



Legal Vacuum in Kazakhstan's Platform Employment

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Abstract: Recently, Internet platforms have been increasingly active in Kazakhstan, providing services, passenger transportation and food delivery. With this in mind, in 2023 the Social Code of the Republic of Kazakhstan was adopted. The Social Code regulates platform employment and makes partial additions to the Labor Code of the Republic of Kazakhstan on this issue. These additions need to reveal the true essence of platform employment due to the need for more elaboration on certain problems and on the lack of consideration of many European countries' international practices and court decisions. Modern approaches to the regulation of platform employment have been revealed in European, Russian and Kazakh scientists' works. The analysis of the works of these scientists allowed the authors of this paper to draw several conceptual conclusions, such as the objective need to classify the self-employed into "independent self-employed" and "dependent self-employed", depending on which norms of civil and labor legislation can be applied. With this classification, particular importance should be given to the principle of authority — subordination in the relationship of the platform with its performers (or employees) in order to identify signs of a classic labor relationship. According to the authors' opinion, in the conditions of a legal vacuum, it is proposed to reflect the most optimal ways of regulating such employment in the future law of the Republic of Kazakhstan "On Platform Employment". The authors' main idea is that when regulating platform employment, a rebuttable presumption

of labor relations should be introduced and the burden of proving the absence of labor relations should be imposed on the platform.

Keywords: platform employment; independent self-employed; dependent self-employed; social benefits and guarantees

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I. Introduction

Under the influence of economic, technological and demographic factors, the scale of platform employment has radically increased in the world over the past decade, the legal regulation of which and the analysis of its quality are the most important issues not only for the labor market but also for its subjects. Due to the demand for platform employment in Kazakhstan, much work remains to be done to develop effective mechanisms for protecting labor rights of platform workers.

In this regard, the study of the mechanism of legal regulation of labor and protection of labor rights of platform workers is conditioned by the need to improve civil and labor legislation regulating this non-standard form of employment using online platforms and digital technologies.

Currently, platform employment in Kazakhstan is not fully regulated. Small point-by-point changes to the Social Code of the Republic of Kazakhstan (hereinafter Social Code) and the Labor Code of the Republic of Kazakhstan (hereinafter Labor Code) do not reveal the essence of such employment, since they are worked out superficially,

without taking into account international practice and court decisions of several European countries.

Modern approaches to the regulation of platform employment have been revealed in the works of Kazakhstani scientists. Thus, in his scientific articles, M. Khasenov reviews concepts and research on regulating digital labor platforms. In his opinion, platform employment generates some challenges related to the increased vulnerability of employees called independent contractors (freelancers). The classical understanding of labor relations presupposes the signs of independent work and employee dependence, which is reflected in the business models of gig companies. The use of algorithmic control mechanisms and information asymmetry indicate the presence of authority in the relationship between the platform and the employee – subordination and dependence of employees on the platforms (Khasenov, 2022). Another Kazakhstani scientist, N. Lyutov, in his article “Platform employment: the draft of the new EU directive and the norms of Russia and Kazakhstan”, based on a comparative analysis of the provisions of the draft EU directive¹ on improving working conditions within the framework of platform employment with norms, draft laws and judicial practice of Russia and Kazakhstan, concludes that it is necessary to consolidate the platform by workers having the status of employees within the framework of labor law (Lyutov, 2022). Russian scientists S. Golovina, A. Serova, O. Chesalina, S. Shuraleva and others also defend the opinion that the relationship between the platform and the contractor should be regulated by labor legislation.

Belarusian scientists have also studied the legal regulation of platform workers’ work. Thus, K. Tomashevski, in his article “Platform employment: between labor, civil and tax law”, notes that relations in platform employment have both an employment and a civil nature (Tomashevski, 2021). A similar opinion is held by A. Serova, who, in the article “In search of the concept of legal regulation of platform employment”, formulated and scientifically substantiated the main provisions necessary for comprehensive normative regulation of labor.

¹ Proposal for a Directive of the European Parliament and of the Council on improving working conditions in platform work. Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_21_6605 [Accessed 01.07.2024].

She proposed to start the process of reforming legislation by separating the self-employed as a separate category of citizens in order to give them an official independent employment status. At the same time, she also proposed to consolidate the Concept of “self-employment”. Moreover, this is necessary in order to bring regulatory clarity to the definition of employment status in the labor market for the self-employed, including platform workers, due to the apparent specifics of their activities (Serova, 2022).

