned IT companies have a very large margin of appreciation for the use of collected personal and confidential information on job applicants. At the same time, private IT companies operate for commercial purposes and have profit at the centre of their interest. This means that some or a lot of personal data can be offered in the market for commercial purposes, mainly targeted advertisement, and this is how IT companies could make additional profit.

Another issue of concern regarding privacy is the use of social media data to infer protected characteristics, as Facebook likes could predict with a high degree of accuracy sensitive characteristics like gender, ethnicity, sexual orientation, religious and political views,

person's skin colour, sexual orientation, or political affiliation (Kosinski, Stillwell and Graepel 2013; Grassegger and Krogerus 2017). Image and voice recognition techniques are similarly being used to infer information about applicants' sexual orientation, race, age, and physical attractiveness (Chamorro-Premuzic et al. 2017; Dattner et al. 2019). The regulatory framework needs to address issues related to the protection of personal data and the privacy of users.

The transparency of automated decision-making is also contested as frequently job applicants and even recruiters do not possess sufficient information on many aspects of machine algorithms, like, for example, on possible profiling of candidates, the retention of personal data and possible re-use of them, assessed requirements during selection and transparent share of the selection decision. According to the OECD AI Principles, transparency can refer to disclosing when AI is being used and enabling individuals to understand how an AI system is developed, trained, operated, and deployed so that people acquiring or using these tools can make informed choices. Transparency, in this context, refers to the ability to provide meaningful information and clarity about the information provided and the reasons behind it (OECD 2019).

Explainability is another feature of big data solutions, and that refers to a feature of AI that enables people affected by the outcome of an AI system to understand how the decision was arrived at (OECD 2019). This entails providing easy-to-understand information to people affected by an AI system's outcome, enabling those adversely affected to challenge the outcome, notably — and to the extent practicable — the factors and logic that led to it.

The regulatory framework for AI needs to be enforceable, inclusive and adaptive, as a majority of AI solutions are privately owned and developed with a commercial purpose. It also needs to factor in all legal solutions developed within the framework of the EU General Data Protection Regulation (the right to transparency on the use of automated decision-making and legal bases for lawfully processing personal data, free, specific, informed and unambiguous consent). Additionally, it should incorporate a suggested broader set of privacy rights in line with the European Convention on Human Rights and other applicable international, regional and national human rights legal frameworks.

6 CONCLUSION

In the conclusion of this paper, research questions will be addressed. Firstly, the first sub-question, regarding how to harness the maximum benefits from the introduction of artificial intelligence in the employment process, will be discussed. The answer to this question derives from the research findings, emphasising that the recruitment process is probably the area of employment and labour relations which currently benefits the most from the application of artificial intelligence.

In regard to job seekers, it is thanks to machine learning, big data and applicable algorithms that job applicants have easier access to job advertisements, can benefit from tailored job vacancies and can apply to any job anywhere in the world online within seconds. Throughout the recruitment process, job seekers can easily communicate with potential employers through various social networks, chatbots, applications, emails and websites. All of these benefits can be optimised only in cases when applicants

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are fully informed and have the right to get an explanation of the algorithmic operations and personal data use.

When it comes to employers, the benefits of using algorithms at the beginning of the recruitment process are multifaceted. They range from quicker and cheaper procedures to the possibility of doing better job matching and saving time by enabling a shift from purely administrative tasks to more strategic and substantial tasks. However, even with automated decisions for administrative tasks, employers who are searching for the best and the most talented workers have to carefully examine algorithmic recruitment services because of possible errors and the multiplication effect of mistakes in candidate screening. Later in the process, when more in-depth assessment is needed to decide whether the candidates are indeed suitable, the recruitment process should include human interaction because the use of AI in this phase could result in algorithmic bias and discriminatory application of big data. Subsequently, employers can disqualify high-quality candidates over minor and unimportant features that are detected by machine algorithms. Human evaluation of shortlisted candidates during the interview phase is crucial to ensure a human review of machine-based decisions on the initial vetting of job applications. Automated decision-making for recruitment should be avoided in line with the EU's General Data Protection Regulation, which grants individuals the right not to be subject to a decision based solely on automated processing. All machine learning decisions should be audited for morally and legally unacceptable decisions. Software solutions cannot interlink and think through various information about the applicant, do not assess properly overall formal and informal working experience and have difficulties assessing soft skills. This could easily lead to an infringement of the fundamental human rights of applicants through machine bias and discriminatory algorithmic processes. Therefore, employers have a role in ensuring proper evaluation and constant monitoring of the application of algorithms and machine intelligence.

From the state's perspective, the use of artificial intelligence in the employment process can tackle issues related to swiftly managing labour shortages and unemployment. Additionally, this approach decreases social risks and addresses numerous other areas, such as the reduction of poverty and increase of education attainment. The states so far have taken a passive role in AI development, allowing the private sector to self-regulate and self-manage. The development of machine intelligence is not only very demanding in terms of skills required to work on proper programs but also enormously expensive. Thus, the private sector took the lead and offered its solutions to private and state institutions such as employment agencies. State institutions, nevertheless, could have an important role in providing feedback for algorithm predictions and reduction of algorithm bias as they frequently interact with a large number of beneficiaries of public employment agencies.

The second sub-question is how to minimise negative aspects of the digitalisation of the employment process and ensure the non-discriminatory application of AI in the employment process and prevention of algorithmic bias. The proposed solution involves better regulation of the development and use of digitalised tools for recruitment. Legal

and regulatory frameworks need to be harmonised with existing human rights instruments. Legal safeguards should include proper monitoring of collected data, and further use would extensively manage to reduce risks stemming from technological innovations. Rather than trying to police the digitalisation of employment, regulators should create a so-called enabling environment that would enable quick recognition of the potential for innovation and progress and prompt reactions after a new program or application is developed to introduce minimum safeguards necessary to ensure the reduction of risks and enable uninterrupted commercial trade if the digital solution is on the market. This can only be done if public regulators are not detached from private companies but instead work together with them on improvements in the use of artificial intelligence in employment.

The third sub-question concerns the advantages of introducing a regulatory framework to the already fully functional and privately developed digital tools to facilitate employment. The response highlights benefits for all three involved parties. The benefit of introducing a regulatory framework for private IT companies, which mainly own technologically innovative solutions, is that it minimises legal actions against them and maximises the legal protection of job applicants' private data and trust in automated decision-making. For employers, a regulatory framework would enable human resources to function more easily as the majority of the main issues would be addressed, while the state would gain legal certainty and proper functioning of the labour market aimed at reducing unemployment and increasing commercial business.

In conclusion, the overall research question on how artificial intelligence can be used in the employment process to the benefit of job seekers and employers was addressed through specific points in this paper. It is clear that the benefits of using artificial intelligence in the recruitment process far outweigh the risks, and as such, at this point in their development, the only missing component is a better regulatory framework and more legal certainty for all involved, which would further reduce risks and possible negative outcomes of the use of digital tools.

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REFERENCES

Agrawal, A., Gans, J. S., & Goldfarb, A. (2019). Artificial Intelligence: The Ambiguous Labor Market Impact of Automating Prediction. *Journal of Economic Perspectives*, *33*(2), 31–50. https://doi.org/10.1257/jep.33.2.31

Broadbent, M. (2021). *What's Ahead for a Cooperative Regulatory Agenda on Artificial Intelligence?* Centre for Strategic and International Studies (CSIS). Research report. https://www.jstor.org/stable/resrep30085

Broecke, S. (2023). Artificial *intelligence and labor market matching*. OECD Social, Employment and Migration Working Papers No. 28. https://one.oecd.org/document/DELSA/ELSA/WD/SEM(2023)2/en/pdf

Chamorro-Premuzic, T., Akhtar, R., Winsborough, D., & Sherman, R. A. (2017). The datafication of talent: how technology is advancing the science of human potential at work. *Current Opinion in Behavioral Sciences*, *18*, 13–16. https://doi.org/10.1016/j.cobeha.2017.04.007

Dattner, B., Chamorro-Premuzic, T., Buchband, R., & Schettler, L. (2019). The Legal and Ethical Implications of Using AI in Hiring. *Harvard Business Review*. https://hbr.org/2019/04/the-legal-and-ethical-implications-of-using-ai-in-hiring. Accessed 12 December 2023

del Pero, A. S., Wyckoff, P., & Vourc'h, A. (2022). *Using Artificial Intelligence in the workplace: What are the main ethical risks?* Paris: OECD. https://doi.org/10.1787/840a2d9f-en

European Commission (2020). *White Paper on Artificial Intelligence* – A European approach to excellence and trust. https://commission.europa.eu/publications/white-paper-artificial-intelligence-european-approach-excellence-and-trust_en

European Commission (2021). *Fostering a European approach to Artificial Intelligence*. Annexes to the Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions. https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=COM%3A2021%3A205%3AFIN

Grassegger, H., & Krogerus, M. (2017, January 28). The Data That Turned the World Upside Down. *Vice*. https://www.vice.com/en/article/mg9vvn/how-our-likes-helped-trump-win

Hershock, P. D. (2020). *Humane Artificial Intelligence: Inequality, Social Cohesion and the Post Pandemic Acceleration of Intelligent Technology*. East-West Center. https://www.jstor.org/stable/resrep25513

International Labour Office (2017). *Future of Work*. Inception Report for the Global Commission on Work. Geneva: ILO.

Kosinski, M., Stillwell, D., & Graepel, T. (2013). Private traits and attributes are predictable from digital records of human behavior. *Proceedings of the National Academy of Sciences*, *110*(15), 5802–5805. https://doi.org/10.1073/pnas.1218772110

Krämer, C., & Cazes, S. (2022). *Shaping the transition: Artificial intelligence and social dialogue*. OECD Social, Employment and Migration Working Papers. OECD Library (OECD Social, Employment and Migration Working Papers, No. 279). Paris: OECD. https://doi.org/10.1787/1bb305a6-en

Lane M., & Williams, M. (2023). *Defining and classifying AI in the workplace*. (OECD Social, Employment and Migration Working Papers No. 290). https://www.oecd.org/publications/defining-and-classifying-ai-in-the-workplace-59e89d7f-en.htm

O'Neil, C. (2016). *Weapons of Math Destruction: How Big Data Increases Inequality and Threatens Democracy*. New York: Crown Publishing Group.

OECD (2019). Artificial Intelligence in Society. Paris: OECD Publishing. https://dx.doi.org/10.1787/eedfee77-en

OECD (2022). *OECD Framework for the Classification of AI systems*. Paris: OECD Publishing. https://doi.org/10.1787/cb6d9eca-en

Peetz, D. (2019). Digitalisation and the jobs of the future. In D. Peetz (Ed.), *The Realities and Futures of Work* (pp. 83–112). Canberra: ANU Press. https://www.jstor.org/stable/j.ctvq4c16w.9

Saidi Mehrabad, M., & Fathian Brojeny, M. (2007). The development of an expert system for effective selection and appointment of the jobs applicants in human resource management. *Computers & Industrial Engineering*, *53*(2), 306–312. https://doi.org/10.1016/j.cie.2007.06.023

Sanchez, S. F. (2020). *Algoritmo y Discriminacion*. Paper for the European Congress of International Society for Labor Law and Social Security Law, Lisabon.

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Pravni aspekti umjetne inteligencije u procesu zapošljavanja

SAŽETAK

Uvođenje umjetne inteligencije u sve domene života najtransformativniji je proces u novijoj povesti. To je također jedan od najdinamičnijih procesa, a zbog prebrzog tempa tehnološkog razvoja regulatorni okvir nije mogao pratiti taj razvoj, i pitanja ljudskih prava, etike, transparentnosti, privatnosti, sigurnosti i odgovornosti su ostala neregulirana.

Pozitivni aspekti uvođenja umjetne inteligencije u proces zapošljavanja su učinkovitost i kvaliteta u usklađivanju radnih mjesta, digitalizacija i ubrzanje procesa, sposobnost obrade velikih podataka i usklađivanja tražitelja posla s dostupnim oglasima za slobodna radna mjesta, ublažavanje administrativnog opterećenja zaposlenika agencija za zapošljavanje i davanje strateških i inovativnih uloga. Sve je to neophodno u današnje vrijeme kada demografski izazovi u europskim zemljama dovode do povećane migracije radne snage i zahtijevaju promjene u procesu zapošljavanja.

U radu se istražuju aktualni izazovi umjetne inteligencije, odnosno kako postići vrijednosti usmjerene na čovjeka i pravednost upotrebe umjetne inteligencije tijekom procesa zapošljavanja, sprečavajući algoritamsku pristranost i diskriminirajuću primjenu alata umjetne inteligencije. Kako bi se iskoristile maksimalne koristi umjetne inteligencije moramo razviti regulatorni okvir koji bi bio provediv, uključiv i prilagodljiv (OECD), posebno znajući da je većina rešenja za umjetnu inteligenciju u privatnom vlasništvu i razvijena s komercijalnom svrhom.

KLJUČNE REČI

umjetna inteligencija, zapošljavanje, digitalizacija, zabrana diskriminacije

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A bibliometric analysis and future research agenda for online labour platforms

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ABSTRACT

Online labour platforms (OLPs) are profit-oriented companies utilising technology to connect independent contractor workers with short-term service labour needs, offering a digital marketplace for posting tasks, receiving bids, and finalising agreements across various domains such as writing, design, programming, and digital marketing. This paper presents a bibliometric analysis of the concurrent body of knowledge on OLPs, explaining how the specificities of this emerging form of labour are researched from various academic standpoints. The study is based on a dataset of 358 papers on OLPs published from 2013 to August 2023. The main finding of the study is that scholarly interest in OLPs is steadily growing in the observed period. However, geographical dispersion of the scientific output is not in line with the actual level of utilisation of OLPs, and scholarly interest in OLPs spans across diverse disciplines, including industrial relations and labour, management, economics, sociology, law, and computer science. The results of this paper can help better understand the dynamics of scholarly publishing on OLPs and further leverage underexploited subtopics in this field.

KEYWORDS

online labour platforms (OLPs), gig economy, bibliometric analysis, systematic literature review, VOSviewer

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1 INTRODUCTION

Online labour platforms (OLPs) are "for-profit firms that use technology to fill immediate short-term service labour needs, either remotely or in-person, with workers who are officially considered independent contractors" (Kuhn and Maleki 2017). These platforms provide a virtual marketplace where work can be posted, bids or proposals can be submitted, and agreements can be reached through digital channels. They cover various tasks and services, including writing, graphic design, programming, data entry, translation, digital marketing, and more.

The global OLP market has experienced significant growth in recent years. Recent reports indicate that the market size was valued at $4.39 billion in 2022, and the expected compound annual growth rate until 2030 is assessed at an impressive 16.5% (GVR 2023). The business model of OLPs is based on charging fees for the intermediary services, which practically means that gig workers and/or requesters pay the platform for each successful matchmaking (Meijerink, Keegan and Bondarouk 2023). Some prominent examples of OLPs include eBay, Taobao, Flipkart, Amazon Marketplaces, Airbnb, Uber, and Taskrabbit (Tadelis 2016).

Kässi and Lehdonvirta (2018) argue that the success of the online gig economy is a result of three major shifts that have occurred in recent decades: (1) the transition from local workplaces to remote ones, (2) the shift from full-time to flexible working hours, and (3) the move from permanent to casual employment. As a consequence of these changes, there has been a steady increase in the number of workers earning their income through OLPs. Recent research by Kässi, Lehdonvirta and Stephany (2021) suggests that there are 163 million registered workers on OLPs, marking a sharp increase compared to 2015 estimates by Kuek et al. (2015), which stood at 50 million. The official statistics of the International Labor Organization (ILO) support this upward trend. According to the June 2021 report (International Labour Organization 2021), the number of labour platforms has increased fivefold globally, with the majority (79%) coming from G20 countries.

OLPs have been developing at a fast pace in recent decades. Some of the driving factors behind their growth include worker flexibility, geographic independence, diverse income streams, and skill development. OLPs have been trending upward for more than a decade, but the lockdowns during the COVID-19 pandemic have accelerated the "work from anywhere" culture (Yao, Baker and Lohrke 2022) and the adoption of hybrid working arrangements around the globe (Radonić, Vukmirović and Milosavljević 2021).

The development of OLPs has, however, been widely criticised. For instance, OLPs generally provide poor working conditions compared to traditional labour agreements (Cantarella and Strozzi 2021). Other studies find that they are unfair by design (Fieseler, Bucher and Hoffmann 2017) or provide only an illusion of autonomy (Sloth Laursen, Nielsen and Dyreborg 2021).

Whether considered good or bad, OLPs are here to stay (Ettlinger 2017). Accordingly, scholars have investigated them within different fields and from various perspectives. Empirical studies dominate the spectrum (i.e., Galperin and Greppi 2017; Wood et al. 2018; Nilsen, Kongsvik and Antonsen 2022;

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Ren, Raghupathi and Raghupathi 2023), but literature reviews of different kinds have also been frequently used to investigate and synthesise the streams of research on labour platforms (i.e., Fu, Avenyo and Ghauri 2021). Oddly, none of the literature reviews on labour platforms have adopted a bibliometric approach. Broader topics such as gig economy (Batmunkh, Fekete-Farkas and Lakner 2022) or platform economy (Boateng et al. 2022) have all been analysed quantitatively, but labour platforms have remained relatively underexplored. Bibliometric analyses are now "firmly established as scientific specialties and integral to research evaluation methodology" (Ellegaard and Wallin 2015). They represent critical quantitative techniques for researchers and practitioners seeking to investigate the status and dynamics of research on a specific scholarly topic, providing valuable outputs such as total publications, citations, and collaboration among institutions and researchers (Donthu et al. 2021). This method has been extensively used in recent economic (Milosavljević, Spasenić and Damnjanović 2022) and digital economy research (Xia et al. 2023).

This study employs the science mapping technique to review the literature on OLPs retrieved from the Web of Science Core Collection database. The study's objectives are to quantitatively examine the global research output and offer some suggestions for the future of research in the field of labour platforms. The specific research questions addressed in this study are as follows:

RQ1. How extensive is the body of academic literature on OLPs?

RQ2. Is the geographical, cooperative, and research funding distribution of OLPs in alignment with the development of actual labour platform employment?

