Digital Rights of Platform Workers in Italian Jurisprudence

Federico Costantini and Alan Onesti

in: Matthias C. Kettemann (ed.), How Platforms Respond to Human Rights Conflicts Online. Best Practices in Weighing Rights and Obligations in Hybrid Online Orders (Hamburg: Verlag Hans-Bredow-Institut, 2022)

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Federico Costantini and Alan Onesti
DEPARTMENT OF LAW, UNIVERSITY OF UDINE

Summary

This contribution provides an analysis of the decisions provided by Italian judicial courts and Data Protection Authority concerning the so called "platform workers". The relevance of this topic for the activities promoted by the GDHRNet Cost Action is due not only for the newness of the technologies deployed in such kind of platforms, but foremost by the fact that some of them involve, directly or indirectly, the matter of "Digital rights". Therefore, these decisions can be considered as written testimony of the first approach adopted by Italian jurisprudence to the challenges raised in terms of data protection and algorithmic discrimination, for example, in this field.

The report is composed of the following parts: Section I provides a general overview on the phenomenon of platform workers; Section II explains the methodology adopted in the research; Section III analyses each single case decided in Italy by judicial courts and by the Data Protection Supervisor; Section IV provides a synthesis of the digital rights emerged from the discussion; Section V offers some recommendations and a few final evaluations. At the end, references are provided.

"platform economy" and "platform workers", a general overview

The phenomenon of the 'collaborative economy', 'sharing economy' or 'gig economy' entered the EU a decade ago. Such kind of economic ecosystems, since then, have been defined in different ways: "*digital networks that coordinate labour service transactions in an algorithmic way*" (Pesole et al. 2018) and, more recently: "*organisations (that are most often, but not always, firms) that offer digital services that facilitate interactions via the Internet between two or more distinct but interdependent sets of users (whether organisations or individuals) and that generate and take advantage of network effects*" (Gawer and Srnicek 2021).

From a functional point of view, four types of digital platforms can be distinguished, depending on whether they concern (1) e-commerce, in a general sense, (2) the sharing of resources ("asset-based", as in the case of AirBnb), (3) the organisation of workforce ("digital labour platforms"), or (4) a way of effectively sharing of goods or services ("collaborative platforms" or "sharing platforms", e.g. BlaBlaCar, Kickstarter). Within the so called "digital labour platforms", a further distinction can be drawn depending on the fact that performance intermediated entail (1) manual or physical activities (e.g. Uber or TaskRabbit), (2) repetitive online tasks (e.g. Amazon Mechanical Turk) or (3) services involving high or specific skills (e.g. PeoplePerHour, Freelancer) (Pesole et al. 2019).

Due to the surge of "digital labour platforms", a new kind of workforce emerged, called "digital platform workers", which has spread worldwide over the last ten years. As we know, this is a category of workers whose activities are determined and controlled by means of continuous and pervasive interaction with sophisticated algorithms.

The novelty of the structural relations generated by digital platforms of this kind has brought to the attention of legislators the need of a stronger protection of workers, especially due to the vulnerability that afflicts it (Codagnone, Biagi, and Abadie 2016). Indeed, the working conditions in this field are usually severe, given the many risks undertaken (e.g. road incidents by riders), the low level of remuneration, and the length and distribution of working-shifts. In recent years we have witnessed the intervention of the EU legislation on the transparency of working conditions, with the recent Directive (EU) 1152/2019[1] and recent concerns expressed by the European Parliament[2]. On the other hand, as regards the Italian legal framework, it is also worthwhile remembering the extension of the discipline of the employment relationship provided for by Legislative Decree 81/2015[3] - and in particular the extension of the guarantees - which took place with Law Decree 101/2019[4] (Filì and Costantini 2019)[5].

From this perspective, in Italy it is noteworthy a recent wave of judicial decisions which strive in framing the pervasive and constant interaction between the individual worker and the online platform in the light of traditional labour law categories. Those decisions take into consideration also issues which recently have been included in the concept of "algorithmic discrimination"(Wachter, Mittelstadt, and Russell 2021; Gerards and Xenidis 2021; Mittelstadt et al. 2016; Floridi and Illari 2014), which occurs when a system automatically creates an unjustified imbalance between different categories of persons, thus affecting their rights under the legal system. Such issue is particularly sensitive, since in automatic reasoning it is physiological to find distortions - 'biases' - that depend on many factors - technological, social, human - and that are difficult to represent in a coherent way from a logical-informatic point of view, and therefore to eliminate or correct beforehand.