Conceptual issues related to the classification of the self-employed, as well as their rights and obligations, depending on which norms of a particular branch of law can be applied, were disclosed in Eva Kocher's monograph “Digital Labor Platforms at the Intersection of Labor Law: regulation of market organizers” (Kocher, 2022).

In the article “Platform Employment in Europe: Lessons Learned, Legislative Developments and Challenges Ahead”, A. Aloisi aims to eliminate possible policy gaps and implications for the social law of the European Union by exploring lessons that can be learned from political and legal changes. It presents the results of trials at the national level with an emphasis on the role of algorithmic management. He also critically analyses the EU Directive on Transparent and Predictable Working Conditions² and the EU Recommendations on access to social protection for the self-employed.³ It is argued that the targeted approach of the Court of Justice of the European Union may lead to the classification of platform workers as subject to social legislation in certain areas (Aloisi, 2022).

When classifying platform workers, particular importance is given to the principle of authority — subordination in the platform's relationship with its performers (employees) to identify signs of a classic labor relationship. In this context, the research of Norwegian scientists

² Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union. Available at: <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32019L1152> [Accessed 01.07.2024].

³ Council Recommendation of 8 November 2019 on access to social protection for workers and the self-employed (2019/C 387/01). Available at: <https://op.europa.eu/en/publication-detail/-/publication/7268ba21-079c-11ea-8c1f-01aa75ed71a1/language-en> [Accessed 01.07.2024].

is interesting, highlighting three dimensions of power: direct power, agenda power and symbolic power. They attach particular importance to symbolic power when it is not manifested, since it receives tacit consent to the influence of this power. By making their own choices, people fall under the influence of a hidden form of power, where algorithmic control from the platform and information asymmetry limit the autonomy of employees (Nilsen et al., 2022).

From the labor law perspective, the article by T. Korshunova and O. Motsnaya, “Platform work and the changing of definitions of employee and employer”, is of great interest. They note that with the development of technology and artificial intelligence, there is a need to reconsider the classical understanding of labor relations and its subjects. Considering that the introduction of new technologies into the field of employment and the departure from the Concept of a (single) employer is a necessary stage of social development, it is proposed to revise the concepts of “employee”, “employer”, “employment relationship” established in labor law. At the same time, it is considered necessary to reconsider the terminological aspect and determine how technological factors affect their legal nature.

Of course, it is impossible to disclose all the issues related to the revision of established concepts in labor law within the framework of one research paper. Nevertheless, a number of conclusions of the authors deserve attention, in particular, the following provisions: 1) persons working for the platform do not conclude an employment contract, do not have a particular legal status and depend entirely on who assigns and evaluates work through the online platform; 2) the advantage of the platform economy is the ability to maintain autonomy and freedom in choosing the schedule and volume of one’s own work; 3) the relations arising between the platform and the contractor can be recognized as labor or civil law relationships; 4) it is proposed to legalize the Concept of “dependent self-employed”; 5) it is proposed to abandon the traditional emphasis on the status of employees and focus based on the concept of the employer; 6) it is proposed to determine the existence of an employment relationship through the performance by the prospective employer of its inherent functions (Korshunova and Motsnaya, 2022).

II. Methodology

The methodological approach of the study is a combination of the dialectical method of cognition of legal reality, general scientific methods of cognition and private scientific methods of legal science. The validity of the assertions and conclusions in this article is achieved through analysis, synthesis, deduction, the systematic approach, and the method of comparative jurisprudence. The dialectical method of cognition was chosen to detect causal relationships in developing the legal mechanism for regulating labor relations in digitalization. The study reveals the internal patterns inherent in modern labor relations. The methods of analysis and synthesis made it possible to study the structure, individual features and internal connections of the legal mechanism for regulating the work of platform workers. The synthesis method made it possible to combine the elements of the legal mechanism in dialectical unity with the allocation of their essential characteristics. With the help of inductions and deduction, both similar features of the legal status and activities of platform workers and specific differences were found. The formal legal method is based on analyzing sources of labor and civil and social law. The comparative law method made it possible to study the experience of foreign countries, taking into account the digitalization of various States.

III. Results

In Kazakhstan, two types of digital labor platforms are used.⁴ They must be clearly distinguished by the legislator or judicial practice; this leads to the deprivation of various social benefits and guarantees for employees. The status of the employees should be determined based on the actual circumstances and not on how the parties formalized the relationship. Let's consider their differences in the tabular version to avoid errors in their classification.