RQ3. Which journals and writers in the OLP field are the most successful?

RQ4. Which subtopics dominate the concurrent body of knowledge on OLPs?

This study adds to the existing body of knowledge in several ways, recognising that prior studies have systematically examined OLPs as a subject of scholarly research. It provides both a vertical extension, involving the inclusion of novel articles in the analysis, and a horizontal extension, which expands the analysis by using comprehensive tools such as the spatial distribution of papers, collaborative teams, journal and author productivity, and noteworthy research subtopics (Milosavljević, Spasenić and Krivokapić 2023).

The remainder of the paper is structured as follows: Section 2 outlines the methodology of the bibliometric study, focusing on the selection of the final group of manuscripts dealing with labour platforms. Section 3 delineates the results of our study. Section 4 contextualises the results by explaining the study's key findings, contributions, and implications. The final section is dedicated to the conclusions, limitations, and recommendations.

2 METHOD

To comprehensively examine the evolution of scholarly contributions pertaining to the topic of the usage and development of OLPs, this study followed the three-stage approach advocated by Spasenić, Milosavljevic and Milanovic (2022) and Milosavljević, Spasenić and Krivokapić (2023). The first stage entails

systematically identifying scholarly articles within the Web of Science database (WoS) by Clarivate Analytics. WoS is one of the most exhaustive repositories of data for bibliometric analyses. This is attested by the most recent bibliometric studies and literature reviews in various research areas that use WoS as the primary source of bibliometric material, including (1) business and finance (Tao et al. 2022; Nguyen et al. 2021), (2) hospitality management (Elkhwesky et al. 2022; Molina-Collado et al. 2022; Elkhwesky 2022), (3) digital technologies (Wang et al. 2022), and (4) renewable energy (Zhang, Ling and Lin 2022; Marzouk and Elshaboury 2022).

The initial search is based on the word string consisting of 15 keywords connected with the Boolean OR operator: "Platform work" OR "Online labor platform" OR "Digital labor platform" OR "Employment platform" OR "Job platform" OR "Job marketplace" OR "Job posting site" OR "Labor marketplace" OR "Gig platform" OR "Freelance platform" OR "Freelancer platform" OR "Task platform" OR "Gig economy platform" OR "Talent marketplace" OR "Remote work platform."

The rationale behind selecting the aforementioned keywords for the bibliometric analysis is to comprehensively capture the multidimensional research landscape of online labour platforms, encompassing platform economics, labour market dynamics, technology, employment patterns, and socio-economic implications. Using the Boolean operator OR in connecting these keywords allows for a broad retrieval of relevant literature.

The selection of keywords includes a broad spectrum of terms utilised to characterise OLPs, including "Platform work," "Online labor platform," and "Digital labor platform," acknowledging the diverse terminology employed by researchers. The inclusion of terms like "Employment platform," "Job platform," and "Gig platform" narrows the scope to platforms facilitating job opportunities and gig-based work, highlighting employment-related aspects. "Job marketplace," "Labor marketplace," and "Task platform" underscore the marketplace nature of these platforms, capturing the economic dynamics of task and service exchanges. Keywords like "Freelance platform," "Freelancer platform," and "Remote work platform" acknowledge the rise of freelance and remote work trends. "Gig economy platform" reflects the integration of gig work into these platforms, providing an insight into the gig economy's role within OLPs. The term "Talent marketplace" draws attention to platforms that highlight skills and talents, catering to research on how these platforms facilitate skill matching and utilisation.

The WoS search engine applies the string to the publication topic, encompassing paper titles, abstracts, author keywords, and keywords plus. In addition, the search query was restricted according to the publication type (Article OR Proceeding paper OR Early access OR Review article OR Book review) and publication language (English). The initial search resulted in 796 publications spanning from 2013 to 2023.

The second phase of the study was dedicated to conducting content analysis of the derived publications to refine the research sample to encompass solely publications focused on online work platforms. Each author of this study screened all 796 publications, searching for titles that were potentially relevant to the research questions. During this

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stage, each author independently decided to include or exclude the publication according to their personal judgement of the publication's relevance to our study. As per the agreed-upon criteria for this phase, articles were included only if (1) the study was strictly related to OLPs and (2) a full-text version in English was available. Articles were excluded if (1) the study was only marginally related to OLPs, (2) the study was unrelated to the topic of interest for this study, and (3) they were non-research publications (i.e., grey literature or Ph.D. dissertations). The final decision regarding the inclusion or exclusion of publications was made at a consensus meeting, where the authors reconciled their opinions and reviewed the full text of publications for which there were discrepancies in opinions (for instance, if one author included a paper while two others excluded it, or vice versa). After applying the described method, the final research sample consisted of 358 papers whose structure by publication type is presented in Table 1. For the final set of publications, all relevant information was extracted from WoS, including the title, abstract, document type, keywords, and other details, which were then compiled into Excel and tab-delaminated files used in the next step of the analysis.

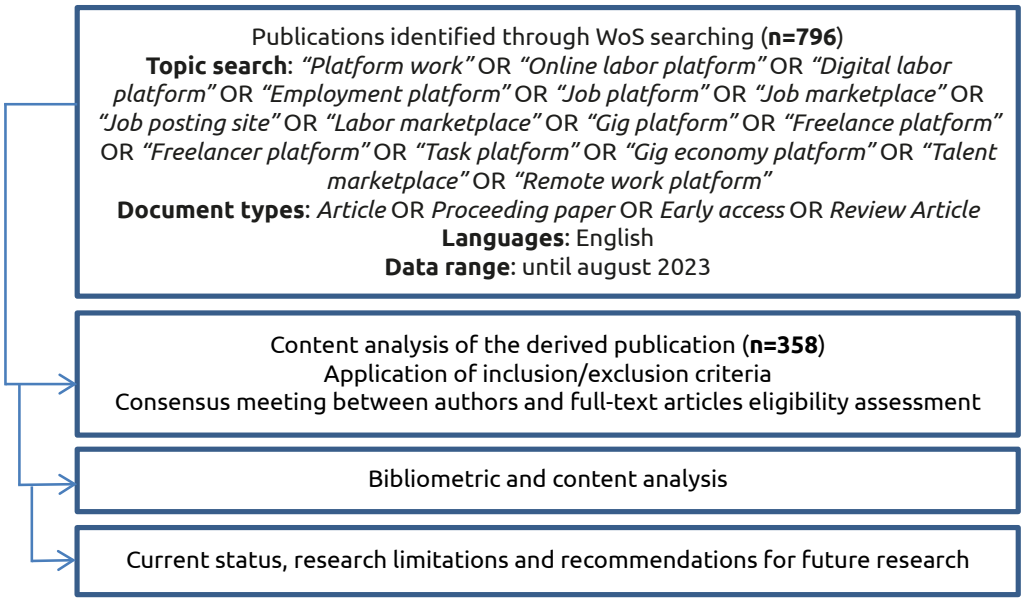
In the third phase, the study incorporated a bibliometric analysis consisting of four steps: (1) descriptive analysis of the final research sample to gain a comprehensive understanding of the temporal evolution of publications over time, (2) descriptive analysis of the research sample with special attention to geographical dispersion, collaboration among researchers, and the scientific output of both journals and authors, (3) descriptive analysis of the most influential publications within the field of research interest, and (4) thematic or content analysis to define the principal subjects and subtopics that emerge from the existing body of literature. Step 2 (descriptive analysis) and 4 (content analysis) were performed using VOSviewer (van Eck and Waltman 2013). The described research design of the analysis is presented in Figure 1.

As shown in Figure 1, the Boolean term-led search initially yielded 796 papers related to OLPs. However, the manual screening of the metadata (titles, abstracts, and keywords) reduced the total number of analysed publications to 358 (or 45% of the initial count). This reduction can be attributed to the very broad use of terms related to OLPs, which might indicate that the field is still amorphous and lacks standardisation in both academic research and practice.

Table 1 Structure of publications on OLPs

No.	Document type	Number of documents	Proportion
1	Article	292	81,6%
2	Proceeding paper	53	14,8%
3	Review article	10	2,8%
4	Book review	3	0,8%
Total		358	100%

Figure 1 Research design



3 RESULTS

This section answers the research questions outlined in this study by addressing the frequency of academic output, the productivity of journals and authors, spatial distribution and cross-country cooperation, and the main subtopics in the OLP field.

3.1 FREQUENCY OF ACADEMIC OUTPUT IN THE OLP FIELD

Consistent with the trends described in the introduction section, there is an academic need to evaluate various aspects of OLPs, with an expectation that scholarly output on OLPs will follow a similar upward trajectory. Figure 2 illustrates the distribution of publications on OLPs over time.

As shown in Figure 2, the dynamics of the academic output pertaining to OLPs exhibit an apparent upward trajectory from 2012 to 2023, reflecting a growing scholarly interest in this research field. Notably, the initial years, 2012 and 2013, represent a nascent stage with minimal scholarly contributions, coinciding with the incipient emergence of online working platforms.

Subsequent years show a consistent and substantial expansion in academic output, with an accelerating proliferation of publications from 2014 through 2023. The year-on-year increase in publication numbers highlights the escalating significance of OLPs as a focal point of academic inquiry. This heightened scholarly attention could also be attributed to the increasing integration of such platforms into contemporary work ecosystems (Pesole et al. 2018), prompting heightened exploration and investigation by scholars across multiple disciplines. The observed peak in publication frequency in 2022, followed by a slight decline in 2023, should be interpreted cautiously, as we have only data for the first eight months of 2023, and

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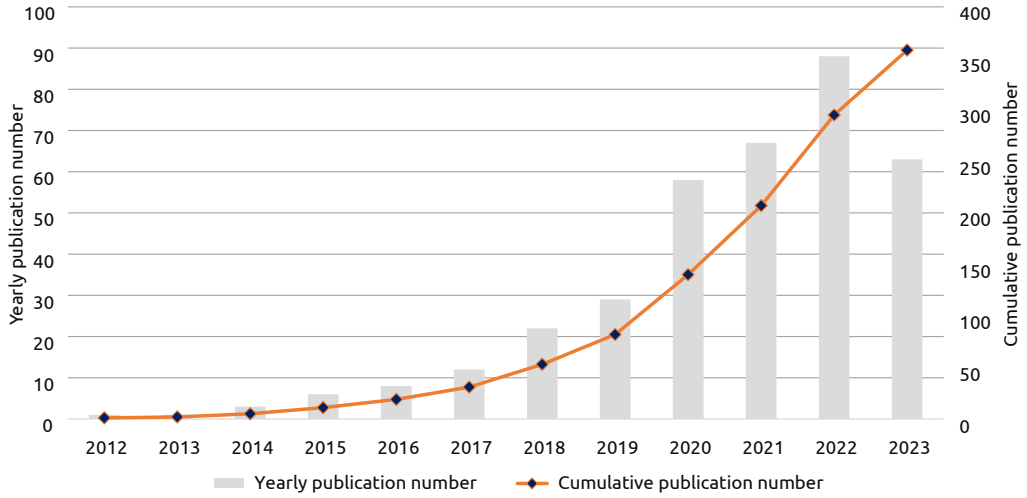
Figure 2 Frequency of academic output in the OLP field



the positive trend may continue. Overall, the data provided illustrates a discernible and sustained inclination among scholars to delve into the multifaceted dimensions of OLPs, capturing their impact on labour dynamics, technological innovation, socio-economic implications, and more.

3.2 PRODUCTIVITY OF JOURNALS AND AUTHORS

Prominent journals in the study of OLPs have emerged as significant sources of knowledge. For instance, "New Technology Work and Employment" has published 16 articles that delve into these platforms. The "European Labour Law Journal" and the "International Labour Review" have featured 14 and 10 insightful articles in this area, respectively. The journal "Work, Employment and Society" has also made substantial contributions with eight notable pieces, enriching scholarly discussions on digital labour platforms. These journals collectively play a vital role in advancing the understanding of OLPs within the academic community.

Within the realm of OLPs, an analysis of scholarly contributions unveils Vili Lehdonvirta as a notable authority, credited with creating an extensive compilation of 10 articles. Similarly, Mark Graham has demonstrated substantial academic involvement through the prolific production of eight articles within the same domain. Likewise, the significant contributions of Jamie Woodcock, represented by five articles, underscore the eminence of this author as a productive and influential contributor in the field of OLPs. The body of work of these three researchers collectively enriches and sheds light on discussions concerning the intricate facets of contemporary digital labour landscapes.

Regarding the most cited papers in the field, the results are shown in Table 2. Top 10 cited papers have received more than 100 citations, with the majority of top cited papers being from the last decade. This indicates that the field is still flourishing and receiving scholarly attention.

Table 2 An overview of the most cited publications in the research field

No.	Authors	Title	Journal	Total citations
1	Wood et al. (2018)	Good Gig, Bad Gig: Autonomy and Algorithmic Control in the Global Gig Economy	Work, Employment and Society	455
2	Graham, Hjorth and Lehdonvirta (2017)	Digital labour and development: impacts of global digital labour platforms and the gig economy on worker livelihoods	Transfer: European Review of Labour and Research	315
3	Vallas and Schor (2020)	What Do Platforms Do? Understanding the Gig Economy	Annual Review of Sociology	242
4	Duggan et al. (2019)	Algorithmic management and app-work in the gig economy: A research agenda for employment relations and HRM	Human Resource Management Journal	193
5	Burtch et al. (2016)	Can You Gig It? An Empirical Examination of the Gig Economy and Entrepreneurial Activity	Ross School of Business Paper No. 1308	174
6	Lehdonvirta (2021)	Flexibility in the gig economy: managing time on three online piecework platforms	New Technology, Work and Employment	159
7	Bergvall-Kåreborn & Howcroft (2014)	Amazon Mechanical Turk and the commodification of labour	New Technology, Work and Employment	140
8	Kässi and Lehdonvirta (2018)	Online labour index: Measuring the online gig economy for policy and research	Technological Forecasting and Social Change	132
9	Wood, Lehdonvirta and Graham (2018)	Workers of the Internet unite? Online freelancer organization among remote gig economy workers in six Asian and African countries	New Technology, Work and Employment	127
10	Kuhn and Maleki (2017)	Micro-entrepreneurs, Dependent Contractors, and Instaserfs: Understanding Online Labor Platform Workforces	Academy of Management Perspectives	126

Wood et al. (2018) and Graham, Hjorth and Lehdonvirta (2017) have shown that OLPs provide workers in Southeast Asia and Sub-Saharan Africa with a high level of flexibility, autonomy, task variety, and complexity, but they also come with drawbacks such as low pay, social isolation, and irregular working hours. Furthermore, the remote gig economy may have adverse health impacts, such as sleep deprivation and exhaustion. The research stream on platform work impact on workers in Asia and Africa is further enriched by Lehdonvirta (2021), who found that the previously mentioned benefits are subject to both

structural, such as the availability of work and worker dependency on the job, and cultural-cognitive constraints, including procrastination and presenteeism, which limit workers from fully exploiting these benefits. These results are similar to those of Kuhn and Maleki (2017), who found that some platforms have made structural and operational choices that reduce workers' autonomy and strengthen their dependency on the platform. Wood, Lehdonvirta and Graham (2018) explored the same geographic region with a more specific research focus, examining collective organisation among online freelancers and revealing that they create unique forms of organisation. In this setup, social media groups play a pivotal role in shaping communication, while labour unions remain absent.

Duggan et al. (2019) proposed a new classification of gig work that recognises three primary forms based on key technological features: (1) app-work, (2) crowdwork, and (3) capital platform work. The authors focused on app-work and stressed that app-workers view their working relationship as extending beyond job flexibility and pure remuneration. Vallas and Schor (2020) have extended this research stream by identifying four major theories in the available literature on the subject, explaining the nature of platform work and its main characteristics. They added a fifth explanation, which suggests that platforms should be understood as a new economic form distinct from markets, firms, and networks. Drawing on existing literature, the authors also tried to predict the future of platforms that, in the most daring scenario, evolve into cooperatives owned by their users, successfully competing with other capitalist firms.

Burtch, Carnahan and Greenwood (2016) sought to shed light on the impact of the gig economy on local entrepreneurial activity, addressing the ambiguity in prior research results. Their experiment suggested that gig economy platforms primarily reduce lower-quality entrepreneurial activity by offering attractive employment for the un- and under-employed (Burbano 2016).

Finally, Kässi and Lehdonvirta (2018) created an Online Labour Index (OLI), which measures the utilisation of online labour across countries by tracking the number of projects and tasks posted on major online gig platforms in near-real time. Their quantitative research results showed that the steady growth of online platform work is mainly driven by the increase in the number of software development, creative, and clerical work positions.

3.3 SPATIAL DISTRIBUTION AND CROSS-COUNTRY COOPERATION

Regarding the geographical distribution of the publications included in this study, 21.8% of the entire corpus originates from the United States, followed by England, with 14.2% of all publications within the sample (see Table 3). The geographical distribution pertains to the research environment within which the manuscripts are situated, as delineated within the Web of Science (WoS) repository.

The observed geographical distribution of the publications mirrors the structure of the world's top freelancing countries. According to the World Bank's study on online gig work, the USA and the UK rank as the top two countries in terms of the demand for online labour (Datta et al. 2023). This information finds support in the results of Upwork's

Table 3 Spatial distribution analysis

Countries/Regions	Record Count	% of 358
USA	78	21.788
England	51	14.246
Germany	28	7.821
Australia	23	6.425
People's Republic of China	21	5.866
Canada	20	5.587
Italy	18	5.028
Spain	18	5.028
France	16	4.469
India	16	4.469
Netherlands	16	4.469
Total	**305**	**85.196**

2022 Freelance Forward survey. The survey revealed that in 2021, 39% of the workforce in the USA, equivalent to 60 million individuals, engaged in freelance work (Upwork 2022). In the UK, there are 1.9 million freelancers, according to the Self-Employed Landscape Report 2022 published by IPSE (2022).

In 2021, the Oxford Online Labour Index ranked Serbia as the 10th country in terms of online labour supply by worker country (Online Labour Index 2021). Payoneer's ranking of Serbia as the 10th capital of freelancing among the top 10 countries (Payoneer Blog 2023), backs up this data. Interestingly, only one paper in the observed sample is authored by scholars affiliated with Serbia. The paper examines the main skill patterns relevant to digital platform workers in the selected Southeastern European (SEE) countries. Despite the growing popularity of this new type of work, there is limited interest among scholars in Serbia in investigating platform work. The reason for this could be that online freelancing is a relatively new concept in the Serbian labour market. Additionally, this mode of work lacks the legal framework that would regulate it.