However, other elements depending on the context in which these technologies operate - the "complacency" that generally accompanies the outcome of digital automatisms, the lack of awareness of the intrinsic risks for operators, the extent and intensity of the potential harmful effects and their rate of propagation - can make the phenomenon particularly insidious, especially since normally - in almost all cases - the discrimination generated is indirect, since it can occur through the combination of factors that would be harmless if considered independently.

As regards these latter issues, the EU legal provisions sometimes can result inconsistent or inapt for many reasons: (1) the lack of coordination among the provisions included in the Fundamental Treaties (art. 2, art. 3§3 TEU, art. 19 TFEU, art. 21 of the Charter of Fundamental Rights), the secondary level of dispositions - mainly the notions of "direct discrimination" and "indirect discrimination" as defined by art. 2 § 2 of Directive 2000/43/CE[6] - and the general prohibition to process particular kind of data expressed by art. 9 §.1 GDPR; (2) the wide spectrum of interpretation of the "right of explanation", which still raises many

[1] https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32019L1152

[2] See European Parliament Resolution adopted on 16 September 2021, Fair working conditions, rights and social protection for platform workers - New forms of employment related to digital development, P9_TA(2021)0385, https://www.europarl.europa.eu/doceo/document/TA-9-2021-0385_IT.html

[3] http://www.normattiva.it/eli/id/2015/06/24/15G00095/CONSOLIDATED.

[4] http://www.normattiva.it/eli/id/2019/09/04/19G00109/CONSOLIDATED/20220321

[5] Only recently in Italy platform workers have achieved legal protection regardless the status of self employed or employee. Indeed, Law Decree 101/2019 extended labour safety minimum obligations - especially in terms of health and physical integrity (Article 47 bis).

[6] Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L 180, 19.7.2000, p. 22–26 , https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32000L0043.

discussions (Wachter, Mittelstadt, and Floridi 2017; Malgieri and Comandé 2017); (3) the unavoidable fact that interpretation of EU regulation may be quite different among member States.

Paradoxically, behind the apparent reassuringly sightseeing of thousands of cyclists, which swarm every day throughout our cities wearing cheerfully coloured thermal backpacks, lies a massive integration among different information technologies, which not only makes it difficult for the courts to identify and prosecute 'algorithmic discrimination' and violation of fundamental rights, but also to detect and prosecute possible abuses and identify suitable criteria for quantifying damage compensation.

Therefore, we can claim that "platform workers" are exposed to a twofold threat: the first relates to new forms of violation of labour-law-based rights; the second regards the emergence of specific threats involving "Digital rights", for which there aren't still effective remedies.

This document describes how Italian jurisprudence has addressed these issues, focusing on those specifically related to the latter topic.

Methodology

This report collects all the judicial decisions involving platform workers issued in the Italian legal system. Also included are the provisions of the Italian Data Supervisor Authority "Garante per la Protezione dei Dati Personali" as it is an independent administrative body that, according to Italian literature, embodies also jurisdictional powers.

A ID number has been assigned to each item. Each decision has been analysed according to a common pattern. The results are represented in the following tables, which include identifying data (date, authority, claimant, grade), a short description of the facts, the legal issues discussed, the party awarded by the decision, and also highlights the issue concerning "Digital Rights", if any. Whenever a case is related to others (e.g. in provisional proceedings), it is specified to whom. If a case is similar to a previous one, or it stems from the same proceeding, the connection is referenced. For clarity, the Italian names of the courts, proceedings and decisions are included between round brackets.