⁴ The Social Code of the Republic of Kazakhstan. Available at: <https://adilet.zan.kz/rus/docs/K2300000224> [Accessed 01.07.2024]. (In Russ.).

Table 1. *Types of digital labor platforms currently operating in Kazakhstan*

Performers are independent self-employed	Dependent self-employed workers
A marketplace is an information system offering information about goods, works, services and their characteristics, ensuring contractor interaction. The system operators are not employers	A digital employer is an information system offering information about goods, works, services and their characteristics, ensuring interaction between employees, employers and contractors. The employers are the operators of the system
Rules are set in advance; performers and customers agree on the price; the platform does not control the quality of execution; platform performers independently search for orders and act on their behalf. Platform performers and marketplace operators are legally equal, and algorithmic control is not performed	The digital platform influences the terms of service provision and the price of the service, sets tariffs for services, and controls the performance of the service. Employees independently ensure working conditions and provide materials and equipment for business activities
They are independent self-employed	The employed include individual entrepreneurs who carry out their work personally. Employees are not limited by working hours and internal work regulations
These are services: copywriting, legal and accounting services, IT work, translation of texts, etc.	Transportation services, food delivery, cleaning services, etc.

As seen from the Table 1, no contracts formalize employment in either type. Internet platforms act as intermediaries, and this circumstance does not make it possible to determine the legal status of the parties who have entered into a relationship.

The main difference between a marketplace and a digital platform is the presence or absence of self-employed (independent or dependent) independence in their work. Most people who regularly earn their living by searching for customers on Internet platforms essentially turn out to be fictitious independent self-employed since their relationships with customers and platforms often have the character of labor; that

is, they are dependent and self-employed. Consequently, independent self-employed and dependent self-employed, on the one hand, are not identical concepts; on the other hand, they overlap, especially in conditions when platforms insist that they are not employers but intermediaries.

Under Subparagraph 133 Art. 1 of the Social Code, “an independent employee is an individual who independently carries out activities for the production (sale) of goods, works and services in order to generate income without state registration of his activities, except individual entrepreneurs, persons engaged in private practice, founders (participants) of an economic partnership and founders, shareholders (participants) of a joint-stock company, members of a production cooperative”. This definition is new in Kazakh legislation and replaces the term “self-employed” that means a person who earns his living without an officially concluded employment contract. Based on the content of the activities of the two groups of “self-employed”, it follows that the first group is *the independent self-employed*; the second group is *the dependent self-employed*.

The legislative definition of the “platform employment” concept is contained in the Social Code that entered into force on 1 July 2023. It notes that “platform employment is a type of activity for the provision of services or the performance of work using Internet platforms and (or) mobile applications of platform employment”. This definition covers both types of employment, a marketplace and digital employer, since it deals with providing services and work performance. At the same time, in the following paragraphs of Art. 102 of the Social Code, many essential signs of such employment were mixed, namely: a) an “individual entrepreneur” or “legal entity” is called as an operator of the Internet platform, which does not correspond to reality, since persons register and work on the platform without an intermediary — an individual an entrepreneur or a legal entity; b) the third party is called the “executor”, which is also incorrect, since the third party may be a “dependent self-employee”, that is, an employee. This circumstance completely refutes the existence of an employment relationship; c) it is stated that the relationship between the operator, the customer and the

contractor is regulated by the Civil Code of the Republic of Kazakhstan,⁵ which also does not leave the parties to the contract to formalize the relationship as an employment relationship. Thus, when developing this article, the legislator formally studied the issue's essence, qualifying the relationship only as a civil law relationship.

To develop the provisions of Art. 102 of the Social Code, the legislator provided for a new Art. 146-1 in the Labor Code that states “Peculiarities of labor regulation of employees employed by an individual entrepreneur or a legal entity operating using Internet platforms and (or) a mobile application for platform employment”.⁶ The article contains reference norms and some exceptions from the general norms of labor legislation (absence of restrictions in setting the deadline, freedom of contract, freedom of remuneration, working hours and rest time). According to this provision, relations with the participation of labor platforms are to be regulated only if an individual entrepreneur or a legal entity engaging employees uses the platform. However, the platform's business model differs in practice: a person registers on the platform and provides services without an intermediary — an individual entrepreneur or a legal entity. In our opinion, the article has also not been worked out by the legislator, which is why it does not clarify the legal regulation of the operation of platform workers. On the contrary, it will lead to confusion when distinguishing the types of self-employed employees.