In terms of collaboration of researchers from various regions, cooperation involving North American contributors is particularly noteworthy (see Figure 3). Authors from the US typically collaborate with researchers from the People's Republic of China and Northern European nations.

Academic research on OLPs is sustained by various funding agencies, as evidenced by the data on funding sources (see Table 4). The support comes from both national and international entities, highlighting the global interest in comprehending the intricacies of this digital phenomenon. Leading the funding landscape, the European Research Council (ERC) and the Spanish Government have allocated significant resources, supporting 5.028% and

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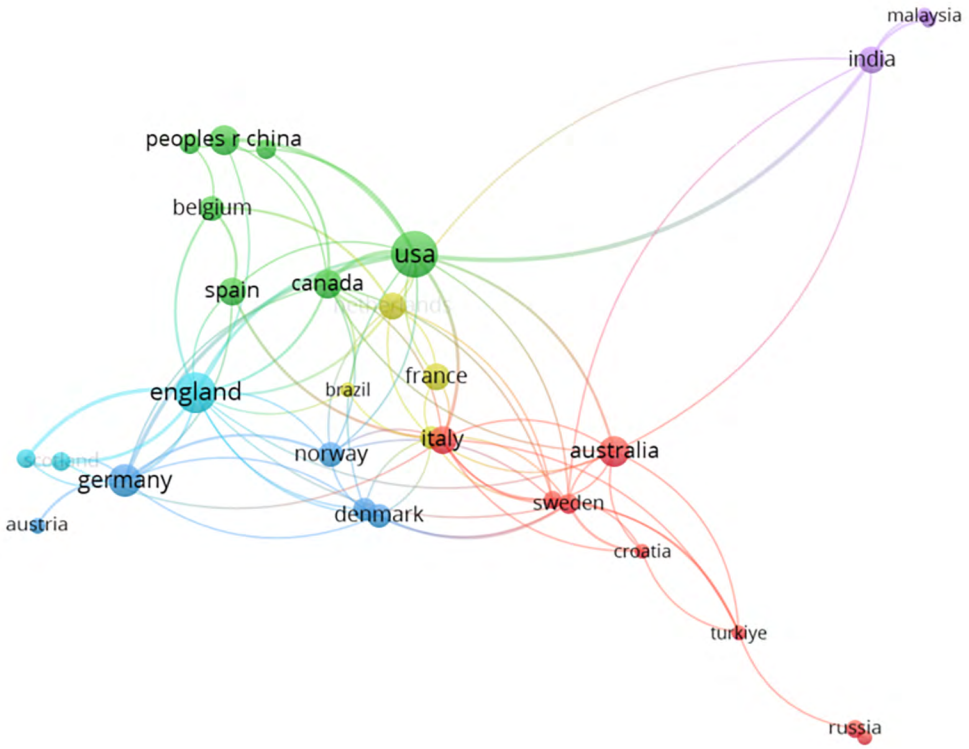
Figure 3 Cooperation network among countries in OLP research (n>3)*



* Cluster 1: Australia, Croatia, Italy, Russia, Slovenia, Sweden, Turkey
Cluster 2: Belgium, Canada, China, Poland, Spain, Switzerland, USA
Cluster 3: Austria, Denmark, Finland, Germany, Norway
Cluster 4: Brazil, France, Ireland, Netherlands
Cluster 5: India, Malaysia, Singapore
Cluster 6: England, Scotland, South Africa

4.749% of the total papers, respectively. Meanwhile, the Economic Social Research Council (ESRC) and UK Research Innovation (UKRI) each account for 2.793% of the papers, highlighting the UK's commitment to advancing research in this domain. Various international bodies, including the European Union (EU), the National Natural Science Foundation of China (NSFC), and the Australian Research Council, contribute to the comprehensive exploration of OLPs. The participation of funding agencies such as the National Science Foundation (NSF) in the US, the German Research Foundation (DFG), and Horizon 2020 underscores the collaborative nature of this research, transcending geographical boundaries. This array of funding sources highlights the global collaboration and concerted effort that underpins the in-depth analysis of OLPs.

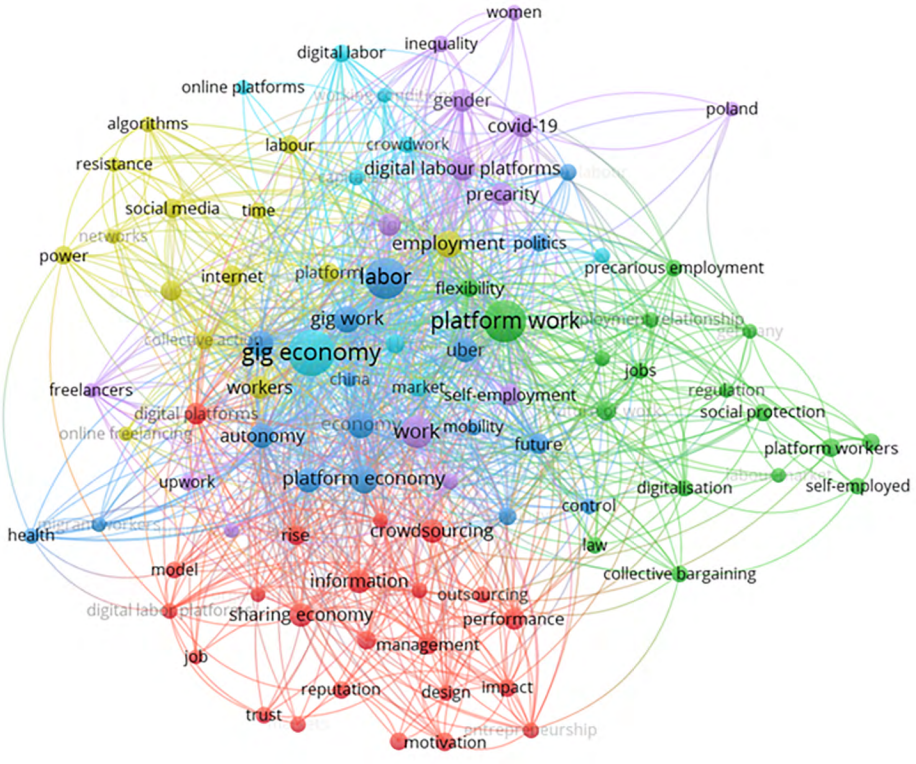
3.4 MAIN SUBTOPICS IN THE FIELD

Finally, we delved into the primary subtopics within the field of OLPs. Our

Table 4 Funding agencies analysis

Funding Agencies	Record Count	% of 358
European Research Council (ERC)	18	5.028
Spanish Government	17	4.749
Economic Social Research Council (ESRC)	10	2.793
UK Research Innovation (UKRI)	10	2.793
European Union (EU)	8	2.235
National Natural Science Foundation of China (NSFC)	7	1.955
Australian Research Council	6	1.676
National Science Foundation (NSF)	6	1.676
German Research Foundation (DFG)	5	1.397
Horizon 2020	4	1.117
International Development Research Centre (IDRC)	4	1.117
NSF Directorate for Computer Information Science Engineering (CISE)	4	1.117
NSF Directorate for Social Behavioral Economic Sciences (SBE)	4	1.117
Research Council Of Norway	4	1.117
Social Sciences and Humanities Research Council of Canada (SSHRC)	4	1.117

Figure 4 Keyword co-occurrence analysis of OLP analysis



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approach encompassed two methods: (1) a neutral keyword-driven analysis and (2) a manual assessment aimed at identifying the main field of research in each study from our sample. Regarding the keyword-driven analysis, the approach measures the co-occurrence of keywords provided by the authors in their publications. The outcomes are visually presented in Figure 4.

Using the co-occurrence analysis, we identified six distinct clusters. The clusters are outlined below (Table 5). Cluster 1 (red cluster) revolves around OLPs and digital entrepreneurship. Cluster 2 (green cluster) focuses on platform work regulation and the future of work. Cluster 3 (dark blue cluster) is centred on algorithmic management and gig economy trends. Cluster 4 (yellow cluster) concerns platform power dynamics and worker collective action. Cluster 5 (purple cluster) addresses gender inequality within digital freelancing. Cluster 6 (light blue) encompasses platform capitalism and gig economy conditions.

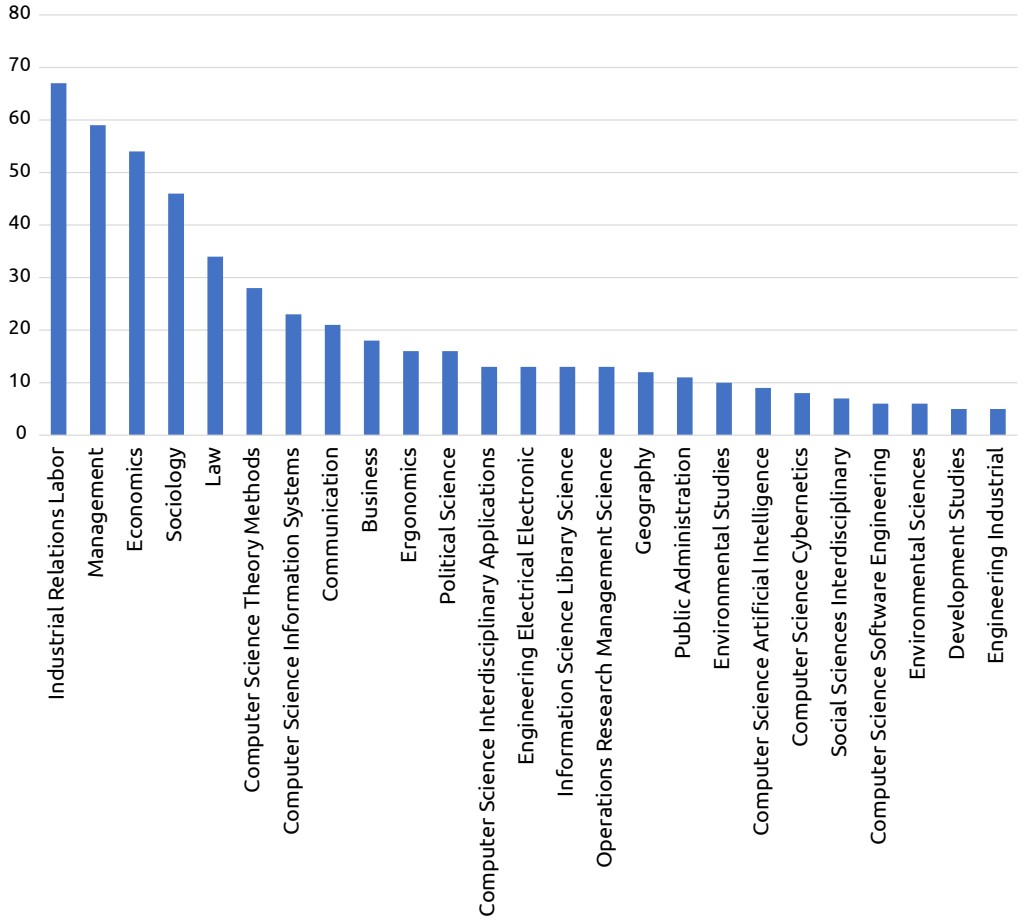
The co-occurrence analysis unveils the primary patterns in online labour platform research. In the US, the debate over whether gig workers should be classified as employees or independent contractors impacts the primary subjects of scholarly investigation regarding OLPs, as it focuses on the legal, tax, and labour market implications of this classification. Considering the large population of internal migrant workers in China, notable academic interest is focused on how OLPs integrate these workers into urban economies and how challenges such as exploitation and precarity can be addressed. In Germany and Nordic countries, strong labour unions and an emphasis on worker protection impact the academic discussion on how collective bargaining could be extended to platform workers to ensure fair wages and working conditions.

Regarding the manually driven assessment of the primary research focus of the studies featured in our sample, the distribution is depicted in Figure 5.

Table 5 Explanation of the main clusters in the co-occurrence analysis

Cluster	Colour	No. of keywords	Top 5 keywords
1		23	Gig economy, self-employment, digital platforms, entrepreneurship, digital labor
2		17	Labour market, regulation, social protection, precarious employment, future of work
3		17	Gig work, algorithmic management, Uber, platform labour, technology
4		14	Collective action, digital labor platforms, labour, online freelancing, social media
5		14	Covid-19, digital labour platforms, inequality, gender, Upwork
6		9	Capitalism, crowdwork, digital labor, gig economy, working conditions

Figure 5 Distribution of publications by research field



Papers exploring OLPs delve into diverse fields, as revealed by the categorization of WoS domains. The categories are segmented based on the number of papers within each, offering an insight into the varying degrees of research focus. At the forefront, the study of Industrial Relations, Labour, Management, Economics, and Sociology takes centre stage, reflecting the substantial attention these areas have garnered. In a moderate focus capacity, Law, Computer Science Theory Methods, and Computer Science Information Systems contribute their perspectives to the discourse. Intermediate attention is found in categories like Communication, Business, Political Science, and Engineering, which, while slightly less prevalent, add valuable dimensions to the dialogue. Categories with a lower focus include Public Administration, Environmental Studies, and various segments of Computer Science, each contributing nuanced insights to the multifaceted landscape of OLPs. It is important to note that this categorization is not exclusively based on thematic coherence but on the

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distribution of research attention across these diverse domains.

The field of industrial relations labour covers various studies exploring multifaceted aspects of platform work. Research topics include the influence of gig companies on workers' market risk exposure (Maffie 2023), investigation of microwork geography and the classification of worker types (Morgan, van Zoonen and ter Hoeven 2023), platform classification systems (Maffie 2020), multidimensional configuration of platform work (Haidar 2022), and the role of algorithmic management in platform work (Duggan et al. 2019; Kullmann 2018). These papers contribute to a comprehensive understanding of the challenges and opportunities in the evolving industrial relations landscape of OLPs.

The field of economics is deeply engaged in understanding the intricate dynamics of digital labour platforms. The analysed papers investigate the profitability challenges of digital labour platforms (Li and Qi 2023), the feminist political economics view on digital labour inequalities (Rodríguez-Modroño, Agenjo-Calderón and López-Igual 2023) and explore the influence of platforms on work precarity (Unni 2023; Muszyński et al. 2022; Sutherland et al. 2020), economic insecurity, and labour agency. They also analyse hiring practices, motivations of freelancers, and the reach of the online gig economy across borders. Reflecting the field's responsiveness to contemporary challenges, research extends to the impacts of global events, such as the COVID-19 pandemic, on labour markets and livelihoods, with 11 papers in the sample. Examining the transition from informal to formal service provision, the expansion of platform work managerialism, and the interplay between labour geographies and collective organising strategies, these studies provide valuable insights into the economic relationships, regulations, and digital work structures.

The field of sociology illuminates a rich tapestry of studies. It examines power dynamics, exploitation, resistance, agency, identity, and social inequalities. Researchers analyse how algorithms are influencing control and resistance in platform work and explore the invisibilisation of labour processes due to algorithms (Salter and Dutta 2023; Cini 2023). They investigate work precarity in platform economy (Wood and Lehdonvirta 2022; Vieira 2021; Schor et al. 2020), and scrutinise the intersection of identity factors such as gender and class within the gig economy (Dunn, Munoz and Sawyer 2021; Milkman et al. 2021). Moreover, the papers critically evaluate the efficacy of labour laws, governance structures, and collective action in the platform economy. This collection of papers contributes to an in-depth understanding of the complex and rapidly evolving environment of work in the digital age, shedding light on the relationships, dependencies, and challenges shaping the lives of platform workers.

The field of law closely examines the intricate legal dimensions surrounding the dynamic realm of OLPs. The observed papers focus on the complex interplay between labour rights, employment status, and technological advancements, often exploring legal innovations to protect workers' rights (Zengyi 2022). The research delves into issues such as algorithmic management (Veale, Silberman and Binns 2023; Kloostra 2021; Todolí-Signes 2021), insurance coverage for third-party damages (Andersen 2022), multiparty work

relationships (Rodríguez Cardo and Álvarez Alonso 2022; Munkholm 2022), and worker representation (Bertolini and Dukes 2022). Researchers critically assess existing laws and propose regulatory solutions to balance the flexibility platforms seek and the rights and security that platform workers deserve.

4 DISCUSSION

The rapid global proliferation of OLPs has transformed how work is organised and conducted. Scholars have shown a keen interest in investigating OLPs due to their transformative impact on traditional work arrangements and the complex interplay of technological, economic, and social factors.

The largest share of papers and evidence on OLPs comes from the US. This likely reflects the country's prominent role in technological innovation and its robust research ecosystem focused on the intersections of labour, technology, and digital entrepreneurship. It can be argued that a substantial share of papers in the sample come from the US and is closely linked to its extensive population of freelancers, fostering an environment conducive to an in-depth exploration and analysis of OLPs.

Scholars from the UK also play a substantial role in expanding the breadth of academic inquiry into OLPs. This can be attributed to the presence of advanced academic institutions, a strong research culture, and a thriving digital economy. This is evident in a European Commission publication highlighting the UK's highest incidence of platform work within the EU (Pesole et al. 2018). Collectively, these factors create a fertile ground for the comprehensive exploration and analysis of this developing field.

However, the swift expansion of OLPs has also brought about many challenges. Issues such as labour rights, worker protections, income, gender inequality, and the erosion of traditional employment structures have emerged as critical concerns. Additionally, questions regarding platform accountability, data privacy, and the potential for algorithmic biases in task allocation have garnered attention. As OLPs continue to reshape the global labour landscape, addressing these issues becomes imperative to ensure a fair and sustainable future of work in the digital age.