Analysis of Italian case-law (ALAN)

Case n.	1
Court / Authority	Court of Florence, labour law section (Tribunale di Firenze, sezione lavoro)
Date of the decision	01.04.2020
Type of proceeding	Provisional / Protective Proceeding (decreto ex art. 700 c.p.c.)
Claimant	Employee/Platform worker
Grade	First
Short description of facts	The claimant, a registered rider for Just Eat Italy s.r.l., requested a set of personal protective equipment against the risk of COVID-19 (gloves, sanitizing gels and cleaning products for his rucksack), the use of which (as regards the gloves and the mask) was recommended

	by the defendant itself for the purposes of carrying out his work in this period of epidemiological emergency. The defendant, despite the employee's requests to that effect, refused to provide such protective devices.
Legal issues raised	The worker took legal action to obtain an urgent measure. The claim is based on the Italian legislation for the protection of workers' health (Article 71, Legislative Decree No. 81/2008) which requires the employer to provide workers with equipment suitable for protecting their health and safety, suitable for the work to be carried out or adapted for such purposes, in compliance with and used in accordance with the legislative provisions transposing EU directives.
Decision	In favour of Employee/Platform worker
Issues concerning digital rights	-

Case n.	2
Court / Authority	Court of Florence, labour law section (Tribunale di Firenze, sezione lavoro)
Date of the decision	05.05.2020
Type of proceeding	Judgment of merit (ordinanza, consequential to the provisional decision dated 01.04.2020 - Cfr. case n. 1)
Claimant	Employee / platform worker
Grade	Second
Short description of facts	Cfr. Case n. 1
Legal issues raised	Cfr. Case n. 1
Decision	In favour of Employee/Platform worker: confirms the decision of the judgment of merit.
Issues concerning digital rights	-

Case n.	3
Court / Authority	Court of Bologna, labour law section (Tribunale di Bologna, sezione lavoro)
Date of the decision	14.04.2020
Type of proceeding	Provisional/Protective Proceeding (decreto ex art. 700 c.p.c.)

Claimant	Employee/Platform worker
Grade	First
Short description of facts	The applicant, a rider for Deliveroo Italy s.r.l., requested personal protective equipment against the risk of COVID-19 (gloves, sanitizing gels and cleaning products for his rucksack) to his employer. The request wasn't satisfied due to organizational problems (high number of requests, difficult of supplying said materials).
Legal issues raised	Cfr. Case n. 1
Decision	In favour of Employee/Platform worker
Issues concerning digital rights	-

Case n.	4
Court / Authority	Court of Bologna, labour law section (Tribunale di Bologna, sezione lavoro)
Date of the decision	01.07.2020
Type of proceeding	Judgment of merit (ordinanza, consequential to the provisional decision dated 14.04.2020 - Cfr. Case n. 3)
Claimant	Employee/Platform worker
Grade	First
Short description of facts	Cfr. Case n. 3
Legal issues raised	Cfr. Case n. 3
Decision	In favour of Employee/Platform worker: confirms the decision of the judgment of merit.
Issues concerning digital rights	-

Case n.	5
Court / Authority	Court of Bologna, labour law section (Tribunale di Bologna, sezione lavoro)
Date of the decision	11.08.2020
Type of proceeding	Judgment of merit (ordinanza ex art. 700 c.p.c.)
Claimant	Employer
Grade	Second (appeal of the decision of the General Court of Bologna dated 01.07.2020 - Cfr. Case n. 4)

Short description of facts	Cfr. Case n. 3
Legal issues raised	Cfr. Case n. 3
Decision	In favour of Employee/Platform worker: confirms the decision of the first grade of judgment.
Issues concerning digital rights	Cfr. Case n. 3

Case n.	6
Court / Authority	Court of Florence, labour law section (Tribunale di Firenze, sezione lavoro)
Date of the decision	09.02.2021
Type of proceeding	Provisional/Protective Proceeding (decreto ex art. 28 Statuto dei Lavoratori)
Claimant	Trade Unions of workers
Grade	First
Short description of facts	Deliveroo Italy s.r.l., with a communication to all its riders (dated 02.10.2020), forced them to accept a collective agreement signed with the trade union Ugl Rider, as a condition to continue their work. In case of refusal, the job contract would have been solved.
Legal issues raised	Others Trade Unions took a legal action, according to art. 28 of the Statute of Worker's rights[7], to ascertain the unfair labour practice by the employer. In particular, they claimed that: The trade union Ugl "Rider" that subscribed the "C.C.N.L. Rider" (collective worker's agreement for the Riders), together with Assodelivery (association of employers), was not qualified to do so, as it had obtained an illegitimate financial support by the employer; The sudden termination of the of the contract of more than 8.000 riders, without involving the trade-unions, could be qualified as a mass layoff in violation of the right of trade unions to be informed and involved in the management of collective measures and of collective dismissal. The aforementioned right is applicable to platform workers, according to art. 2 of the Legislative Decree no. 81/2008.