The Resolution of the European Parliament on Fair Working Conditions, Rights and Social Protection of Platform Workers recognizes the difference in the approaches of States to defining the concepts of “self-employed” and “employee”, which leads to erroneous qualifications of such employees.⁷ In this regard, we support the resolution regarding the need to introduce a rebuttable presumption

⁵ The Civil Code of the Republic of Kazakhstan. Available at: <https://adilet.zan.kz/rus/docs/K940001000> [Accessed 01.07.2024]. (In Russ.).

⁶ The Labor Code of the Republic of Kazakhstan. Available at: <https://adilet.zan.kz/rus/docs/K1500000414> [Accessed 01.07.2024]. (In Russ.).

⁷ European Parliament resolution of 16 September 2021 on fair working conditions, rights and social protection for platform workers — new forms of employment linked to digital development (2019/2186(INI)). Available at: www.europarl.europa.eu/doceo/document/TA-9-2021-0385_EN.html [Accessed 01.07.2024].

of employment relations in platform employment and the burden of proving the absence of an employment relationship rests on the platform. Unfortunately, the absence of clear legislative criteria for distinguishing “independent self-employed” from “dependent self-employed” makes it impossible to define platform workers’ legal status.

IV. Discussion

The criteria of labor relations in platform employment are defined by M. Khasenov, who identifies the following:

- 1) subordination and control (the work is performed under the instructions of the other party);
- 2) personal performance of work;
- 3) employee’s integration into the organization and business model;
- 4) entrepreneurial opportunities — generating income in the service market and the presence of economic risks, to which the contractor is exposed;
- 5) economic dependence (Khasenov, 2022, p. 43).

It follows from the listed criteria that there are signs of traditional labor relations in the activities of digital platforms. At the same time, it cannot be said that there is wage labor on all labor platforms, as can be seen from *Table 1*, where, in addition to the “dependent self-employed”, there are “independent self-employed” on digital platforms, who independently search for orders, act on their behalf, and they are not subject to algorithmic control.

Most of the court decisions rendered by the courts of the EU Member States proceed from the recognition of employees’ fundamental rights inherent in wage labor. Furthermore, again, this does not mean that hired labor is used in all cases of platform employment. The main reason for similar court decisions is the lack of proper legal regulation of labor, services provided in platform employment, that is, a legal vacuum and the desire of the courts to protect the rights of precarious workers.

The automatic extension of all social guarantees to platform employment causes severe damage to the economy and poses a real threat to the platforms’ existence (Sinyavskaya et al., 2021, p. 7). In this regard, we support the opinion on the soft regulation of this type of

employment and the expansion of opportunities for voluntary insurance of certain risks while maintaining the status of the “independent self-employed”. Moreover, as for the “dependent self-employed”, all the benefits and guarantees provided by labor legislation can be extended. To date, Kazakhstan does not have an adequate insurance system for both categories of persons, leaving them unprotected.

Currently, 9.1 million people are employed in the Republic of Kazakhstan, 6.8 million are employees, and 1.6 million are self-employed. The share of the self-employed population is about 17.5 %.⁸

The self-employed in Kazakhstan are those who earn their living without an officially concluded employment contract with employers, and these are not necessarily platform workers, whose number is more than 1 million people.⁹ Identifying the specific number of platform employees is complicated since no general guidelines exist for such an assessment. According to some authors, it is difficult to estimate the number of people employed on digital labor platforms for the following reasons: a) the platforms themselves do not always provide such information; b) the same employees may be registered on different platforms; c) not all work full-time, some work for several hours a day. For some, this work is the primary source of income, while for others it is additional earnings (Petrovskaya, 2021). Furthermore, in this context, the number noted above — 1 million people — is an approximate number of platform workers.

The Concept of the Development of Kazakhstan’s labor market for 2024–2029 draws attention to new approaches to formalizing platform workers.¹⁰ It is noted that the main advantages of platform employment are flexibility of working hours, the ability to combine work with the main activity, and a balance of career and personal life. At the same time, it is emphasized that the main task of the state is to ensure the labor rights

⁸ The main indicators of the labor market in the Republic of Kazakhstan (I quarter 2024). Available at: <https://stat.gov.kz/ru/industries/labor-and-income/stat-empt-unempl/publications/158481/> [Accessed 01.07.2024]. (In Russ.).