Drawing from a thorough examination of scholarly publications and the concerns arising from the rapid expansion of OLPs, this investigation posits potential avenues for future research agenda:

- Further research should explore the issue of earnings distribution, job insecurity, and precarious employment among workers on online platforms (Muntaner 2018) in more detail to shed light on whether and how the gig economy exacerbates uncertainties in the job market. By dissecting the implications of this research, scholars can provide insights into strategies to ensure more stable and secure working conditions.
- Further studies should comprehensively investigate regulatory approaches to safeguard workers' rights within the gig economy (Rosin 2022; Georgiou 2022). By assessing the feasibility and effectiveness of implementing measures such as fair treatment and minimum wages for gig workers and evaluating existing regulations, scholars can help identify gaps and shortcomings

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and formulate new models for governing OLPs. The research should also consider the responsibility of platforms in ensuring fair worker treatment in the digital economy.

- Future research agenda should focus on the relationship between digital platforms, algorithms, and workers (Bellesia, Mattarelli and Bertolotti 2022). This exploration could provide insight into how algorithmic control influences labour conditions and worker autonomy and demystify its role in shaping the future of work. With this in mind, special attention should be paid to the ethical considerations of algorithmic decision-making.
- Future studies should provide more evidence on the inclusivity dynamics within OLPs. By examining gender-based aspects of participation (Gerber 2022; Rodríguez-Modroño, Pesole and López-Igual 2022), earnings, and overall experiences within online gig work, researchers can uncover potential disparities and distinguish their drivers. Additionally, the investigation into the unique challenges faced by marginalised groups should be the focus of future scholarly attention (Webster and Zhang 2020; Riordan, Robinson and Hoffstaedter 2022). This research could highlight strategies to enhance inclusivity, equity, and representation within the digital labour landscape and help create regulatory frameworks and policies to foster a more inclusive future of work.
- The forthcoming research agenda should include the examination of online platform workers' potential to leverage collective power in shaping labour conditions (Mendonça and Kougiannou 2022). This research agenda should focus on illuminating innovative models of collective action that can empower online platform workers to voice their concerns, advocate for fair treatment, and contribute to the ongoing discourse surrounding labour rights and platform governance.
- Another avenue for further research includes additional development of subtopics within the OLP studies, including labour economics, technology and computer science, sociology and ethics of work, law and policy, psychology, geography and labour force migrations, and business management.

Our study's findings contribute to advancing scholarly knowledge in the domain of OLPs. Within this thriving field of research, research interest is steadily increasing due to the growing flexibility and mobility of labour practices. While this study holds potential value for several stakeholders, its most significant implications are for researchers specialising in public industrial relations and labour, management, economics, sociology, and law.

The findings of this study clear up the path for further investigations into OLPs. However, the bibliometric methodology used in this study has several potential limitations. Firstly, the use of comprehensive research phrases to produce articles on OLPs narrows the scope of this study. Further studies can horizontally extend research phrases to encompass specific topics related to the future of OLPs, such as automation, niche platforms, digital identities, labour rights, economic policies of labour platforms, education, upskilling, and many others. Secondly, the use of the Web of Science data-

base restricts access to other quality publications (i.e., from the field of computer science) that are not included in this database. Further studies should consider integrating publications from Scopus, Crossref, various preprint databases, and Google Scholar. Finally, this bibliometric study has only considered publications in English, thus limiting the findings to a global context.

5 CONCLUSION

OLPs have attracted significant scholarly attention in the last few years, with a gradual increase in the number of papers published on this topic. Nonetheless, the overall volume of such publications is still in its early stages.

The future scope of research into OLPs holds substantial promise for further exploration and understanding. As these platforms continue to reshape the global labour landscape, several key avenues warrant investigation. The evolving nature of work relationships and the legal classification of platform workers as independent contractors or employees is an essential area for deeper analysis. Additionally, the impact of algorithms and artificial intelligence on task allocation, worker earnings, and platform dynamics remains a critical research focus. Examining worker well-being, job satisfaction, and the potential for social isolation within the gig economy ecosystem offers another dimension for exploration.

Furthermore, the study of regulatory frameworks, their effectiveness in safeguarding labour rights, and the potential for cross-border collaboration in regulating platform work will continue to gain importance. Ethical considerations, such as data privacy, algorithmic fairness, and the potential to exacerbate income inequality, are fertile grounds for inquiry. In summary, future research in OLPs will explore multifaceted dimensions that shape the future of work, necessitating interdisciplinary collaboration and innovative methodologies to address the evolving challenges and opportunities within this dynamic field.

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REFERENCES

Andersen, M. L. B. (2022). Digital Platforms and Insurance Coverage of Damages on Third Parties. *European Review of Private Law*, 30(6), 999 – 1018. http://www.kluwerlawonline.com/api/Product/CitationPDFURL?file=Journals\ERPL\ERPL2022047.pdf

Batmunkh, A., Fekete-Farkas, M., & Lakner, Z. (2022). Bibliometric Analysis of Gig Economy. *Administrative Sciences*, 12(2), 51. https://doi.org/10.3390/admsci12020051

Bellesia, F., Mattarelli, E. & Bertolotti, F. (2022). Algorithms and their Affordances: How Crowdworkers Manage Algorithmic Scores in Online Labour Markets. *Journal of Management Studies,* 60(1), 1–37. https://doi.org/10.1111/joms.12870

Bergvall-Kåreborn, B., & Howcroft, D. (2014). Amazon Mechanical Turk and the commodification of labour. *New Technology, Work and Employment*, 29(3), 213–223. https://doi.org/10.1111/ntwe.12038

Bertolini, A. & Dukes, R. (2021). Trade Unions and Platform Workers in the UK: Worker Representation in the Shadow of the Law. *Industrial Law Journal*, 50(4), 662–688. https://doi.org/10.1093/indlaw/dwab022

Boateng, R., Penu, O. K. A., Anning-Dorson, T., & Budu, J. (2022). Fairness in the Platform Economy: A Bibliometric Analysis of Journal Research Articles. *Digital Innovations, Business and Society in Africa*, 253–280. https://doi.org/10.1007/978-3-030-77987-0_12

Burtch, G., Carnahan, S., & Greenwood, B. N. (2016). Can You Gig it? An Empirical Examination of the Gig-Economy and Entrepreneurial Activity (March 7, 2016). *Ross School of Business Paper No. 1308*, https://ssrn.com/abstract=2744352 or http://dx.doi.org/10.2139/ssrn.2744352

Cantarella, M., & Strozzi, C. (2021). Workers in the crowd: the labor market impact of the online platform economy. *Industrial and Corporate Change*, 30(6), 1429–1458. https://doi.org/10.1093/icc/dtab022

Cini, L. (2023). How algorithms are reshaping the exploitation of labour-power: insights into the process of labour invisibilization in the platform economy. *Theory and Society*. https://doi.org/10.1007/s11186-023-09520-9

Datta, N., Chen, R., Singh, S., Stinshoff, C., Iacob, N., Nigatu, N. S., Nxumalo, M., Klimaviciute, L., & et al. (2023). Working without Borders: The Promise and Peril of Online Gig Work. World Bank, Washington, DC. https://openknowledge.worldbank.org/entities/publication/ebc4a7e2-85c6-467b-8713-e2d77e954c6c

Donthu, N., Kumar, S., Mukherjee, D., Pandey, N., & Lim, W. M. (2021). How to conduct a bibliometric analysis: An overview and guidelines. *Journal of Business Research*, 133, 285–296. https://doi.org/10.1016/j.jbusres.2021.04.070

Duggan, J., Sherman, U., Carbery, R., & McDonnell, A. (2019). Algorithmic management and app-work in the gig economy: A research agenda for employment relations and HRM. *Human Resource Management Journal,* 2019, 1–19. https://doi.org/10.1111/1748-8583.12258

Dunn, M., Munoz, I., & Sawyer, S. (2021). Gender Differences and Lost Flexibility in Online Freelancing During the COVID-19 Pandemic. *Frontiers in Sociology*. 6:738024. https://doi.org/10.3389/fsoc.2021.738024

Elkhwesky, Z. (2022). A systematic and major review of proactive environmental strategies in hospitality and tourism: Looking back for moving forward. *Business Strategy and the Environment*, 31(7), 3274–3301. Portico. https://doi.org/10.1002/bse.3076

Elkhwesky, Z., Salem, I. E., Ramkissoon, H., & Castañeda-García, J.-A. (2022). A systematic and critical review of leadership styles in contemporary hospitality: a roadmap and a call for

future research. *International Journal of Contemporary Hospitality Management*, 34(5), 1925–1958. https://doi.org/10.1108/ijchm-09-2021-1128

Ellegaard, O., & Wallin, J. A. (2015). The bibliometric analysis of scholarly production: How great is the impact? *Scientometrics*, 105(3), 1809–1831. https://doi.org/10.1007/s11192-015-1645-z

Ettlinger, N. (2017). Paradoxes, problems and potentialities of online work platforms. *Work Organisation, Labour and Globalisation*, 11(2). https://doi.org/10.13169/workorgalaboglob.11.2.0021

Fieseler, C., Bucher, E., & Hoffmann, C. P. (2017). Unfairness by Design? The Perceived Fairness of Digital Labor on Crowdworking Platforms. *Journal of Business Ethics*, 156(4), 987–1005. https://doi.org/10.1007/s10551-017-3607-2

Fu, X., Avenyo, E., & Ghauri, P. (2021). Digital platforms and development: a survey of the literature. *Innovation and Development*, 11(2–3), 303–321. https://doi.org/10.1080/2157930x.2021.1975361

Galperin, H., & Greppi, C. (2017). Geographical Discrimination in Digital Labor Platforms. *SSRN Electronic Journal*. https://doi.org/10.2139/ssrn.2922874

Georgiou, D. (2022). The new EU Directive on Transparent and Predictable Working Conditions in the context of new forms of employment. *European Journal of Industrial Relations*, 28(2), 193–210. https://doi.org/10.1177/09596801211043717

Gerber, C. (2022). Gender and precarity in platform work: Old inequalities in the new world of work. New Technology, Work and Employment, 37(2), 206–230. https://doi.org/10.1111/ntwe.12233

Graham, M., Hjorth, I., & Lehdonvirta, V. (2017). Digital labour and development: impacts of global digital labour platforms and the gig economy on worker livelihoods. Transfer: European Review of Labour and Research, 23(2), 135–162. https://doi.org/10.1177/1024258916687250

GVR (2023). Freelance Platforms Market Size, Share & Trends Analysis Report By Component (Platform, Services), By End-user, By Application (Web & Graphic Design, Project Management), By Region, And Segment Forecasts, 2023 – 2030. Available at: https://www.grandviewresearch.com/industry-analysis/freelance-platforms-market-report/toc, last accessed: 03.10.2023.

Haidar, J. (2022). The multidimensional configuration of platform work: A mixed-methods analysis of the Argentinian case. *Economic and Industrial Democracy*, 0(0). https://doi.org/10.1177/0143831X221099663

International Labour Organization. (2021). Digital Platforms and the World of Work in G20 Countries: Status and Policy Action. https://www.ilo.org/

IPSE. (2022). *The Self-Employed Landscape Report 2022*. https://www.ipse.co.uk/policy/research/the-self-employed-landscape/self-employed-landscape-report-2022.html

Kässi, O., & Lehdonvirta, V. (2018). Online labour index: Measuring the online gig economy for policy and research. *Technological Forecasting and Social Change*, 137, 241–248. https://doi.org/10.1016/j.techfore.2018.07.056

Kässi, O., Lehdonvirta, V., & Stephany, F. (2021). How Many Online Workers are there in the World? A Data-Driven Assessment. https://doi.org/10.31235/osf.io/78nge; https://open-research-europe.ec.europa.eu/

Kloostra, J. (2022). Algorithmic pricing: A concern for platform workers? *European Labour Law Journal*, 13(1), 108–126. https://doi.org/10.1177/20319525211060360

Kuek, S. C., Paradi-Guilford, C., Fayomi, T., Imaizumi, S., Ipeirotis, P., Pina, P., & Singh, M. (2015). The global opportunity in online outsourcing. *World Bank, Washington, DC.* http://hdl.handle.net/10986/22284

Kuhn, K. M., & Maleki, A. (2017). Micro-entrepreneurs, Dependent Contractors, and Instaserfs: Understanding Online Labor Platform Workforces. *Academy of Management Perspectives*, 31(3), 183–200. https://doi.org/10.5465/amp.2015.0111

Kullmann, M. (2018). Platform Work, Algorithmic Decision-Making, and EU Gender Equality Law. *International Journal of Comparative Labour Law and Industrial Relations*, 34(1), 1–21. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3195728

Lehdonvirta, V. (2021). Flexibility in the Gig Economy: Managing Time on Three Online Piecework Platforms. *New Technology, Work and Employment*, 33(1), 13–29. https://doi.org/10.31235/osf.io/k3hy4

Li, Z., & Qi, H. (2023). The Profitability Puzzle of Digital Labor Platforms. *Review of Radical Political Economics*, 0(0). https://doi.org/10.1177/04866134231183213

Maffie, M. D. (2020). Are we "sharing" or "gig-ing"? A classification system for online platforms. *Industrial Relations Journal*, 51(6), 536–555. https://doi.org/10.1111/irj.12312

Maffie, M. D. (2023). Visible hands: How gig companies shape workers' exposure to market risk. *Industrial Relations: A Journal of Economy and Society*, 00(0), 1–21. https://doi.org/10.1111/irel.12337

Marzouk, M., & Elshaboury, N. (2022). Science mapping analysis of embodied energy in the construction industry. *Energy Reports*, 8, 1362–1376. https://doi.org/10.1016/j.egyr.2021.12.049

Meijerink, J., Keegan, A., & Bondarouk, T. (2023). Having their cake and eating it too? Online labor platforms and human resource management as a case of institutional complexity. *Technologically Mediated Human Resource Management*, 22–58. https://doi.org/10.4324/9781003388203-2

Mendonça, P., & Kougiannou, N.K. (2022). Disconnecting labour: The impact of intraplatform algorithmic changes on the labour process and workers' capacity to organise collectively. *New Technology, Work and Employment*, 38(1), 1–20. https://doi.org/10.1111/ntwe.12251

Milkman, R., Elliott-Negri, L., Griesbach, K., & Reich, A. (2021). Gender, Class, and the Gig Economy: The Case of Platform-Based Food Delivery. *Critical Sociology*, 47(3), 357–372. https://doi.org/10.1177/0896920520949631

Milosavljević, M., Spasenić, Ž., & Krivokapić, J. (2023). Bibliometric Review of Participatory Budgeting: Current Status and Future Research Agenda. *International Journal of Financial Studies*, 11(3), 104. https://doi.org/10.3390/ijfs11030104

Milosavljević, M., Spasenić, Ž., & Damnjanović, V. (2022). Bibliometric Survey on Microfinance for the SMEE Sector. *Lecture Notes in Networks and Systems*, 430–444. https://doi.org/10.1007/978-3-031-18645-5_27

Molina-Collado, A., Santos-Vijande, M. L., Gómez-Rico, M., & Madera, J. M. (2022). Sustainability in hospitality and tourism: a review of key research topics from 1994 to 2020. *International Journal of Contemporary Hospitality Management*, 34(8), 3029–3064. https://doi.org/10.1108/ijchm-10-2021-1305

Morgan, R. A., van Zoonen, W., & ter Hoeven, C. (2023). Lost in the crowd? An investigation into where microwork is conducted and classifying worker types. *European Journal of Industrial Relations*, 29(3), 301–322. https://doi.org/10.1177/09596801231171997

Munkholm, N. V. (2022). Multiparty work relationships in Denmark: The active role of social partners. *European Labour Law Journal*, 13(4), 515–529. https://doi.org/10.1177/20319525221131184

Muntaner, C. (2018). Digital Platforms, Gig Economy, Precarious Employment, and the Invisible Hand of Social Class. *International Journal of Health Services*, 48(4), 597–600. https://doi.org/10.1177/0020731418801413

Muszyński, K., Pulignano, V., Domecka, M., & Mrozowicki, A. (2021). Coping with precarity during COVID-19: A study of platform work in Poland. *International Labour Review*, 161(3), 463–485. https://doi.org/10.1111/ilr.12224

Nguyen, M.-H., Nguyen, H. T. T., Le, T.-T., Luong, A.-P., & Vuong, Q.-H. (2021). Gender issues in family business research: A bibliometric scoping review. *Journal of Asian Business and Economic Studies*, 29(3), 166–188. https://doi.org/10.1108/jabes-01-2021-0014

Nilsen, M., Kongsvik, T., & Antonsen, S. (2022). Taming Proteus: Challenges for Risk Regulation of Powerful Digital Labor Platforms. *International Journal of Environmental Research and Public Health*, 19(10), 6196. https://doi.org/10.3390/ijerph19106196

Online Labour Index. (2021, February 26). *Getting a big update: sneak preview* [Blog post]. Fabian Stephany. https://blog.oii.ox.ac.uk/2021/02/26/online-labour-index-getting-a-big-update-sneak-preview/

Oxford Internet Institute. University of Oxford. (2021). *The iLabour Project: Investigating the Construction of Labour Markets, Institutions and Movements on the Internet*. https://ilabour.oii.ox.ac.uk/onlinelabourindex2020/

Payoneer Blog. (2023, March 7). *Payoneer's List of the Top Freelancing Countries* [Blog post]. Richard Clayton. https://blog.payoneer.com/freelancers/top-10-freelancing-countries/amp/

Pesole, A., Brancati, U., Fernández-Macías, E., Biagi, F., & González Vázquez, I. (2018). Platform workers in Europe. *Luxembourg: Publications Office of the European Union*. https://publications.jrc.ec.europa.eu/repository/handle/JRC112157

Radonic, M., Vukmirovic, V., & Milosavljevic, M. (2021). The Impact of Hybrid Workplace Models on Intangible Assets: The Case of an Emerging Country, *Amfiteatru Economic*, 23(58), 770. https://doi.org/10.24818/ea/2021/58/770

Ren, J., Raghupathi, V., & Raghupathi, W. (2023). Exploring Influential Factors in Hiring Freelancers in Online Labor Platforms: An Empirical Study. *Economies*, 11(3), 80. https://doi.org/10.3390/economies11030080

Riordan, T., Robinson, R. N. S., & Hoffstaedter, G. (2022). Seeking justice beyond the platform economy: migrant workers navigating precarious lives. *Journal of Sustainable Tourism*, 31(12), 2734–2751. https://doi.org/10.1080/09669582.2022.2136189

Rodríguez Cardo, I., & Álvarez Alonso, D. (2022). Multiparty work relationships in Spain: Legal provisions and emerging trends. *European Labour Law Journal*, 13(4), 492–514. https://doi.org/10.1177/20319525221131174

Rodríguez-Modroño, P., Pesole, A., & López-Igual, P. (2022). Assessing gender inequality in digital labour platforms in Europe. Internet Policy Review, 11(1). https://doi.org/10.14763/2022.1.1622

Rodríguez-Modroño, P., Agenjo-Calderón, A., & López-Igual, P. (2023). A Feminist Political Economic Analysis of Platform Capitalism in the Care Sector. *Review of Radical Political Economics*, 0(0). https://doi.org/10.1177/04866134231184235

Rosin, A. (2022). Towards a European Employment Status: The EU Proposal for a Directive on Improving Working Conditions in Platform Work. *Industrial Law Journal*, 51(2), 478–493. https://doi.org/10.1093/indlaw/dwac011

Salter, L. A., & Dutta, M. J. (2023). The algorithmic big Other: using Lacanian theory to rethink control and resistance in platform work. *Distinktion: Journal of Social Theory,* 0(0). https://doi.org/10.1080/1600910X.2023.2224521

Schor, J. B., Attwood-Charles, W., Cansoy, M., Ladegaard, I., & Wengronowitz, R. (2020). Dependence and precarity in the platform economy. *Theory and Society,* 49, 833–861. https://doi.org/10.1007/s11186-020-09408-y

Sloth Laursen, C., Nielsen, M. L., & Dyreborg, J. (2021). Young Workers on Digital Labor Platforms: Uncovering the Double Autonomy Paradox. *Nordic Journal of Working Life Studies*. https://doi.org/10.18291/njwls.127867

Spasenic, Z., Milosavljevic, M., & Milanovic, N. (2022). Project financing of renewable energy projects a bibliometric analysis and future research agenda. *Fresenius Environmental Bulletin*, 31(8), 7844–7851.