[7] LEGGE 20 maggio 1970, n. 300, Norme sulla tutela della liberta' e dignita' dei lavoratori, della liberta' sindacale e dell'attivita' sindacale, nei luoghi di lavoro e norme sul collocamento (GU n.131 del 27-05-1970) http://www.normattiva.it/eli/id/1970/05/27/070U0300/CONSOLIDATED

Decision	In favour of the Employer (Deliveroo Italy S.r.l.)
Issues concerning digital rights	-

Case n.	7
Court / Authority	Court of Palermo, labour law section (Tribunale di Palermo, sezione lavoro)
Date of the decision	12.04.2021
Type of proceeding	Judgment of merit (ordinanza)
Claimant	Trade Unions of workers
Grade	First
Short description of facts	The platform's owner withdrawn from the contract with the rider in advance of its natural end, as the worker refused to sign a new contract that would have been compliant with the collective contract signed between the employer's association and a trade union to which the rider didn't belong.
Legal issues raised	The worker took legal action to establish that the employer's withdrawal was illegal, as it discriminated the worker for his membership to a specific Trade Union.
Decision	In favour of Employee.
Issues concerning digital rights	The Court decided that the withdraw was not only illegal, but also null and void (with the result of being obliged to restore the worker contract), as it was against the prohibition of discrimination provided by the Italian Constitution and by the Article 14 of the CEDU[8] The Court has also condemned the employer to compensate the worker for damages for an amount of 5.000 €.

Case n.	8
Court / Authority	Court of Bologna, labour law section (Tribunale di Bologna, sezione lavoro)
Date of the decision	31.12.2020
Type of proceeding	Judgment of merit (ordinanza)

[8] Every worker has the right to partecipate to the Trade Union that is the most rappresentative for him, and cannot be obliged to accept a collective agreement that has been signed by a employee's Trade Union, which is different to the one he belong to. Moreover, he can't suffer retaliations or poor treatments, based on the membership to a Trade Union.

Claimant	Trade Unions of workers
Grade	First
Short description of facts	The workload division system between all the riders registered for Deliveroo Italy S.r.l. was entrusted to be based on an algorithm. Among the instructions, one established that riders who revoked their availability with a forewarning lower than 24 hours, would have been penalized with a lower possibility of booking a specifically time slot, having consequentially a lower possibility of work, thus a minor income.
Legal issues raised	The applicants took legal action to terminate and sanction Deliveroo Italy's behaviour, as it was discriminatory (art. 14 CEDU) and damaging to the freedom of assembly and association (art. 11 CEDU) since it did not took properly in consideration the cause of the revocation, especially the exercise of union rights (e.g. to assembly with others).
Decision	In favour of Trade Unions workers.
Issues concerning digital rights	The Court granted the application because the algorithm didn't distinguish between the reasons of the revocation, penalizing independently both the defaulting workers and those who acted in force of a recognized right, e.g. the freedom of assembly and association recognized by the article 11 of CEDU. It also caused a discrimination (prohibited by article 14 of CEDU) towards all workers that were part of a Trade Union instead of another. The Court also condemned the employer to compensate the worker for damages for an amount of € 50.000.

Case n.	9
Court / Authority	Court of Milan, labour law section (Tribunale di Milano, sezione lavoro)
Date of the decision	04.07.2018
Type of proceeding	Judgment of merit (sentenza)
Claimant	Employee
Grade	First
Short description of facts	The applicant was a registered rider for Foodinho S.r.l. for four months, when the employer withdrawn from the contract, imposing him – for the prosecution of the relation - to subscribe a new contract. It was never signed by the contrclaimants, however the old

	contract continued until the employer interrupted definitely the relation after an occupational injury happened to the worker.
Legal issues raised	The applicant took legal action to establish the existence of a salaried practice between him and Foodinho S.r.l., asking the reintegration as well to work and the establishment of the illegitimacy of the withdrawal or dismissal. The request was based on the fact that the rider worked continuously for four months, for eight hours a day and for seven days a week. He also claimed that he has respected directives and orders about the tasks and the delivery given by the employer.
Decision	In favour of Employer
Issues concerning digital rights	The Court rejected the claim because evidences showed that the rider could decide *if* and *when* to provide his performance. According to the decision, such an element is incompatible with a salaried practice, characterized by the obligation to work in a given timeslot. The circumstance that, after offering their availability, riders should respect specific rules about the execution of the job, did not mean that the riders couldn't choose whether to work or not.