⁹ Self-employed and single aggregate payment in Kazakhstan in 2023. Available at: <https://buh.mcfr.kz/article/852-samozanyatyeyysclid=lqp4dle143341273270> [Accessed 01.07.2024]. (In Russ.).

¹⁰ Available at: <https://adilet.zan.kz/rus/docs/P2300001050> [Accessed 01.07.2024]. (In Russ.).

protection and establish social guarantees for platform workers. At the same time, this Concept has no provisions regarding specific measures to protect platform workers' labor and social rights. However, it was possible to mention how "formalization" would occur. In our opinion, an independent law "On Platform Employment" is needed, where the categories under consideration would be fully described, depending on which it would be possible to determine the legal status, rights and obligations of the parties to the legal relations arising in this case, as well as social protection.

The Concept should also mention the risks of platform employment, such as a) unstable employment and income, and b) lack of the right to social benefits for unemployment, temporary disability, pension contributions, compulsory social health insurance, etc.

One of the main issues of platform employment is the issue of classifying the relationship between the platform and workers using platforms to provide services. The analysis shows that three types of relationships arise with such employment: civil, labor and mixed. It is difficult to identify mixed relationships since they may contain civil and labor relations elements. According to V. Vinogradova (2020), K. Tomashevski (2021), and others, these employees are not only in the field of joint normative regulation of civil, labor, and tax law norms.

A pilot project on platform employment of couriers and taxi drivers has been launched in Kazakhstan since 1 July 2023.¹¹ As part of this project, Internet platform operators are recognized as tax agents with the obligations to pay taxes and social payments.

As the relevant Agreement was signed with the *Yandex.Taxi* Internet platform, taxi drivers must register as individual entrepreneurs directly on the Internet platform. The Internet platform operator undertakes obligations to pay individual income tax, social contributions, mandatory pension contributions and contributions to compulsory health insurance from the income of taxi drivers. Therefore, if a taxi driver fulfils tax obligations in this way, he will receive social guarantees and access to medical care. On the one hand, the "dependent self-employed" is a

¹¹ Pilot project on platform employment. Available at: <https://tsnik.kz/news/s-1-iyulya-zapushchen-pilotnyy-proekt-po-plattformennoy-zanyatosti%20/?ysclid=lqp12yctiw102990848> [Accessed 01.07.2024]. (In Russ.).

business entity, and on the other, an employee with certain guarantees in terms of medical and pension provisions. The above obligations of a digital employer do not differ from those of an ordinary employer — the subject of labor relations. The question arises: why should such a complex scheme develop and register as an individual entrepreneur when an electronic employment contract can be concluded?

Moreover, in such activities of a self-employed individual entrepreneur, there is no entrepreneurial risk; he receives income for his work, not profit. It is also evident that transferring many social risks to such a dependent self-employed person makes him vulnerable with a compromised guarantee of labor relations, in other words, makes him precarious. In our opinion, this pilot project is mainly aimed at realizing the state's fiscal interests.

Yandex.Taxi does not limit its activities to an information intermediary only, since the platform fully coordinates and controls the process of drivers' work. It seems that at the end of this pilot project, it will be possible to legislate the specifics of labor activity and its characteristic features: the economic dependence of the employee; the asymmetry of the economic opportunities of the parties; the weakening of the integration of employees into the organizational structure of the enterprise (Akmanov, 2021). In practice, several countries have a situation where, due to the great competition between platforms, some platforms, the owners of their sites, hire them to attract responsible performers. Moreover, this approach guarantees constant customer access to platform services, even in times of crisis. Furthermore, this allows the platforms to maintain their niche in the employment system and continue to provide high-quality services. Such employees should be distinct from employees directly employed by the platform, who are internal employees ensuring the platform's functioning.

According to the pilot project organizers, taxi drivers will receive the following advantages: 1) exclusion of intermediary services in the form of taxi companies, which allows saving money for subsequent payment of taxes and social payments with the inclusion of the driver in the social security system; 2) simplified registration as an individual entrepreneur directly through the *Yandex* platform, without visiting the tax authorities; 3) income tax is set at 1 % of the actual

income received, whereas the standard income tax for an employee is 10 %; 4) no obligation to submit reports and calculate taxes and social payments independently. With the driver's consent, *Yandex* can withhold and transfer taxes and social payments calculated based on the driver's income.¹² As can be seen from the listed "advantages", the main drawback, in our opinion, is a minimal income tax of 1 %, which does not cover the necessary social protection level established for employees under an employment contract.