Sutherland, W., Jarrahi, M. H., Dunn, M., & Nelson, S. B. (2020). Work Precarity and Gig Literacies in Online Freelancing. *Work, Employment and Society*, 34(3), 457–475. https://doi.org/10.1177/0950017019886511

Tadelis, S. (2016). Reputation and Feedback Systems in Online Platform Markets. Annual Review of Economics, 8(1), 321–340. https://doi.org/10.1146/annurev-economics-080315-015325

Tao, H., Zhuang, S., Xue, R., Cao, W., Tian, J., & Shan, Y. (2022). Environmental Finance: An Interdisciplinary Review. Technological Forecasting and Social Change, 179, 121639. https://doi.org/10.1016/j.techfore.2022.121639

Todolí-Signes, A. (2021). Spanish riders law and the right to be informed about the algorithm. *European Labour Law Journal*, 12(3), 399–402. https://doi.org/10.1177/20319525211038327

Unni, J. (2023). Platforms and Shared Economy: Precarity of Work or Building Agency? *The Indian Journal of Labour Economics*, 66, 355–370. https://doi.org/10.1007/s41027-023-00435-8

Upwork. (2022). *Freelance Forward 2022*. https://www.upwork.com/research/freelance-forward-2022

Vallas, S., & Schor, J. B. (2020). What Do Platforms Do? Understanding the Gig Economy. Annual Review of Sociology, 46(1), 273–294. https://doi.org/10.1146/annurev-soc-121919-054857

van Eck, N. J., & Waltman, L. (2009). Software survey: VOSviewer, a computer program for bibliometric mapping. *Scientometrics*, 84(2), 523–538. https://doi.org/10.1007/s11192-009-0146-3

Veale, M., Silberman 'Six', M., & Binns, R. (2023). Fortifying the algorithmic management provisions in the proposed Platform Work Directive. *European Labour Law Journal*, 14(2), 308–332. https://doi.org/10.1177/20319525231167983

Vieira, T. (2023). The Unbearable Precarity of Pursuing Freedom: A Critical Overview of the Spanish sí soy autónomo Movement. *Sociological Research Online*, 28(1), 244–260. https://doi.org/10.1177/13607804211040090

Wang, J., Li, X., Wang, P., & Liu, Q. (2022). Bibliometric analysis of digital twin literature: a review of influencing factors and conceptual structure. *Technology Analysis & Strategic Management*, 1–15. https://doi.org/10.1080/09537325.2022.2026320

Webster, N.A., & Zhang, Q. (2020). Careers Delivered from the Kitchen? Immigrant Women Small-scale Entrepreneurs Working in the Growing Nordic Platform Economy. *NORA – Nordic Journal of Feminist and Gender Research*, 28(2), 113–125. https://doi.org/10.1080/08038740.2020.1714725

Wood, A. J., & Lehdonvirta, V. (2022). Platforms Disrupting Reputation: Precarity and Recognition Struggles in the Remote Gig Economy. *Sociology*, 0(0). https://doi.org/10.1177/00380385221126804

Wood, A. J., Graham, M., Lehdonvirta, V., & Hjorth, I. (2018). Good Gig, Bad Gig: Autonomy and Algorithmic Control in the Global Gig Economy. *Work, Employment and Society*, 33(1), 56–75. https://doi.org/10.1177/0950017018785616

Wood, A. J., Lehdonvirta, V., & Graham, M. (2018). Workers of the Internet unite? Online freelancer organisation among remote gig economy workers in six Asian and African countries. *New Technology, Work and Employment*, 33(2), 95–112. https://doi.org/10.1111/ntwe.12112

Xia, Y., Lv, G., Wang, H., & Ding, L. (2023). Evolution of digital economy research: A bibliometric analysis. *International Review of Economics & Finance*, 88, 1151–1172. https://doi.org/10.1016/j.iref.2023.07.051

Yao, Q. (Missy), Baker, L. T., & Lohrke, F. T. (2022). Building and sustaining trust in remote work by platform-dependent entrepreneurs on digital labor platforms: Toward an integrative framework. *Journal of Business Research*, 149, 327–339. https://doi.org/10.1016/j.jbusres.2022.05.046

Zengyi, X. (2022). Labour Protection of Platform Workers in China: Legal Innovations and Emerging Trends. *Industrial Law Journal,* 51(4), 831–854. https://doi.org/10.1093/indlaw/dwac029

Zhang, L., Ling, J., & Lin, M. (2022). Artificial intelligence in renewable energy: A comprehensive bibliometric analysis. Energy Reports, 8, 14072–14088. https://doi.org/10.1016/j.egyr.2022.10.347

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Bibliometrijska analiza i pravci budućih istraživanja u oblasti onlajn platformi za rad

SAŽETAK

Pojava onlajn platformi za rad je preoblikovala postojeće radne prakse, obezbeđujući digitalno tržište koje povezuje nezavisne izvođače sa kratkoročnim potrebama za radnom snagom. Ovo istraživanje predstavlja opsežnu bibliometrijsku analizu novonastalog korpusa znanja u oblasti onlajn platformi za rad, ukazujući na višestruke pristupe u istraživanju ovog novog oblika rada u različitim akademskim disciplinama. Sa skupom podataka koji se sastoji od 358 radova objavljenih između 2013. godine i avgusta 2023. godine, ova studija ukazuje na ključne trendove, geografsku distribuciju i naučna interesovanja koja karakterišu istraživanje u oblasti onlajn platformi za rad. Analiza otkriva konzistentan rast pažnje naučnika prema onlajn platformama za rad u toku posmatranog perioda, odražavajući brzu globalnu ekspanziju ovih platformi. Rezultati analize prostorne distribucije naučnih istraživanja nisu u skladu sa obimom korišćenja onlajn platformi za rad u različitim zemljama, što ukazuje na uticaj različitih kontekstualnih faktora na istraživački interes. Studija otkriva širok spektar akademskih disciplina koje se bave istraživanjem onlajn platformi za rad, uključujući industrijske odnose i rad, menadžment, ekonomiju, sociologiju, pravo i računarske nauke. Ovaj interdisciplinarni pristup naglašava uticaj onlajn platformi za rad na tradicionalne radne angažmane, podstičući istraživanja o kompleksnoj interakciji tehnologije, ekonomije i društvenih aspekata. Analizirajući uvide iz naučnih publikacija i evoluirajuće izazove koje postavljaju onlajn platforme za rad, studija predlaže kritične pravce za buduća istraživanja. Raspodela zarade, nesigurnost posla i regulatorni pristupi za zaštitu prava radnika u okviru gig ekonomije identifikovani su kao ključne oblasti za buduća istraživanja. Pored toga, odnos između digitalnih platformi, algoritama i iskustva radnika, kao i dinamika inkluzivnosti unutar onlajn platformi za rad, zahtevaju dodatnu pažnju istraživača. Potencijal radnika na onlajn platformama da iskoriste kolektivnu moć u oblikovanju uslova rada takođe se izdvaja kao jedan od budućih pravaca istraživanja. Dok nalazi ove studije doprinose postojećem korpusu saznanja o onlajn platformama za rad, metodologija sadrži izvesna ograničenja. Oslanjanje na specifične ključne reči prilikom sprovođenja bibliometrijske analize može ograničiti obuhvat radova, što ukazuje na potencijal za uključivanje većeg broja ključnih reči. Uključivanje publikacija iz različitih baza podataka i na različitim jezicima može obezbediti sveobuhvatniju analizu. Bez obzira na navedena ograničenja, ova studija pruža ključnu osnovu za buduće istraživačke poduhvate u oblasti onlajn platformi za rad. Ovim radom se naglašava potreba za suočavanjem sa brojnim izazovima koje postavljaju onlajn platforme za rad, a istovremeno najavljuje transformativni potencijal ovih platformi u oblikovanju budućnosti rada u digitalnoj eri. Kako onlajn platforme za rad nastavljaju da se razvijaju, interdisciplinarna istraživanja su imperativ u informisanju o pravičnim i održivim radnim praksama.

KLJUČNE REČI

onlajn platforme za rad, gig ekonomija, bibliometrijska analiza, sistematski pregled literature, VOSViewer

Osvrti i komentari

Reviews and reflections

Ljubinka Kovačević, Dragica Vujadinović & Marco Evola (Editors)

Ukrštena diskriminacija žena i devojčica sa invaliditetom i instrumenti za njihovo osnaživanje

Univerzitet u Beogradu Pravni fakultet, 2022, 955 str.

U zborniku „Ukrštena diskriminacija žena i devojčica sa invaliditetom i instrumenti za njihovo osnaživanje" iz 2022. godine, u izdanju Pravnog fakulteta USnverziteta u Beogradu, publikovan je impresivan broj (čak 39) radova domaćih i stranih naučnika i istraživača koji su ovom zanemarenom društvenom problemu pristupali iz perspektive različitih grana pravne i socološke nauke, te socijalne politike. Urednici zbornika prof. dr Dragica Vukadinović, prof. dr Ljubinka Kovačević i prof. dr Marko Evola čitaoca već u Predgovoru upoznaju sa konceptom teorije intersekcionalnosti unutar kojeg su autori razmatrali ukršteno djelovanje različitih izvora diskrminacije i kršenja prava žena i djevojčica sa invaliditetom. Nadalje, autori se ne zadržavaju isključivo na konstatovanju sistemske diskriminacije žena i djevojčica sa invaliditetom, već idu korak dalje. Iznose niz kritika na račun javnih politika, propisa i mjera koji regulišu pitanje invaliditeta, diskriminacije i rodne ravnopravnosti, kao i predloge za unapređenje prava osoba sa invaliditetom.

Već u prvom tekstu prvog poglavlja, Dragica Vujadinović konstatuje da se krši premisa o tome da invaliditet ne čini osnovu za razlikovanje ljudi u pogledu mogućnosti da uživaju ljudska prava. Naime, i pored praktičnih nastojanja da se ovakva praksa prevaziđe, žene s invaliditetom (u većoj mjeri nego muškarci) suočavaju se sa diskriminacijom u javnoj sferi – u domenu ekonomije, privatnom životu. Autorka ističe da je *dati glas* osobama sa invaliditetom jedan od načina za poboljšanje njihovog položaja. Od presudne je važnosti da sami artikulišu svoje potrebe, *progovore* o svojim mogućnostima. Naravno, ne smijemo zaboraviti da postoji još jedan uslov za moguću kvalitativnu promjenu – Drugi (javnost, donosioci praktičnih politika, propisa i mjera) morao bi biti raspoložen da ih čuje i sa njima otvori dijalog. Sličan, kritički ton pronalazimo i u narednom tekstu kojeg potpisuje Ivana Grgurev. Baveći se EU kao „važnim igračem u zaštiti osnovnih ljudskih prava", konstatuje da legislativa država članica ne prepoznaje intersekcionalnu diskriminaciju žena u različitim sferama društvenog života. Analizirajući slučajeve diskriminacije u domenu prava na rad koji su se našli pred Sudom pravde EU, Grgurev zaključuje da su presude nedosljedne i da je nerijetko odsutan

jasan konceptualni okvir (npr. primjenjuju se različite definicije invaliditeta). Marko Reljanović fokus stavlja na intersekcionalnu diskriminaciju u pristupu obrazovanju i zapošljavanju žena sa invaliditetom. Uz opravdano isticanje da žene s invaliditetom predstavljaju heterogenu grupu, autor iznosi niz predloga za smanjenje diskriminacije, počev od prepoznavanja i umrežavanja različitih društvenih aktera, preko primjene mjera koje su se u praksi pokazale kao korisne, do osmišljavanja i praćenja pokazatelja napretka u ovoj oblasti. Damjan Tatić evaluira primjenu preporuka Komiteta za prava osoba sa invaliditetom u Republici Srbiji. Navodi da je došlo do izvjesnog napretka: od prepoznavanja rizika od višestruke i intersekcionalne diskriminacije žena sa invaliditetom u strateškim dokumentima, do pomaka u praksi (npr. u domenu zapošljavanja). Valentina Gennadyevna Mirkina u svom tekstu razmatra kako višestruka diskriminacija ometa osobe ženskog pola sa invaliditetom u uživanju ljudskih prava. Mirkina se osvrće na prava rješenja i praksu u pojedinim državama, uključujući Rusku Federaciju, prepoznaje ključne aspekte diskriminacije i identifikuje dobre prakse koje diskriminaciju, npr. u domenu zapošljavanja, mogu ublažiti. Ljubomir Tintor dovodi u neposrednu vezu diskriminaciju žena sa invaliditetom i zaštitu životne sredine, podvlačeći da su upravo one u ekološkim migracijama izložene mnogostrukim vidovima diskriminacije. Osim toga, ovaj nas autor upoznaje i sa zabrinjavajućom činjenicom da su žene sa invaliditetom kategorija koja nije vidljiva u međunarodnim pravnim okvirima. U sljedećem koautorskom radu Bojan Stojanović, Bogdan Krasić i Zoran T. Stojanović daju predgled definicija i prava različitih ranjivih grupa, s posebnim osvrtom na kontekst prisilnih migracija i skorije okončane pandemije kovid 19. Ivana Nikolić se u svom radu bavi izuzetno važnom temom čija je društvena relevantnost nažalost i dalje neupitna, zahvaljujući primarno neuspjehu međunarodnih pravnih normi koje nalažu zabranu prinudne sterilizacije djevojčica i žena sa invaliditetom. S pravom podsjeća da je nedoborovoljni pristanak na sterilizaciju ništa drugo do li nasilje i da ide ruku pod ruku sa uobičajenim predrasudama o neracionalnosti ovih žena. Nikolićeva analizira ključne razloge zbog kojih se njihova prinudna sterilizacija i nadalje sporovodi, i iznosi niz korisnih predloga kako bi se moglo ovoj invazivnoj praksi stati na kraj. Vasilije Marković, posebnije se baveći konceptualnim određivanjem intersekcionalne diskriminacije, primjećuje dozu neodređenosti, i ističe stav da se nejasnoće u ovoj oblasti mogu prevazići u nekoj mjeri upoređivanjem sudskih slučajeva. Milica Midžović posebnije razrađuje temu vezanu za pravo na pristup sudu osoba sa invaliditetom u našem domaćem zakonodavstvu. Identifikuje ključne probleme sa kojima se suočavaju naročito žene sa invaliditetom, a potom se kritički osvrće i na neka od obilježja našeg pravosudnog sistema koja stoje na putu primjene antidiskriminacionih zakona. Osim toga, Midžović uočava da je slaba informisanost o mogućnosti da zaštite svoje pravo na ravnopravnost jedan od faktora zbog kojih su osobe sa invaliditetom podložne diskriminaciji.

Naredno poglavlje posvećeno je pitanjima iz domena građanskog i porodičnog prava. Katarina Dolović Bojić i Snežana Dabić Nikićević otvaraju niz dilema koje se tiču ustanove lišenja poslovne sposobnosti. Čitalac može da se obavijesti o odredbama koje uređuju lišenje poslovne sposobnosti, a autorka

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se bavi i onim što vidimo kao etičke dileme: da li lišenje poslovne sposobnosti predstavlja diskriminaciju, da li bi ukidanje ovakvog instituta dovelo do poboljšanja položaja osoba sa invaliditetom? Dolović Bojić i Dabić Nikićević iznose niz argumenata kojima se protive konceptu prema kojem bi sva odrasla lica treba da budu poslovno sposobna, i tvrde da ukidanje poslovne sposobnosti predstvalja način da se spriječi diskriminacija osoba sa invaliditetom. Uroš Novaković fokus svog izlaganja stavlja na nasilje nad ženama sa invaliditetom u porodičnom i radnom okruženju, te u okviru ustanova socijalne zaštite. Ističe da je vulnerabilnost na nasilje u slučaju žena sa invaliditetom izrazita, a da su u naročito teškom položaju u pogledu mogućnosti da zaštite svoja prava one žene iz ove kategorije koje su lišene poslove sposobnosti. Osim toga, Novaković s pravom ističe da, izuzev kroz pravnu, ženama sa invaliditetom koje su vikitmizovane nasiljem mora biti pružena i sistemski podržana socijalna podrška.