Case n.	10
Court / Authority	Court of Palermo, labour law section (Tribunale di Palermo, sezione lavoro)
Date of the decision	24.11.2020
Type of proceeding	Judgment of merit (sentenza)
Claimant	Employee
Grade	First
Short description of facts	The applicant worked as a rider for Foodinho S.r.l. from 28.09.2018 until 03.03.2020, when he was disconnected from the platform and never connected again, without any justified reason.
Legal issues raised	The Court granted the application because it noticed that the freedom of the rider to decide if and when to work was only apparent: indeed, he could work only in the time slots made available by the platform, and moreover the deliveries were assigned by the platform through the algorithm, that uses criteria absolutely different from the interest or the preferences of the worker.
Decision	In favour of Employee
Issues concerning digital rights	-

Case n.	11
Court / Authority	Court of Turin, labour law section (Tribunale di Torino, sezione lavoro)
Date of the decision	11.04.2018
Type of proceeding	Judgement of merit (sentenza)
Claimant	Employees
Grade	First
Short description of facts	The applicants worked as riders for Foodinho S.r.l. on the base of multiple temporary contracts of collaboration, until the employer retired from the contract. The job involved the use of a system of remote surveillance of workers.
Legal issues raised	The applicants took legal action to establish the existence of a salaried practice between them and Foodinho S.r.l., asking as well the reintegration to work and the establishment of the illegitimacy of the withdrawal or dismissal. Alternatively, the applicants request the extension to their self of the salaried workers' legal framework, due to the application of art. 2 of the Legislative Decree no. 81/2008. Moreover, the applicants request a compensation for damages because of the data protection violation committed by the employer, which adopted a system of remote surveillance of workers.
Decision	In favour of the Employer.
Issues concerning digital rights	Data protection violation (remote surveillance of workers). The court finds that, despite the information notice provided is generic, there is no violation of data protection regulation and there is no evidence of suffered damage for which is requested a restoration.

Case n.	12
Court / Authority	Court of Appeal of Turin (Corte d'Appello di Torino)
Date of the decision	11.01.2019
Type of proceeding	Judgement of merit (sentenza)
Claimant	Employees
Grade	Second (Appeal of the judgment of the Court of Turin dated 11.04.2018 - cfr. case n. 11)

Short description of facts	Cfr case n. 11
Legal issues raised	The appellants insisted to the claims concerning the existence of a salaried practice and the extension of the salaried workers' legal framework, due to the application of art. 2 of the Legislative Decree no. 81/2008. The claimants didn't raise appeal for the profile of the decision regarding the compensation for damages because of the data protection violation.
Decision	In favour of the Employer
Issues concerning digital rights	About the data protection violation, the Court confirmed the decision of the first grade, because there was no evidence of damage. Moreover, the claimants didn't raise appeal for this profile.

Case n.	13
Court / Authority	Supreme Court (Corte suprema di Cassazione)
Date of the decision	24.01.2020
Type of proceeding	Judgment of legitimacy (sentenza)
Claimant	Employee
Grade	Third (Appeal of the judgment of the Court of Appeal of Turin dated 11.01.2019 - Cfr. case n. 12)
Short description of facts	Cfr. Cases n. 11 e 12
Legal issues raised	The appellants insisted to the claims concerning the extension of the salaried workers' legal framework, due to the application of art. 2 of the Legislative Decree no. 81/2008. The claimants didn't raise appeal for the profile of the existence of a salaried practice neither for the profile of the decision regarding the compensation for damages because of the data protection violation.
Decision	In favour of Employee
Issues concerning digital rights	The Supreme Court established that the job of the riders of Foodinho are due to the collaborations regulated by the art. 2 of the Legislative Decree no. 81/2008 and so that is applicable to the riders the salaried worker legal framework. On the contrary, the Court didn't pronounce about the data protection violation because the claimants didn't raise appeal for this profile.