A. Serova considers it appropriate to provide platform workers with a package of social and labor rights and guarantees at three levels: general, which applies to all platform workers; specific that all the self-employed should have; and unique that only platform self-employed will be endowed with (Serova, 2022, p. 265). Agreeing with this opinion, we would like to clarify that such a differentiated regulation of social and labor rights and guarantees is suitable for the *independent self-employed*. As for the *dependent self-employed*, they should be considered as employees with the establishment of all social benefits and guarantees under labor law. We are talking about a social package for the platform self-employed, i.e., "dependent self-employed".

The legal literature contains papers where the authors doubt the purity of such regulation of the categories of the self-employed. Thus, L. Zaitseva notes that some platforms, to minimize possible costs, position themselves exclusively as an intermediary, although a quasi-employer platform may grow out of an intermediary platform. Such a digital employer has a solid and differentiated search system, offering users multi-level search conditions for performers, as well as a profound system of controlling influence on performers, carrying out not only selection but also training and evaluation, rating performers by evaluating the quality of their services in order to reward and punish in the future. As the contractor in such a platform eventually falls into organizational, personal and economic dependence, it becomes difficult to determine the status of such a contractor (Zaitseva, 2021). Moreover, this suggests that it is impossible in its pure form to single out and differentiate

¹² Platform employment: regulation: pros, cons. Available at: <https://uchet.kz/news/platformennaya-zanyatost-regulirovanie-plyusy-minusy%20/?ysclid=lqpownsa0z260571939> [Accessed 01.07.2024]. (In Russ.).

the types of social protection for each of the categories of the self-employed mentioned above. The unclear formalization of labor relations and ambiguity in the issue of employee rights and responsibilities of platforms allows companies to control platform employees as employees but without the costs associated with the employer's social responsibility (Yanchenko, 2022, p. 922). Conceptualization of platform employment requires, firstly, defining the concept of various terms describing work based on digital platforms and, secondly, grouping them according to essential features and identifying categories of self-employed in order to establish social guarantees and prevent their precarization.

Some authors propose to divide platform employment into several components and to formulate for each component its regulatory framework by analogy with the types of entrepreneurships (Glotova and Gerauf, 2021, p. 26). Let us disagree with this statement of the question for the following reasons. Firstly, entrepreneurship is an activity that involves investing funds in order to make a profit based on a combination of personal gain and public benefit. Secondly, entrepreneurship is self-reliance and independence, the ability to make decisions regarding a particular issue within the framework of legal norms. With platform employment, a person can engage in certain activities that do not necessarily generate profit, but rather provide income. As principles of entrepreneurial activity, independence is not always inherent in a platform worker.

There are five types of entrepreneurships in Kazakhstan:¹³ industrial entrepreneurship, commercial entrepreneurship, financial and credit entrepreneurship, intermediary entrepreneurial activity, and insurance. By analogy with these types of entrepreneurships, platform employment cannot be regulated, since such employment is not entrepreneurship.

Foreign researchers also believe many differences in platform employment exist, so courts classify legal relations with their employees differently. Nevertheless, the qualification of the status of persons working through digital platforms is necessary not only for their legislative consolidation but also for recognizing precarious employment

¹³ The Entrepreneurial Code of the Republic of Kazakhstan. Available at: <https://adilet.zan.kz/rus/docs/K1500000375> [Accessed 01.07.2024]. (In Russ.).

in the country with all its consequences and developing social measures to support this type of employment.

Due to the adoption of the Social Code in Kazakhstan and the inclusion of the norms on platform employment, self-employed citizens are subjects of entrepreneurial activity and their status is regulated by the norms of civil and tax legislation. Moreover, this suggests that a new organizational and legal form of entrepreneurship has emerged, which we categorically disagree with. Firstly, according to their economic situation, the self-employed are closer to employees than to business entities. Secondly, there is no entrepreneurial risk in the work of the self-employed. Thirdly, the self-employed receives income, not profit. Fourthly, all social risks that the employer must bear are shifted to the self-employed.