Sljedeća cjelina posvećena je kompanijskom pravu. Već u prvom tekstu u ovom poglavlju, čiji je autor Nebojša Jovanović, otvara se dilema da li preduzeća čija je svrha profesionalna rehabilitacija i zapošljavanje osoba sa invaliditetom krše ustavno načelo ravnopravnosti učesnika na tržištu budući da po našem zakonu uživaju određene ekonomske povlastice. Kroz analizu sistema zapošljavanja osoba sa invaliditetom, s posebnim osvrtom na našu zemlju, autor odlučno odbacuje mogućnost da su ovakva preduzeća povlašćena. Naime, njihove se povlastice, kako Jovanović kaže, „potiru" zbog povećanih obaveza prema kategoriji lica koja zapošljavaju. Tijana Kovačević govori o socijalnim preduzećima kao o nužnoj stepenici zaštićenog zapošljavanja marginalizovanih grupa, uključujući i one sa invaliditetom. Autorka prepoznaje da, i pored niza prepreka koje stoje na putu razvoja socijalnih preduzeća (npr. manjak finansijskih sredstava, neadekvatna zakonska regulativa), zaštićeno zapošljavanje ima pozitivne ishode počev od pružanja ekonomske sigurnosti zaposlenima sa invaliditetom, preko njihovog osnaživanja i van ekonomske sfere, do kreiranja ukupne (pozitivne) društvene atmosfere i prihvatanja *drugačijih*.

Poglavlje o Radnom pravu i politici zapošljavanja otvara tekst Ljubinke Kovačević, koja ukazuje na prednosti i nedostatke intersekcionalnog pristupa diskriminaciji žena sa invalditetom pri ostvarivanju prava na rad. Uočava da intersekcionalnost ima kapacitet da poboljša položaj žena sa invaliditetom na tržištu rada i da ih zaštiti od diskriminacije, ali u isto vrijeme konstatuje da je ovaj koncept opterećen nizom metodoloških poteškoća, npr. analitičke kategorije nisu dovoljno jasno definisane a polemika između različitih autora se vodi oko toga da li ih treba ograničiti (npr. na pol, rasu, invaliditet) ili primjeniti kontekstualni pristup; takođe, nema dovoljno pouzdanih empirijskih istraživanja u ovom domenu. Lazar Jovevski, baveći se diskriminacijom žena sa invaliditetom u sferi zapošljavanja, čitaocu nudi na uvid kratak istorijski prikaz položaja žena sa invaliditetom na tržištu rada, prepoznaje da je u njihovom slučaju riječ o posebnom pravnom fenomenu koji bi mogao biti riješen kroz sistemsku inkluziju, ali se i dalje reguliše nizom specijalnih uredbi i akata. Autor se osvrće i na psihološke, sociološke i etičke aspekte diskriminacije po osnovu pola i invaliditeta, ukazuje na one međunarodne, evropske i nacionalne (Sjeverna Makedonija) pravne okvire koji su

imali/imaju značajan uticaj na smanjenje rodne nejednakosti i diskriminacije. Thais Guerrero Padrón nas upoznaje sa španskim pravnim rešenjima koja se tiču lica sa invaliditetom. Konstatuje da je, i pored postojeće pravne regulative koja ide u korak sa Konvencijom o pravima osoba sa invaliditetom, „nešto i dalje pogrešno". Tržište rada u ovoj zemlji obremenjeno je nizom strukturalnih poteškoća (visoka nezaposlenost, radna nesigurnost) koje naročito pogađaju žene sa invaliditetom. Stoga su one i nadalje suočene sa diskriminacijom u domenu prava na rad. Vanesa Hervías Parejo i Francisca Bernal Santamaría pred sebe postavljaju niz zadataka sa ciljem da ukažu na položaj mladih žena sa invaliditetom na tržištu rada uzevši u obzir ne samo specifične nejednakosti i diskriminaciju, već analiziraju domete afirmativnih mjera i inkluzivnih praksi koje bi trebalo da obezbjede njihovo ravnopravno učešće na tržištu rada. Isabel Ribes Moreno nastoji da odgovori na pitanje da li je diskriminacija žena sa invaliditetom po osnovu zarada mit ili ne? Podaci koje nam podastire autorka govore o tome da su ljudi sa invaliditetom češće uključeni u prekarni rad, kao i da je stopa njihove nezaposlenosti viša u poređenju sa osobama bez invaliditeta, s jedne strane. S druge, autorka podvlači da u Španiji, ali i u drugim članicima EU, nema dovoljno podataka o eventualnom rodnom jazu u zaradama zaposlenih. Smatra da bi transparentnost u ovom domenu, kao i razvijanje indikatora nejednakosti po osnovu zarada a s obzirom na invaliditet, mogla biti od značajne koristi u ostvarivanju prava na rad osoba sa invaliditetom. Valentina Franca i Andrijana Mitrić istražuju viktimizaciju žena i djevojaka sa invaliditetom od strane trećih lica na radnom mjestu. One se posebnije bave ovim fenomenom u kontekstu visokoškolskih ustanova u Sloveniji, primjećuju da su žene sa invaliditetom osjetljivije na nasilje od strane trećih lica, te predlažu da se ova oblast normativno uredi. U koautorskom radu, Tijana Ugarković i Marko Jović ističu ulogu sindikata u suzbijanju intersekcionalne diskriminacije žena sa invalditetom. Stoje na stavu da, iako ove organizacije nisu prepoznate u Konvenciji o pravima lica sa invaliditetom, one jesu važan faktor za uspostavljanje socijalnog dijaloga i veće i ravnopravnije participacije na tržištu rada. Mila Petrović analizira pravne regulative i iz njih ishodeće diskriminišuće prakse prema osobama sa različitim stepenom invaliditeta. Autorka zaključuje da su pravne praznine kojima se uređuje pitanje socijalnog osiguranja radnika čiji je trajni invaliditet nastupio kao posljedica povrijeda na radu ili profesionalne bolesti, podjednako kao i onih sa dijelom očuvanom sposobnošću za rad, izuzetne, i da se zahvaljujući njima, te nedovoljnoj efikasnosti sistema, produkuju društveno vulnerabilne grupe. Jovana Rajić Ćalić tretira pitanja rodne nejednakosti osoba sa invaliditetom u čijoj su osnovi predrasude o razlikama između muškaraca i žena koje utiču na njihove živote u ranom uzrastu. Autorka ne ostaje na ovim konstatacijama, već predlaže i niz praktičnih mjera koje bi mogle poboljšati položaj žena sa invaliditetom, uključujući i edukaciju nastavnika o odnosu roda i invaliditeta, te zapošljavanje žena sa invaliditetom kao nastavnog kadra. Mina Kuzminac osvjetljava problem kršenja radnih prava žena u slučaju trudnoće i materinjstva, posebno podvlačeći da su žene sa invaliditetom u posebnom riziku od gubitka posla tokom i nakon trudnoće. Kuzminac je stava da ovaj značajan problem ne može biti riješen na adekvatan način

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i pored svih pravnih normi i okvira čiji je cilj da se intersekcionalna diskriminacija ako ne ukine, a ono ublaži bez preuzimanja i poštovanja garancija radnih i socijalnih prava žena sa invalditetom.

U sljedećem poglavlju autori se bave socijalnim pravom i socijalnom politikom. Filip Bojić ukazuje na izazove socijalnog obezbjeđivanja žena sa invaliditetom u sistemu penzijskog i invalidskog osiguranja, a koji su dijelom prouzorkovani i *pravnim prazninama*. Ukazuje na etiologiju marginalizacije žena sa invaliditetom u sferi rada i na posljedice takvog socijalnog tretmana, te koristeći uporednopravni metod daje primjere pozitivnih pravnih okvira i praksi na međunarodom nivou, koji bi mogli biti primjenjivi i kod nas. Marija Dragićević daje opsežnu analizu prava lica zavisnih od tuđe njege i pomoći, i ukazuje na dobre strane i manjkavosti ovog sistema u praksi. Kao primarni nedostatak identifikuje fragmentaciju sistema, sugeriše da rješenja budu zasnovana na iskustvenoj provjeri, kao i da u njega budu inkoroporirani svi zainteresovani akteri. Sanja Stojković Zlatanović bavi se institutom porodičnog njegovatelja u našem društvu, ukazujući s jedne strane na neophodnost pravne regulative neformalne porodične njege koja kod nas ne postoji. S druge, autorka koristeći uporednopravni metod analizira pravna rješenja u Njemačkoj, Japanu i Švedskoj i iz njih proistekle dobre prakse, ukazujući da je u uslovima ekonomsko-socijalnog modela kapitalizma neophodno sistem socijalne sigurnosti podići na nivo održivog modela. To svakako nameće i potrebu da se rekonceptualizira institut neformalne porodične njege. Kristina Balnožan se takođe bavi temom neformalne porodične njege djevojčica i žena sa invaliditetom. Ukazuje kako je skorašnja pandemijska kriza skrenula pažnju na ulogu neformalnih njegovatelja, i predlaže niz mjera iz radnopravnog i socijalnopravnog domena kako bi se podigle njihove radne kompetencije i socijalna sigurnost, što uzev zajedno predstavlja zalogu očuvanja njihovog zdravlja budući da je njihov posao nerijetko emocionalno i na druge načine iscrpljujući.

Potom slijedi poglavlje posvećeno poreskom pravu i ekonomskoj analizi prava. Teresa Pontón Aricha u svom radu dotiče temu intersekcionale diskriminacije iz perspektive španskog poreskog sistema. Primjećuje da promjene u strukturi oporezivanja dovode do nejednakosti, kao i da normativni ovkir ne prepoznaje dvostruku diskriminaciju žena – po osnovu pola i invaliditeta. Lidija Živković temu poreskog sistema i žena sa invaliditetom razrađuje na primjeru naše zemlje. Na osnovu opsežne analize zaključuje da je poreska regulativa u R. Srbiji nedovoljno razvijena, a invaliditet se kao kategorija rijetko diskutuje u ovom domenu. Jovan Protić u svom radu nastoji da odgovori na pitanje da li je sistem kvota prilikom zapošljavanja lica sa invaliditetom efikasan. Autor smatra da se sistem pokazao kao ekonomski nedovoljno opravdan, da predstavlja još jedan parafiskalni teret za privatne preduzetnike koji zbog toga nisu dodatno motivisani da zapošljavaju osobe sa invaliditetom. Ipak, zaključuje da sve nije izgubljeno i daje predloge na koji način bi se sistem mogao unaprijediti.

Osmo poglavlje nosi naziv Krivično pravo i kriminologija. U prvom radu u ovom poglavlju Milan Škulić i Vanja Bajović pišu o položaju seksualno zlostavljanih žena sa invaliditetom u krivičnom zakonodavstvu i sudskoj praksi. Oni ukazuju na niz kontekstualnih faktora koji lica sa invaliditetom stavljaju u vulnerablinu poziciju kada je riječ o seksualnom

(i svim drugim oblicima) nasilja, konstatuju da je viktimizacija ovih lica učestala, ali da se ona relativno rijetko pojavljuju pred organima formalne socijalne kontrole kao žrtve, a potom se osvrću na postojeća normativna rješenja. Kazuju da pravni okviri zaštite od nasilja, uključujući i seksualno, ostavljaju prostor za poboljšanje, ali iznose zaključak sa kojim se moramo složiti – bez društvene, ekonomske i obrazovne inkluzije, a naročito društvene vidljivosti, pravna regulativa može malo šta da učini u pogledu zaštite osoba sa invaliditetom od nasilja. Sličnom temom – krivičnopravnom zaštitom žena i djevojčica sa invaliditetom – u svom radu bave se Nataša Mrvić Petrović i Dragan Obradović. Kao i Škulić i Bajović, i ovo dvoje autora ukazuju na potrebe za poboljšanjem krivičnopravnih rješenja, i ističu da kvalitativne promjene mogu da se dese isključivo onda kada se promijeni društveni odnos prema ženama sa invaliditetom. Aleksandar Stevanović istražuje diskriminatorno postupanje prema osobama s invaliditetom u sistemu krivičnog pravosuđa (u ulozi žrtve, ili izvršioca krivičnog djela). Konstatuje da je zakon uopšte, pa i krivični naravno, osmišljen da bude primjenjen na osobe koje se ne suočavaju sa izazovom invaliditeta. Stoga Stevanović apeluje da se ne samo iz razloga humanosti, već i činjenice da su ljudi sa invalditetom najveća manjinska grupa globalno gledano, njihov položaj pred krivičnim pravom poboljša.

Slijedi poglavlje pod nazivom Pravo i religija. Ono sadrži samo jedan, ali veoma informativan i opsežan tekst Branka Rakića o položaju žena i osoba sa invaliditetom u avramovskim religijama. Autor ukazuje na različit položaj muškarca i žena u judaizmu, hrišćanstvu i islamu, ali u isto vrijeme konstatuje da se takva pravila i prakse ne mogu smatrati diskriminatornim iz ugla modernih pravih pravila jer bi se u tom slučaju kosila sa pravom čovjeka na religijsko vjerovanje. Rakić uočava da u osnovi ove tri vjere stoji ljubav, milosrđe i jednakost, ali da se žene i osobe sa invaliditetom posmatraju kao *ne-ravne* ostalima. Autor cijeni da je takav odnos prema ove dvije kategorije diskriminisanih nastao iz pogrešnog tumačenja svetih spisa. Po toj, nategnutoj interpretaciji žene su (ostale) krive za izgon iz Raja, kao što je uostalom i invaliditet kazna za grešnike. Obe kategorije se zbog toga percipiraju kao inferiorne u pomenutim religijama, mada avramovske religije propagiraju sasvim drugačije vrijednosti.

Posljednje poglavlje ovog obimnog zbornika posvećeno je sociološkoj perspektivi. U prvom tekstu u ovom poglavlju Gordana Rajkov i Sanja Nikolin istražuju izuzetno važnu temu o političkom učešću žena sa invaliditetom u našoj zemlji u kontekstu pandemije. Konstatuju da su se marginalizovane grupe tokom pandemije suočavale sa intenzivnijom socijalnom izolacijom i povećanom diskriminacijom, a istraživanje koje su sprovele autorke na uzorku osoba sa invaliditetom (N=52) pokazalo je da je njihovo učešće u biračkom procesu koji je upriličen tokom trajanja pandemije bilo niže nego inače. Osim toga, Rajkov i Nikolin daju glas svojim respondentima sa kojima su diskutovale o predlozima povećanja inkluzivnosti izbornog procesa. Mila Đorđević otvara još jednu zanimljivu i društveno veoma aktuelnu temu koju možemo reframirati u formi pitanja: u kojoj mjeri gradski prostori pripadaju ženama sa invaliditetom? Polazi se od feminističke perspektive koja postulira ideju da prostorno pomjeranje obezbjeđuje pristup resursima, da je javna sfera zatvorenija za žene i da su one opterećene geografijom straha –

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nesigurnošću koja proističe iz njihovog subordinisanog položaja. Takav je slučaj naročito sa ženama sa invaliditetom jer se suočavaju sa mnogostrukim fizičkim i barijerama druge vrste koje onemogućavaju da ravnopravno učestvuju u političkom i socijalnim životu grada. Na kraju, Đorđević skreće pažnju na legislativna rješenja u okviru EU i u našoj zemlji koja su, kako smatra, važna ali sama po sebi nedovoljna za socijalnu intregaciju žena sa invaliditetom. Filip Mirić ukazuje na jedan od ključnih aspekata svakodnevice. Riječ je o komunikaciji. Budući da je čovjek socijalno biće, a da se ne-komunicirati ne može (jer je i ćutanje komunikacija, kako to lijepo kaže Hejli), Mirić u tekstu sa čitaocem dijeli „kratka i jednostavna pravila dijaloga sa Drugima". Osim toga, autor nam skreće pažnju na nalaze istraživanja o zloupotrebi jezika vezanog za invaliditet, ali bez osvrta na zloupotrebu političke korektnosti u ovom domenu, koja kao i „nekorektni jezički stil" ima svoje društvene funkcije i implikacije. Pavle Novevski priču o diksursima podiže na makronivo u svom tekstu u kojem se bavi odnosom između medija i diskriminacije prema ženama sa invaliditetom. Konstatuje da medijski prostor nije rezervisan za marginalizovane grupe, da njihov glas rijetko kad čujemo, zaključuje da je to jedan od načina na koji se produbljuje diskriminacija onih na marginama i daje niz preporuka koje bi trebalo da poboljšaju ukupni društveni položaj, posebno žena sa invalditetom.

Da sumiramo: kroz deset poglavlja autorke i autori nude značajne uvide u realne poteškoće sa kojima se suočavaju žene sa invalditetom, pred nas iznose postojeće pravne regulative, kritički se osvrću na takva rješenja i nude predloge kako unaprijediti položaj ovih osoba. Iako čitaoca može u prvom trenutku odbiti izuzetna obimnost štiva, to je ujedno i njegova primarna prednost. Onaj koga zanima kriminološka dimenzija, može se baviti samo njome, kao i onaj ko bi volio više saznati o religijskoj ili sociološkoj persektivi. Interdisciplinarnost i komparativna perspektiva, kao i teorijski okvir koji rod i invaliditet percipira kao izvor intersekcionalne diskriminacije omogućavaju da steknemo širu sliku o jednoj od marginalizovanih grupa. Osim toga, nekoliko autora donosi glas lica na koje se preporuke odnose, primjenjujući jedinu logičnu i dugoročno gledano (u pogledu poboljšanja položaja) efikasnu staregiju svih marginalizovanih grupa – *ne o nama bez nas*! Ovom treba dodati svakako i ozbiljnost štiva – kvalitet objavljenih radova je visok, najveći broj je dostupan na engleskom jeziku što će nesumnjivo povećati čitalačku publiku. Konačno, da na račun ovog zaista vrijednog zbornika ne budu izrečene isključivo pohvale, ukazaćemo na dva detalja za koja nam se čini da nisu dovoljno akcentovana. O njima govorimo iz ugla sociologa koji se bavi istraživanjem marginalizovanih grupa. Prvi osvrt tiče se specifičnosti teme: riječ je o ženama i djevojčicama sa invaliditetom. Iako nema posebne potrebe da ističemo da je intersekcionalna diskriminacija žena i djevojčica sa invaliditetom relevantna društvena tema, naš je stav da svaka podjela unutar marginalizoavne grupe (u ovom slučaju ona se odnosi na rod) dijeli njeno *tijelo* i ne doprinosi poboljšanju položaja ni žena ni djevojčica ni muškaraca. Druga naša opaska odnosi se na participatorna istraživanja, pa odatle i poziv da se ona češće uključuju u razmatranje ovakvih ozbiljnih, društveno osjetljivih i relevantnih pitanja, kao i da se među istraživačima nađu i oni koji se bave sociologijom – naukom koja je najpozvanija da kritikuje društvo.