Case n.	14
Court / Authority	Data Protection Authority (Garante per la protezione dei dati personali)
Date of the decision	10.06.2021
Type of proceeding	Administrative procedure
Claimant	Proceeding started by the Authority on its own initiative.
Grade	First
Short description of facts	From the investigations made by the Commissioner, resulted that Foodinho S.r.l., as the data controller, processed personal data of 18.686 riders in violation of the G.D.P.R. and the Italian legislative decree n. 196/2003.
Legal issues raised	The processing of the personal data made by the company was in violation of the articles 5, par. 1, lett. a), c) e e) (principle of lawfulness, correctness, limitation of conservation); 13 (information notice); 22, par. 3 (suitable tools for the automated treatment of data); 25 (data protection by design and data protection by default); 30, par. 1, lett. a), b), c), f) e g); 32 (preventive measure); 35 (impact evaluation); 37, par. 7 (communication to the control authority of the responsible of data protection); 88 (data protection during the employment relationship) of the GDPR; article 114 (warranties in matter of remote control) of the Italian legislative decree n. 196/2003. The Authority ordered to comply with data protection provisions and fined Foodinho S.r.l. for unlawful data processing with a € 2.600.000,00 sanction.
Decision	Against Foodinho S.r.l.
Issues concerning digital rights	The most important digital right that is treated in this case, is the right to privacy (art. 8 CEDU and GDPR).

Case n.	15
Court / Authority	Data Protection Authority (Garante per la protezione dei dati personali)
Date of the decision	22.07.2021
Type of proceeding	Administrative procedure
Claimant	Proceeding started by the Authority on its own initiative.
Grade	First
Short description of facts	From the investigations made by the Commissioner, it resulted that Deliveroo S.r.l., as data controller, processed personal data of 8.000

	riders in violation of the G.D.P.R. and the Italian legislative decree n. 196/2003.
Legal issues raised	The treatment of the personal data made by the company was in violation of the articles 5, par. 1, lett. a), c) e e) (principle of lawfulness, correctness, limitation of conservation); 13 (information notice); 22, par. 3 (suitable tools for the automated treatment of data); 25 (data protection by design and data protection by default); 30, par. 1, lett. c), f) e g); 32 (preventive measure); 35 (impact evaluation); 37, par. 7 (communication to the control authority of the responsible of data protection); 88 (data protection during the employment relationship) of the GDPR; article 114 (warranties in matter of remote control) of the italian legislative decree n. 196/2003. The Data Protection Authority ordered to comply with data protection provisions and fined Foodinho S.r.l. with a € 2.600.000,00 sanction.
Decision	Against Deliveroo Italy S.r.l.
Issues concerning digital rights	The most important digital right that is treated in this case, is the right to privacy (art. 8 CEDU and GDPR).

Challenges concerning "digital rights" for "platform workers"

Interestingly, the analysis of the Italian jurisprudence on platform workers sheds a peculiar light on the discussion on "Digital Rights". Indeed, from the comparison among them it emerges that technology creates an ecosystem in which are tightened the legal ties among parties, increasing the asymmetries between them, and strengthening the subordination between employer and employees. Moreover, the automation of internal processes and the virtualization of human resources, increases the efficiency of organizational processes, creating a unprecedent dependency by the infrastructure by humans: everyone - workers, customers, third parties - becomes a simple user of a given set of resources. Indeed, in some cases - specifically, those decided in Bologna[9] and Palermo[10] - the discussion is dominated not by theoretical arguments - for example, whether a rider should be considered a self-employed worker or an employee - but by very practical observations based on the analysis on how the management of human resources were controlled by the algorithms governing the platform. For example, in those cases it is thoroughly described the procedure of signing up of new riders, and the huge amount of personal data processed during remote monitoring of the activities performed: e.g. availability especially during peek-hours, efficiency in routing strategies for each delivery, feedback received from clients or customers, and so on.

In the following table it is offered a synthesis of the collected data, showing that the matter of "Digital rights" was discussed in one third of the cases.

[9] Tribunale Bologna sez. lav., 31 dicembre 2020.

[10] Sentenza dei Tribunale di Palermo 12 aprile 2021.