In a challenging international environment, the labor markets of the member countries of the Eurasian Economic Union (EAEU) show stability in comparison with the labor markets of many third countries. At the same time, they require transformation, considering the challenges of the time. Thanks to non-traditional forms of employment, markets are increasingly developing not for labor activity but for skills activity. At the same time, new forms of employment are developing faster than the legislative framework, which creates risks for parties to labor relations to remain without social protection and medical care. The absolute priorities of the EAEU are the creation of convenient platform solutions, digitalization of business processes aimed at removing barriers to doing business, and improvement of the quality of life of people in the Union.

Let us consider the state of legislative regulation of platform employment in several EAEU countries. In Kazakhstan, platform employment is available in taxi and courier services and IT services for software development. There are intermediary digital platforms that provide services from households to professionals. Negative consequences include inconstancy of income and work, reduction of job security, unavailability of social partnership, reduction of control over work hours, instability of safety and labor protection, reduction of coverage of social protection and insurance, lack of access to advanced training, etc. Legislative regulation of platform employment is provided for in the Social Code and the Labor Code (Art. 102 of the Social Code,

Art. 146-1 of the Labor Code). Platform employees do not enjoy the benefits and guarantees established by labor legislation, except cases provided for in the Labor Code. A pilot project is being implemented to provide social guarantees to taxi drivers and couriers.

In the Republic of Belarus, individuals employed through Internet platforms do not make an employment contract with the platform. The platforms use variants of civil law contracts to provide paid services to the contractor. The principle of voluntary payment of mandatory contributions for state social insurance (for pension provision and payment of temporary disability) has been established.

There is currently no legislative regulation of platform employment in Russia. A draft law “On Platform Employment” is being developed. It is expected to provide for the creation of a mandatory Register of digital platforms where each platform will have to register; the obligation for the platform to maintain a rating for platform-employed clients; the requirement to inform employees and customers; specific requirements for the payment procedure; creating conditions for voluntary social insurance of the employed; establishment of a procedure for resolving individual disputes between an online platform and the employed; creation of the Council of Digital Platform Operators; creation of a trade union of platform employees with voluntary membership. The participation of operators in the Council will be mandatory. Currently, social guarantees are provided through local initiatives: since 2020, *Yandex Services*, in partnership with an insurance company, have begun an experiment in providing social guarantees (paid sick leave and insurance). The program is implemented on a co-financing basis.

In the new Federal Law No. 565-FZ dated 12 December 2023, “On Employment of the Population of the Russian Federation”, we do not find provisions on platform employment, let alone the mechanism of their legal regulation.¹⁴ It is known that the deputies of the State Duma decided to develop and adopt a new law “On Platform Employment” but this does not mean that the fundamental law “On Employment of the Population of the Russian Federation” cannot even mention such employment that

¹⁴ Available at: https://fs.czn.cap.ru/czn_home/www/laws/2023/12/12/f63ed296-afa6-4d33-a1be-be0be02365b3/zakon-o-zanyatosti-ot-301123.pdf [Accessed 01.07.2024]. (In Russ.).

not only exists in the country, but is also rapidly developing. Fifteen and a half million of workers in Russia have employment experience in the platform economy (we are talking about performers of one-time jobs who find customers using Internet platforms), including almost 2 million people who are permanent partners of the platforms. Regarding the number of the permanently employed, the platform economy is twice as large as all mining industries together, and three times as many are employed as in transport engineering, and five times in metallurgy. According to the trade unions, the initial draft of the law provided for creating a supra-platform Council that was developed mainly in the interests of platform companies. It provided for the legal regulation of the activities of platform workers using the norms of civil legislation without subjecting digital employers to proper social responsibility. Insufficient elaboration of the draft law led to the postponement of consideration and adoption to a later date.

There is an opinion among trade union representatives that creating a supra-platform Council and adopting the law "On Employment of the Population" are carried out in the interests of platform companies since both separate platform employment from labor relations.

In Kyrgyzstan, digital platforms are not legally regulated. The platform economy is widespread in passenger transportation (taxi), delivery services, trade, etc. Platform leaders are *Yandex*, *Glovo*, *2GIS*, *Lalafo*. Difficulties in the activities of taxi drivers include the illegal status of drivers, an opaque labor system, the use of fines, the lack of pension provision and social protection. Trade unions advocate determination of the legal status of platform workers and extending all guarantees to platform workers, developing protection mechanisms regardless of whether they are employees and have a civil contract. In February 2021, the taxi drivers' union was established. The life and health insurance program for *Yandex* users and drivers during trips has been in effect since June 2023.