Sve u svemu, urednike i autore treba pohvaliti za otvaranje ovako važne društvene teme, a onima koji se njome posebnije bave, toplo preporučiti da se o pravnim rješenjima, sudskoj praksi, društvenom položaju i tretmanu žena sa invaliditetom, te preporukama kako ga poboljšati obavijeste u zborniku „Ukrštena diskriminacija žena i devojčica sa invaliditetom i instrumenti za njihovo osnaživanje".

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International Conference

The Right to (Digital) Platform Work: Is Everybody Welcome on Board?

Belgrade, 21–22 June 2023

The conference was organised as a hybrid event by the Institute of Economic Sciences in Belgrade and the Public Policy Research Centre, a Belgrade-based think tank. It was held under the auspices of COST Action CA21118 — Platform Work Inclusion Living Lab (P-WILL). The conference addressed the challenges and opportunities associated with digital platform work and explored ways to ensure fair and inclusive practices within this emerging sector.

The conference had several primary objectives. Firstly, it aimed to increase awareness regarding the rights and working conditions of individuals involved in digital platform work. Secondly, it sought to analyse the influence of digital platforms on both the labour market and the broader economy. Additionally, the conference aimed to facilitate discussions surrounding regulatory frameworks and policy choices that can ensure equitable and inclusive conditions for digital platform workers. Lastly, it aimed to promote dialogue among policymakers, researchers, industry representatives, and civil society organisations on these crucial issues.

The conference provided a comprehensive platform for in-depth exploration and discussion of critical aspects of digital platform work. It effectively raised awareness about the rights and working conditions of individuals engaged in this rapidly evolving sector. By delving into the profound impact of digital platforms on both the labour market and the broader economy, the conference offered valuable insights for researchers and policymakers alike. One notable aspect of the conference was its thorough exploration of regulatory frameworks and policy alternatives aimed at promoting fairness and inclusivity within the realm of digital platform work. This aspect was particularly beneficial for the academic community, providing a solid foundation for future research endeavours in this dynamic field. The conference's emphasis on fostering meaningful dialogue further enriched the discourse, allowing for the cross-pollination of ideas and the cultivation of a collaborative spirit. By seamlessly integrating the expertise of policymakers, industry leaders, researchers, and civil society representatives, the conference exemplified a holistic approach to addressing the multifaceted challenges posed by digital platform work.

The work of 30 speakers was discussed across eight panels. Presentations covered a wide range of topics, including labour market dynamics, the economic impact of digital platforms, legal perspectives on platform work, and worker well-being. The research presentations provided valuable insights and stimulated discussions among the participants.

The first day of the conference began with a welcoming address by Isidora Beraha, head of the Sector for Basic Research and Senior Research Associate at the Institute of Economic Sciences, and Branka Anđelković, co-founder and programme director of the Public Policy Research Centre and P-WILL Action Vice Chair. Valentina Vukmirović, a research associate at the Institute of Economic Sciences and a member of the P-WILL Management Committee representing Serbia, presented details of the conference's agenda.

The first panel, "Inclusive employment on (digital) labour platforms: can they assist in solving unemployment issues?" was initiated with a presentation by Jelena Starčević from the School of Labour Studies at McMaster University, Canada. Her presentation, titled "Platform Work and Labour Market Institutions: Can Digital Labour Platforms Break the Vicious Circle of Long-Term Unemployment in Transitioning Countries?" explored the potential of digital labour platforms to disrupt the enduring cycle of long-term unemployment while examining their relationship with labour market institutions. The second presentation in the panel, titled "People with Disabilities and Work on Digital Work Platforms as a Path to an Independent Life," was delivered by researchers from the Institute of Economic Sciences: Milena Lazić, Valentina Vukmirović, and Jelena Banović. Their presentation highlighted the potential of online labour platforms in facilitating increased independence through enhanced employment prospects for individuals with disabilities. Concluding the panel, Elvisa Drishti and Brikena Kapisyzi from the Faculty of Economy, University of Shkodra "Luigj Gurakuqi," along with their colleague Bresena Kopliku from the Faculty of Social Sciences, University of Shkodra "Luigj Gurakuqi," Albania, presented "School-to-Work Transitions and Platforms in the Albanian Labour Market." This presentation delved into the dynamics of school-to-work transitions in the context of the Albanian labour market, with a particular focus on the role of digital platforms. Following the presentations, there was an interactive 10-minute Q&A session, with the first panel moderated by Tanja Jakobi, executive director of the Public Policy Research Centre and Co-Leader of P-WILL Working Group 4.

The second panel, "Platform economy intersectional gender perspective", commenced with a presentation by Jing Hiah, P-WILL Working Group 1 co-leader from the Department of Law, Society & Crime at the Erasmus University Rotterdam. Her presentation "New mobilities or persistent inequalities? Exploring the intersections of migration, gender, race/ethnicity in paid domestic and care work in the platform economy" shed light on the complex intersections of migration, gender, and race/ethnicity within the platform economy, specifically in the context of paid domestic and care work, to assess whether it perpetuates existing inequalities or presents new opportunities for mobility. The second presentation of the panel, "Platform Patriarchy? Gender and Fairwork in the Platform Economy", was delivered by

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Anjali Krishan from the Oxford Internet Institute. The presentation investigated the presence and implications of gender-related issues within the platform economy, focusing on aspects related to fairness and work conditions, shedding light on potential "platform patriarchy" dynamics. The panel was concluded by Alesandra Tatić, affiliated with the Ecole des hautes études en sciences sociales and Centre Norbert Elias. Her presentation "Building Resilient Communities through Feminist Unionizing in the Platform Economy — The Case of Household and Care Workers in Catalonia" focused on the experiences and activism of women house workers and caregivers, particularly members of the Sindihogar union in Barcelona, as they confront systems of oppression related to housework and caregiving, emphasising their diverse backgrounds and the impact of COVID-19 on their feminist community. These insightful presentations set the stage for an engaging 10-minute interactive Q&A session. The second panel was moderated by Mariacristina Sciannamblo from the Sapienza University of Rome — Department of Communication and Social Research, who facilitated the exchange of ideas among the panellists and the audience.

The third panel, "Gigmetar™ South East Europe — how good it is in capturing inequality", provided a comprehensive exploration of the platform's effectiveness in capturing inequality across various dimensions. The session commenced with an introduction to the Gigmetar™ report by Zoran Kalinić, a member of the Gigmetar team and full professor of the Faculty of Economics at the University of Kragujevac. Subsequently, associate professor Vladan Ivanović, also from the Faculty of Economics at the University of Kragujevac and a member of the Gigmetar team, delved into the critical aspect of "Professions and Pay," shedding light on the platform's ability to analyse disparities in this domain. Following this, the discussion expanded to include the intersection of pay and gender, with insights provided by Branka Andjelković and Tanja Jakobi from the Public Policy Research Centre. Together, these presentations offered a comprehensive overview of Gigmetar™'s potential to address inequalities in Southeast Europe. The moderator of the third panel was Ljubivoje Radonjić from the Public Policy Research Centre.

The fourth panel titled "Ensuring Fair Competition in Digital Labour Platforms: Can We Mitigate Inequality Traps?" held promise for shedding light on several pertinent topics. The discussion commenced with an examination of ways to enhance the fairness of platform work, drawing valuable lessons from a Europe-wide dialogue on the future of work. This segment was presented by Jovana Karanović from the Rotterdam School of Management and Jelena Šapić from Reshaping Work. Following this, Laura Valle Gontijo, representing the Faculty of Sociology at the University of Brasilia in Brazil, delved into the intricacies of platform work and piece wages. The session also reflected on the importance of preserving the dignity of work within the realm of digital labour platforms, with insights provided by Brikene Dionizi, and Elvisa Drishti, from the Economic Faculty, the University of Shkodra "Luigj Gurakuqi", and their colleague Bresena Kopliku, who works at the Faculty of Social Sciences, University of Shkodra "Luigj Gurakuqi", Albania. The presentations were followed by an interactive 10-minute Q&A session. The panel discussion was facilitated by Melissa Renau Cano, representing the

Internet Interdisciplinary Institute at the Open University of Catalonia in Spain.

The final panel of the inaugural conference day, titled "How Platforms Utilise Failures of Labour Markets in Times of Crisis?", addressed a critical inquiry regarding the adaptability of digital labour platforms during periods of crisis. The discourse commenced with a focused examination of the impact of the new Serbian national Strategy on SMEs and entrepreneurship on platform employment, as presented by Miloš Milosavljević, an associate professor at the Faculty of Organisational Sciences, University of Belgrade, Serbia. Against the backdrop of the COVID-19 pandemic, Liva Grinevica, representing the Latvian Council of Science, Latvia, explored the potential of remote work platforms as a viable avenue for labour market entry. Additionally, the session delved into the intersection of digital technologies and female workers within the platform work domain, featuring insights from Esra Kabaklarlı, associated with Selçuk Üniversitesi in Konya, Turkey. Following these presentations, an engaging 10-minute interactive Q&A session was moderated by Valentina Vukmirović, a research associate at the Institute of Economic Sciences, providing the audience with a dynamic exchange of ideas.

The second day of the conference began with a comprehensive review of the key insights gleaned from the preceding day, laying a sturdy foundation for the subsequent discussions. The rapporteur was Tanja Jakobi from the Public Policy Research Centre, who adeptly encapsulated the salient points that emerged during the initial day's deliberations, thus offering attendees a holistic perspective on the proceedings. Moreover, a concise preview of the second-day agenda was provided, effectively priming the atmosphere for the ongoing exploration of pivotal conference themes and the continuation of fruitful dialogues.

The second day of the conference was opened with a panel titled "Equalizing Freelancers' Rights: Creating a Regulatory Framework for (Digital) Platform Work". The panel raised a pivotal question: Can we bridge the gap in rights between freelancers and other workers through the establishment of a regulatory framework for (digital) platform work? This inquiry served as the cornerstone for discussions encompassing various facets of platform employment. Sanja Stojković Zlatanović, senior research associate from the Institute of Social Sciences — Centre for Legal Research in Belgrade, initiated the dialogue by sharing valuable insights through a presentation titled 'Flexibilisation, Platformisation, and Autonomisation' of an Employment Relationship — Lessons Learned So Far. Tamara Petrović, representing the Association of Internet Workers (Srb. Udruženje radnika na internetu) in Belgrade, underscored the imperative of enhancing working conditions for freelancers and the pressing need for regulatory measures specific to (digital) platform work in the Western Balkans. Meanwhile, Zuzanna Kowalik, affiliated with the Institute for Structural Research at the University of Warsaw, provided evidence shedding light on job quality disparities between migrant and native gig workers, focusing on the case of Poland. The presentations were followed by an interactive 10-minute Q&A session. Branka Anđelković, from the Public Policy Research Centre, moderated the session by facilitating the exchange of ideas and perspectives on the regulation of platform work and its implications for worker rights.

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The second panel of the day highlighted the importance of inequality mitigation by posing a fundamental question: Who are the stakeholders involved in shaping the landscape of digital work? This session brought together diverse perspectives to shed light on this pressing issue. Aleksandar Kovačević, from the Faculty of Political Science, University of Belgrade, delved into the vital role played by trade unions in navigating the ongoing digitisation of work processes within Serbia. Tamara Gavrić, serving as the Upwork ambassador, offered a unique platform-centric viewpoint, providing valuable insights from the perspective of digital work platforms. Furthermore, P-WILL Action Chair Mayo Fuster Morell, faculty associate at the Berkman Klein Center for Internet and Society at Harvard University, and Dimmons, director of research at the Internet Interdisciplinary Institute of the Open University of Catalonia, delved into the complexities of platform equality and its intricate relationship with policymaking, as exemplified by the co-creation working group of the Sharing Cities Summit and the Matchimpulsa programme in Barcelona. Her comprehensive discussion served as a vital contribution to the ongoing discourse surrounding inequality mitigation, reflecting on the perspectives of different members of the platform economy ecosystem. Ljubivoje Radonjić, from the Public Policy Research Centre, moderated the session and guided the participants through an interactive 10-minute Q&A session that followed the presentations.

The concluding panel of the second conference day, "Brain Drain and Online Platform Work as Transitional Option", delved into the evolving dynamics of labour migration and its connection to digital work platforms. The first presentation, by Bresena Kopliku from the Faculty of Social Sciences and Brikene Dionizi from the Faculty of Economy, University of Shkodra in Albania, examined the influence of digital work on the changing patterns of migration in Albania. This study provided valuable insights into the role of online platform work as a transitional option in addressing the brain drain phenomenon. Slobodan Golušin, from the Central European University in Vienna, Austria, explored the integration of Serbian software developers into the global labour market through digital labour platforms, shedding light on the potential for reversing brain drain trends. Furthermore, Ahmet Yaman, a visiting research fellow at Lund University, Sweden, and assistant professor at Tarsus University, Turkey, discussed the co-creation model as a potential solution to unemployment, illustrated through the case of the Mersin Virtual Employment Fair Platform in Turkey. Jelena Šapić, from Reshaping Work, moderated the session, facilitating an enriching exchange of perspectives on the intersection of brain drain, labour migration, and online platform work. These presentations collectively contributed to a deeper understanding of the role of digital work platforms in addressing labour migration challenges and fostering transitional employment opportunities.

The conference was closed with a session that encapsulated collaborative efforts and paved the way for future directions within the P-WILL community. Mayo Fuster Morell, in her role as the P-WILL Action Chair, fervently emphasised the action's core mission of advancing gender equality and nurturing inclusivity within the ever-evolving

platform economy, aligning seamlessly with the principles embedded in the EU Pillar of Social Rights and the Sustainable Development Goals. In the course of the presentation, she also shed light on the roadmap that lies ahead for P-WILL, delineating the path toward future action and meaningful impact. Following this, Aida Hanić, a research associate at the Institute of Economic Sciences, delivered a presentation with the aim of spotlighting the Institute's ongoing international collaborations within the framework of research projects. Her presentation underlined the Institute's dedication to cultivating international scientific partnerships and establishing further connections. Additionally, she shed light on the Institute's commitment to providing researchers with the opportunity to publish their findings in the Institute's journals. To wrap up this informative session, Branka Anđelković, representing the Public Policy Research Centre, provided closing remarks. Her presentation underscored the commitment to collaborative research within the P-WILL community but also served as a platform for outlining the future steps and directions of this COST action.

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- ✓ Datoteka rukopisa koji podnosim je u formatu Microsoft Word *docx*.
- ✓ Tekst je napisan na engleskom ili latiničnom pismu srpskog jezika (uključujući sve književne varijante nekadašnjeg srpskohrvatskog), ima jednostruki prored, koristi standardni font, npr. Calibri veličine 10; koristi kurziv umesto podvlačenja, dok su ilustracije, tabele i prilozi smešteni unutar teksta na odgovarajućim mestima, a ne na kraju.
- ✓ Gde god je moguće, DOI brojevi / URL referenci su priloženi.
- ✓ Tekst se pridržava stilskih i bibliografskih uslova navedenih u *Uputstvu za autore*.
- ✓ Grafički, kartogrami, slike i ilustracije dostavljeni su i kao zasebni fajlovi (PDF vektorski fajl).
- ✓ Informacije o autorima (i zahvalnice) navedene su isključivo u zasebnoj Word datoteci.
- ✓ Predavanjem rukopisa redakciji časopisa *Stanovništvo* autori se obavezuju na poštovanje *Obaveza autora* navedenih u *Uređivačkoj politici*.

PODNOŠENJE RUKOPISA – SMERNICE ZA AUTORE

- Prilikom podnošenja rukopisa, autori garantuju da rukopis predstavlja njihov originalan doprinos, da nije već objavljen, da se ne razmatra za objavljivanje kod drugog izdavača ili u okviru neke druge publikacije, da je objavljivanje odobreno od strane svih koautora, ukoliko ih ima, kao i, prećutno ili eksplicitno, od strane nadležnih tela u ustanovi u kojoj je izvršeno istraživanje.
- Autori snose svu odgovornost za sadržaj podnesenih rukopisa, kao i validnost eksperimentalnih rezultata, i moraju da pribave dozvolu za objavljivanje podataka od svih strana uključenih u istraživanje.
- Autori koji žele da u rad uključe slike ili delove teksta koji su već negde objavljeni dužni su da za to pribave saglasnost nosilaca autorskih prava i da prilikom podnošenja rada dostave dokaze da je takva saglasnost data. Materijal za koji takvi dokazi nisu dostavljeni smatraće se originalnim delom autora.
- Autori garantuju da su kao autori navedena samo ona lica koja su značajno doprinela sadržaju rukopisa, odnosno da su sva lica koja su značajno doprinela sadržaju rukopisa navedena kao autori.
- Nakon prijema, rukopisi prolaze kroz preliminarnu proveru u redakciji kako bi se proverilo da li ispunjavaju osnovne kriterijume i standarde. Pored toga, proverava se da li su rad ili njegovi delovi plagirani.
- Samo oni rukopisi koji su u skladu sa datim uputstvima biće poslati na recenziju. U suprotnom, rukopis se neće dalje razmatrati, o čemu se autori obaveštavaju.
- **Neophodno je otpremiti dva Word dokumenta** prilikom podnošenja rukopisa:

  1) Dokument (npr. Tekst.docx) koji sadrži ***glavni tekst rukopisa bez ikakvih informacija o autorima i zahvalnica*** treba otpremiti kao **'Tekst članka'** odabirom ove opcije iz padajućeg menija sastavnih delova rada pod stavkom 'Dostavljanje dokumenta predaje'.