Description	ID	Number	Percentage
Cases analysed	1-15	15	100%
Cases resolved in favour of the platform workers	1, 2, 3, 4, 5, 7, 8, 10, 13	9	60,00
Cases decided in favour of the platform owner	6, 9, 11, 12	4	26,67
Platform owner fined	14, 15	2	13,33
Cases not involving digital rights	1, 2, 3, 4, 5, 6, 10, 12, 13	9	60,00
Cases involving digital rights	7, 8, 11, 14, 15	5	33,33
Cases involving privacy (art. 8 CEDU)	11, 14, 15	3	20,00
Cases involving discrimination (art. 14 CEDU)	7, 8	2	13,33

This is a relevant information showing that recent Italian jurisprudence seems keen - if not ready - for a full understanding of the meaning of "digital rights" in this context.

The main concern is related to data protection. In this sense it is interesting to note that discrimination is considered a specific risk included in this field, even if there is one decision which isolates discrimination as a separate issue.

Conclusions and policy recommendations

According to the results of this analysis, and following the arguments spent in the decisions above analysed, we can observe that current legislation and ordinary judicial remedies are insufficient to solve a complex matter such as the legal issues concerning "platform workers", especially those including "Digital rights". Of course, in this effort laymen cannot be left alone, being required the support from international institutions ('OECD Framework for the Classification of AI Systems' 2022), and from the community of experts (Schwartz et al. 2022) in order to assess the risks posed by artificial agents. In the EU context, for example, it is worthwhile to be mentioned an attempt to prepare the grounds for the future "Artificial Intelligence Law" (Floridi et al. 2022).

Besides ordinary legislation and judicial proceedings, a few alternative approaches can be envisioned, suitable to offer solutions that can bring a lasting benefit for workforce but also for platform providers and in general for the society.

Technological design.

The incorporation of ethical values in technological devices has been officially recognized by the EU legislator with article 25 of GDPR, regulating the privacy "by design" and "by default" approach. In this sense, it could be possible to incorporate the protection of Digital rights directly into the algorithm governing the platforms, in order to provide built-in operating mechanisms of trade union negotiation and assistance. International guidelines and collection of best practices could help.

Collective bargaining agreements.

Rather than an *a priori* legislation which, being general and abstract, leaves *per se* too wide margins of interpretation, or an *ex post* judicial proceeding which, being expensive and uncertain, cannot be pursued by many workers, it could be useful to include a more binding and specific regulation using collective

agreements between union workers and employers' associations. Of course, in this sense public institutions play a fundamental rule of intermediation in order to avoid abuses and "false flag" strategies as those adopted in one of the Italian cases.

Local arrangement and code of conducts.

Since the services provided by such kind of platforms are strongly territorial (e.g. delivery), it could be an opportunity for municipalities to step up and regulate some specific aspects that could improve significantly the quality of jobs of platform workers (e.g. creating stations or offering shed zones for riders waiting for a call) or assisting workers and employers in adopting voluntary codes of conduct that could not only improve the quality of jobs, or raise the productivity of platforms, but also provide benefit for the whole community[11].

Regulatory sandboxes and living labs.

The concept of "regulatory sandbox" is included in the EU proposal called "Artificial Intelligence Act"[12] (articles 53 and 54), which intend to provide regulation concerning the processing of data and the security measures to safeguard the deployment of artificial agents. In this sense, this tool could be used to establish provisional legal frameworks in order to experiment new forms of regulations and models of interaction suitable to protect the "Digital Rights" of "platform workers"[13].

Acknowledgements

This report addresses the topic discussed in the 11th Webinar included in the GDHRNet Highlights Lectures, Tuesday 1st Feb 2021 (13-14 CET), "The Platform Economy and Human Rights", Janneke Gerards (Utrecht University), Valeria Filì and Federico Costantini (University of Udine).

This document is the output of a research activity jointly done by the authors. Section I and II have to be attributed to Federico Costantini, Section III to Alan Onesti, Section IV, V, and VI to both.

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The references are mentioned using Zotero and the citation style Chicago 17th.

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[11] Cfr. "Carta dei diritti fondamentali del lavoro digitale nel contesto urbano" (c.d. Carta di Bologna) of 2018.

[12] Proposal for a Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) and amending certain union legislative acts, COM/2021/206 final, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021PC0206.

[13] It is noteworthy that a similar attempt is being made by an ongoing research project https://wetransform-project.eu/.

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