  2) Dokument (npr. Autori.docx) koji sadrži ***informacije o svim autorima*** (uključujući njihova puna imena i afilijacije – akademske titule, istraživačke/naučne pozicije, e-mail adrese, kao i ORCiD brojeve) ***i izraze zahvalnosti*** (ako postoje) treba otpremiti kao **'Afilijacije'** odabirom ove opcije iz padajućeg menija sastavnih delova rada pod stavkom 'Dostavljanje dokumenta predaje'. Informacije ***o svim autorima*** i eventualne izraze zahvalnosti neophodno je ***uneti i kroz web formu*** prilikom podnošenja rukopisa. ***Jedan*** autor mora biti identifikovan kao ***autor za korespondenciju***. Ukoliko je nakon prihvatanja rukopisa došlo do promena prvobitno navedenih afilijacija, imajte na umu da one ne mogu biti uzete u obzir.

Tehničko uputstvo za pripremu rukopisa

- Autori su dužni da se pridržavaju uputstva za pripremu radova. Rukopisi u kojima ova uputstva nisu poštovana biće odbijeni bez recenzije.
- Radovi treba da budu napisani na engleskom ili latiničnom pismu srpskog jezika (uključujući sve književne varijante nekadašnjeg srpskohrvatskog) i da sadrže prošireni rezime na engleskom (za radove na srpskom) odnosno na srpskom (za radove na engleskom).
- Za obradu teksta treba koristiti program Microsoft Word (2013 i noviji). Rukopis treba da bude podnet kao datoteka tipa docx. Format teksta treba da bude što jednostavniji.
- **Da biste lakše pripremili svoj rukopis, preuzmite sa sajta Word-ov predložak u dotx** formatu, koji sadrži već definisane stilove i autorske smernice.
- Koristiti jednostruki prored uz obostrano poravnanje. Gde god je podesno, treba koristiti kurziv, supskripte, superskripte, kao i pogodnosti tekst procesora za prikazivanje jednačina. Dozvoljena su dva nivoa podnaslova. Fusnote se obeležavaju sukcesivno arapskim brojevima. Reference citirane u tekstu nikako ne navoditi u fusnotama, već isključivo u spisku referenci.
- Prilikom prvog uvođenja skraćenice ili akronima, obavezno u zagradi navesti pun naziv. U rukopisima na srpskom jeziku, imena stranih autora se pišu transkribovano, dok se u zagradi navodi njihov originalni oblik. U radovima na engleskom jeziku, britanska i američka varijanta pravopisa se tretiraju ravnopravno.
- **Članak** može imati **najviše 8.000 reči**, što uključuje sažetak na jeziku glavnog teksta, ali ne i spisak literature i opširniji rezime na engleskom (za radove na srpskom). U izuzetnim slučajevima, redakcija može odobriti i duže radove. Ostali prilozi mogu biti dužine do 2.500 reči. U određivanju dužine teksta, grafički prilozi (tabele, grafikoni, kartogrami i sl.) se računaju kao 400 reči (cela strana) odnosno 200 reči (pola strane).
- Stil pisanja i jezička kompetencija mogu biti kratko komentarisani u procesu recenziranja; sitnije propuste koriguje lektor; međutim, članci koji obiluju slovnim i gramatičkim greškama ne mogu se prihvatiti za objavljivanje. ***Koristiti rodno neutralan jezik*.**
- **Preporučujemo da članke dostavljate na engleskom jeziku**, jer su takvi radovi vidljiviji i imaju veće šanse da budu citirani. Neophodno je da kvalitet engleskog bude na visokom nivou, jer redakcija vrši samo korekturu teksta.

Članak treba da bude strukturiran na sledeći način: **naslov, sažetak, ključne reči, glavni tekst** (*uvod, metodi, rezultati, diskusija i zaključak),* **spisak referenci, spisak tabela i ilustracija** (ako postoje) **i opširniji rezime** na engleskom (za radove na srpskom) odnosno na srpskom (za radove na engleskom).

Naslov opisuje članak i/ili glavne odnose između varijabli; treba da bude jasan sam po sebi i ne preterano dugačak (do 10 reči). Ako je moguće, treba izbegavati upotrebu skraćenica u naslovu.

Sažetak daje kratak i jasan rezime članka (od 150 do 200 reči), odražavajući osnovnu strukturu rada (predmet i cilj, metodi, rezultati i zaključak), uz upotrebu termina koji se često koriste za indeksiranje i pretragu u referentnim periodičnim publikacijama i bazama podataka. U sažetku ne treba navoditi reference. Sažetak treba da bude napisan na istom jeziku na kojem je napisan tekst članka.

Ključne reči (pojmovi, geografske lokacije, rezultati) navode se u posebnom redu ispod sažetka i moraju biti relevantne za temu i sadržaj rada. Dobar izbor ključnih reči preduslov je za ispravno indeksiranje rada u referentnim periodičnim publikacijama i bazama podataka. Navesti **pet ključnih reči** odnosno deskriptora na jeziku rada.

Tekst članka bi trebalo da ima sledeću strukturu odeljaka: *uvod, metodi, rezultati, diskusija i zaključak* (ne nužno pod ovim nazivima). U zavisnosti od sadržaja i kategorije članka, moguće je izostaviti neke od odeljaka. Na primer, kod preglednog članka, moguće je izostaviti odeljke o metodima i rezultatima, dok naučna kritika ili polemika može uključiti samo odeljke o motivima rada, konkretnim istraživačkim problemima i diskusiju.

- ***Uvod*** opisuje istraživački problem, sumira relevantna prethodna istraživanja u logičkom i kritičkom maniru, vodi čitaoca ka glavnom istraživačkom pitanju članka; jasno formuliše predmet i cilj istraživanja, kao i postojeće nalaze i teorije koje prikazano istraživanje testira ili pokušava da nadogradi.

- Odeljak o ***metodu (metodima)*** treba da pokaže kojim postupcima se postiže cilj naveden u članku; jasno opisuje empirijski plan istraživanja, uzorački postupak, korišćene podatke, mere, instrumente i postupke (novi metodi bi trebalo da budu opisani detaljnije); može početi hipotezom; može biti podeljen u odgovarajuće pododeljke.
- ***Rezultati:*** Obrada podataka i statistička analiza treba da budu jasno izložene (naročito u slučaju novih ili retko korišćenih postupaka); odeljak, takođe, može biti podeljen u prikladne pod-odeljke. Rezultate treba prikazati u logičkom nizu; pored numeričkog prikaza statističke analize, autori treba da uključe i narativno objašnjenje nalaza, dok interpretaciju treba ostaviti za diskusiju.
- ***Diskusija*** sadrži interpretaciju dobijenih rezultata, koja treba da bude u kontekstu modela, teorija i nalaza prikazanih u uvodu; ovaj odeljak, opciono, može biti podeljen u pod-odeljke sa konciznim podnaslovima. Treba jasno specifikovati koja su od ranijih istraživanja podržana, osporena ili unapređena nalazima prikazanim u radu, a zatim, ako je moguće, ponuditi nove modele ili okvire za ostvarene nalaze; dati samo logičke tvrdnje na osnovu prikazanih nalaza. Treba izbegavati pretrpavanje ovog odeljka preteranim citiranjem i dugačkim reinterpretacijama literature, već se fokusirati na svoje nalaze. Treba izbegavati zaključke za koje nije obezbeđeno dovoljno istraživačkih podataka. Izuzetno, odeljci o rezultatima i diskusiji mogu se kombinovati u jednom zajedničkom pod nazivom *Rezultati i diskusija*.
- ***Zaključak*** mora biti u zasebnom odeljku, koji bi trebalo da iskaže kako je prikazano istraživanje unapredilo postojeće naučno znanje; trebalo bi da pruži opšti, kratak i prikladan rezime, najviše do dve strane, predstavljenih nalaza. Zaključak ne sme da bude puko ponavljanje delova sažetka. Diskusija zajedno sa zaključkom može obuhvatiti i do 30% članka, ali u svakom slučaju ova dva odeljka zajedno ne bi trebalo da budu kraća od uvoda.

Reference se navode isključivo na latiničnom pismu kako bi se indeksnim bazama omogućilo brzo i tačno indeksiranje, a globalnom auditorijumu lako razumevanje. Spisak referenci treba da sadrži samo publikacije koje su citirane u tekstu. Navedene publikacije treba da budu poređane po abecednom redu, bez numeracije, i da uključuju imena (prezime i početno slovo imena) svih autora. Ukoliko citirana referenca ima osam ili više autora, u spisku se navode imena prvih šest autora, zatim (…) i ime poslednjeg autora. Poželjno je da većina referenci bude novijeg datuma, demonstrirajući aktuelni naučni značaj prikazanog istraživanja. U slučaju navođenja više radova istog autora, najpre se navodi najranije objavljeno delo. Autori bi trebalo da ograniče broj citiranih referenci tako što će se pozivati samo na najrelevantnije radove. Ćirilične reference obavezno transkribovati na latinicu. *Gde god je dostupan, na kraju reference obavezno navesti njen **DOI** broj ili **URL***. Stanovništvo koristi **APA** stil za uređivanje spiska referenci.

Stanovništvo toplo ***preporučuje*** autorima da ***koriste softver za upravljanje referencama*** kao što su Zotero, Mendelei i Endnote. Ovi softverski programi su neprocenjivi alati koji mogu u velikoj meri olakšati proces upravljanja citatima. Koristeći dodatke za citate, autori mogu jednostavno da izaberu odgovarajući šablon časopisa kada pripremaju svoj članak, omogućavajući automatsko formatiranje citata i bibliografija u propisanom stilu časopisa. Da bismo obezbedili besprekornu integraciju vaših referenci u vaš rukopis, snažno apelujemo na autore da iskoriste prednosti ovih alata. Na taj način, autori ne samo da će uštedeti dragoceno vreme i trud, već će i minimizirati rizik od grešaka pri citiranju. Kao koristan resurs, ***Zotero stil za Stanovništvo*** je lako dostupan za preuzimanje, omogućavajući autorima da efikasno i precizno formatiraju svoje citate i reference u skladu sa smernicama našeg časopisa.

- **Primeri za navođenje različitih vrsta radova**:
  - ***Monografije, knjige:***
    Alho, J. M., & Spencer, B. D. (2005). *Statistical Demography and Forecasting.* New York: Springer. https://doi.org/10.1007/0-387-28392-7
  - ***Monografije, knjige sa više izdanja:***
    Todaro, M. P., & Smith, C. S. (2012). *Economic Development* (11th ed.). Boston: Mass Addison-Wesley.
  - ***Delovi štampanih monografija ili zbornika radova:***
    De Abreu, B. S. (2001). The role of media literacy education within social networking and the library. In D. E. Agosto & J. Abbas (Eds.), *Teens, libraries, and social networking* (pp. 39–48). Santa Barbara, CA: ABC-CLIO.

- ***Delovi monografija ili zbornika radova pronađeni na internetu:***
  Nikitović, V. (2018). The End of Demographic Transition in Kosovo: Does the Meaning of the Population Factor Change? In D. Proroković (Ed.), *Kosovo: Sui Generis or Precedent in International Relations* (pp. 299–320). https://www.diplomacy.bg.ac.rs/wp-content/uploads/2018/11/2018_Kosovo_Dusan_Prorokovic.pdf
- ***Članci iz časopisa:***
  Lutz, W., Sanderson, W., & Scherbov, S. (2001). The end of world population growth. *Nature*, 412(6846), 543–545. https://doi.org/10.1038/35087589
- ***Radovi sa konferencija ili poster prezentacije:***
  Rašević, M. (2006). *Abortion problem in Serbia.* Paper presented to EPC 2006 "Population Challenges in Ageing Societies", Liverpool, UK, June 21–24. http://epc2006.princeton.edu/papers/60355
- ***Istraživački izveštaji, radni dokumenti:***
  Dudel, C., & Schmied, J. (2019). Pension adequacy standards: an empirical estimation strategy and results for the United States and Germany. Rostock: Max Planck Institute for Demographic Research (MPIDR Working Paper WP-2019-003). https://www.demogr.mpg.de/papers/working/wp-2019-003.pdf
- ***Doktorske disertacije pronađene u bazama:***
  Galjak, M. (2022). *Prevremeni mortalitet u Srbiji.* Univerzitet u Beogradu. https://nardus.mpn.gov.rs/handle/123456789/21191. Pristupljeno 20. februara 2023.
- ***Sadržaj internet stranica:***
  Statistical Office of the Republic of Serbia (2018). *Vital Events – Data from 2011*. Statistical Database. http://data.stat.gov.rs/Home/Result/18030102?languageCode=en-US
- ***Zakonodavstvo (zakoni, uredbe, sporazumi, statuti itd.):***
  Zakon o sprečavanju diskriminacije osoba sa invaliditetom 2006 (2016, February 19). http://www.pravno-informacioni-sistem.rs/SlGlas-nikPortal/eli/rep/sgrs/skupstina/zakon/2006/33/1/reg
- ***Novinski članci iz štampanih izdanja:***
  Frost, L. (2006, Septembar 14). First passengers ride monster jet. *The Salt Lake Tribune*, str. A2.
- ***Novinski članci pronađeni na internetu:***
  Cohen, P. N. (2013, November 23). How can we jump-start the struggle for gender equality? *New York Times*, SR9. https://opinionator.blogs.nytimes.com/2013/11/23/how-can-we-jump-start-the-struggle-for-gender-equality/?_r=0.

- **Citiranje referenci u okviru teksta** podrazumeva navođenje prezimena autora i godine objavljivanja reference:
  - Direktan citat: Lee (1998);
  - Indirektan citat: (Rašević 2009; Stanić i Matković 2017).
  - Doslovno citiranje: „Sporost postsocijalističke transformacije srpskog društva učinila je ekonomsku depresiju i visoku stopu nezaposlenosti dugotrajnim fenomenima" (Petrović 2011: 64).
  - U slučaju četiri ili više autora: (Alkema i dr. 2011); (Petrović i dr. 2017).
  - U slučaju citiranja dva ili više radova istog autora: (McDonald 2002, 2006).
  - U slučaju više od jedne reference istog autora u istoj godini: (Raftery i dr. 2012a, 2012b).

Tabele ne treba da prelaze dimenzije jedne stranice i ne treba da budu preopterećene pomoćnim linijama; slova i brojevi unutar tabela treba da budu veličine 9pt. Tabele treba da imaju jasne, samoobjašnjavajuće naslove. Treba da budu obeležene arapskim brojevima po redosledu kojim se pojavljuju u tekstu. Uredništvo treba da ima potpunu kontrolu nad tabelama, odnosno da može klikom unutar tabele da uređuje fontove reči napisanih u tabelama kako bi se zadovoljio stil časopisa i ispravile pravopisne greške. ***Sve tabele moraju biti uključene u sam tekst rukopisa***.

Grafikoni, kartogrami, slike, crteži i druge ilustracije treba da budu ***dostavljeni i kao posebne datoteke*** u PDF vektorskom formatu (nezavisan od rezolucije). Autori bi trebalo da dostave svoje grafikone/kartograme/ilustracije u boji za elektronsku verziju članka. Ipak, treba imati u vidu da je štampano izdanje časopisa crno-belo. Sve ilustracije treba da budu ***označene kao 'Grafikon' i numerisane arapskim*** brojevima po redosledu kojim se pojavljuju u tekstu (npr. Grafikon-1.pdf).

Podatke i/ili proračune korišćene za kreiranje grafikona i tabela, takođe, treba dostaviti kao posebne datoteke (bez obzira što nisu sastavni deo rukopisa). Npr. ukoliko su grafikoni napravljeni u MS Excel-u, pobrinuti se da dozvoljavaju pristup izvornim podacima na osnovu kojih su kreirani.

Naslovi tabela stoje iznad, a *grafičkih priloga* ispod njih (veličina slova je 10pt, levo ravnanje). Legende tabela i grafičkih priloga se nalaze ispod njih, i treba da sadrže izvore podataka, a eventualne napomene u novom redu ispod izvora (veličina slova 8pt, levo ravnanje). Upućivanje na tabele i grafičke priloge u samom tekstu mora biti u skladu sa numeracijom (npr. u tabeli 1), a ne sa pozicijom priloga u tekstu (npr. u gore navedenoj tabeli). Konačna pozicija tabela i grafičkih priloga u tekstu može biti drugačija od izvorne zbog postizanja što boljeg preloma članka. Uredništvo neće objaviti sve priloge ako proceni da ih ima previše, kao ni one lošeg kvaliteta.

Molimo vas nemojte:

- dostavljati grafičke priloge optimizovane za korišćenje na ekranu (npr. gif, bmp, pict, wpg); oni obično imaju nisku rezoluciju i mali raspon boja;
- dostavljati grafičke priloge u rasterskom formatu;
- dostavljati ilustracije nesrazmerno velikih dimenzija spram formata rukopisa.

Opširniji rezime (**350–400 reči**) – ***na engleskom (za radove koji nisu na engleskom) ili na srpskom jeziku (za radove na engleskom)*** treba da bude napisan u skladu sa strukturom rada, rukovodeći se uputstvom za pisanje sažetka. Takođe, treba navesti naslov i ključne reči na jeziku rezimea. U radovima na srpskom, rezime na engleskom treba da se nalazi na početku članka, pre naslova i sažetka na srpskom (videti Word predložak). U radovima na engleskom, rezime na srpskom treba da se nalazi nakon spiska referenci odnosno eventualnog spiska tabela i/ili grafičkih priloga (videti Word template).

PRIKAZI knjiga, časopisa i drugih radova iz oblasti nauke o stanovništvu na početku treba da sadrže potpune bibliografske podatke prikazanog dela (ime i prezime autora dela, naslov, naziv izdavača, sedište izdavača, godinu izdanja, ukupan broj strana).

OSVRTI, takođe, na početku treba da sadrže sve relevantne informacije o naučnom skupu, konferenciji, publikaciji ili akciji na koju se odnose.

Format i tip slova u prikazima i osvrtima treba da bude identičan onom u člancima.

Redakcija časopisa

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- ✓ The text is single-spaced; uses one of the standard fonts (e.g., Calibri 10-point font); employs italics rather than underlining; and all illustrations, figures, and tables are placed within the text at the appropriate points, rather than at the end.
- ✓ Where available, DOIs / URLs for the references have been provided.
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- ✓ Figures, cartograms, images, and illustrations are also uploaded as separate submission files of high resolution (PDF vector files).
- ✓ Information about the authors (and acknowledgments) is listed exclusively in a separately submitted Word file.
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