There is no legislative regulation of platform employment in Armenia. Nevertheless, Armenia participates in all meetings of the CIS Interparliamentary Assembly to discuss legislative regulation of platform employment.

In the CIS region, there are no uniform legal norms for regulating platform employment. The CIS Model Law “On Platform Employment” (draft) will be adopted in 2025. According to this draft law, platform employment is a civil law relationship (subject to the criteria established in the law that distinguish these relations from labor). Platforms that comply with such criteria are immune from reclassification of relations with platform employees into labor ones. The platforms are assigned a list of responsibilities they owe to employees: to inform about all essential conditions of cooperation and available insurance products related to social protection. We concluded that it is necessary to introduce a single definition of a self-employed person throughout the CIS to ensure the introduction of social guarantees and protection for employees using the appropriate tax regime.

Currently, no EAEU Member State has an independent law “On Platform Employment” that would list the categories of self-employed and define their legal status to develop a set of social protection measures. After all, it is known that, if platform employment is regulated at the level of the law and its participants acquire a certain status, then platform employment will be an official way of earning money. The following three ways of regulating platform employment and establishing social guarantees are possible: 1) platforms will independently find a solution to provide basic social guarantees to performers; 2) platform workers will be endowed with all the rights and obligations established under the Labor Code; and 3) platform employment will be divided into several types and for each type regulatory measures will be established, while social protection measures will be determined and applied.

There are the countries where independent laws governing platform employment were enacted. In Spain, the Ley Rider Law has been in force since June 2021. The Law establishes the legal status of couriers and their right to: 1) carry out activities for the delivery and (or) distribution of any consumer product in exchange for remuneration; 2) receive information about the presence (or absence) of algorithmic control from the platform; 3) receive information about the rules and instructions established by the company. These rights are limited by inability to object to what has already been established by the platform. Thus, the platform, on the one hand, can establish algorithmic control,

but, on the other hand, the employee must know about it, i.e., the control must be transparent. The main advantage of this law is the extension of labor legislation to couriers. On 3 March 2021, the Government of Spain and the social partners concluded the Agreement regarding “The labor rights of platform workers”, where they are recognized as employees provided with the right to access social services (this Agreement refers to workers subject to labor legislation).

Italian Law 128/2019 regulates the activities of all “organizationally” dependent employees: 1) those whose work is organized by the platform; and 2) the work of self-employed couriers delivering goods using two-wheeled vehicles. Even though couriers are called self-employed, the platform sets allowances for working at night, holidays, on days of adverse weather conditions, mandatory insurance against industrial accidents and occupational diseases. The platform unilaterally interferes with the activities of these employees, and the labor legislation applies to them. In 2020, the Protocol was signed between the Trade Union Conference and the Italian Ministry of Labor, according to which couriers are classified as employees.

In France, on 24 December 2019, the law regulating platform workers introduced significant changes to the French Labor Code. A new chapter entitled “Social responsibility of platforms” was included. The chapter concerns taxi drivers and couriers. Such responsibility of the platforms occurs if the platform determines the characteristics of the services and goods provided and sets the price.

As can be seen from the analyzed laws of European countries, the subject of regulation in all the three laws is the work of drivers and couriers who carry out their activities under the platform's direct (or indirect) control and are subject to labor legislation. Unfortunately, no laws in any country today distinguish the legal status of “dependent self-employed” and “independent self-employed”. This is necessary in an environment where platforms sometimes reveal the true essence of relationships with employees to avoid social responsibility. Scientists researching this issue agree that legal classification is paramount for providing social protection to employees (Aloisi, 2022).

V. Conclusion

Regulation of the relationship between platforms and performers (employees) is carried out by the platforms unilaterally. Moreover, such regulation can lead to unfair competition between platforms, leakage of confidential personal data, and information asymmetry. Despite the attractiveness of such employment, as practice shows, it remains unstable, ultimately leading to the precarization of workers. Moreover, this fact cannot but worry the scientific community that is concerned about the legal vacuum that has developed in the majority of countries where the exploitation of the labor of platform workers continues, and the elimination of which can be carried out by state intervention through the development of effective mechanisms for the essential protection of the labor (services) of platform workers called the *independent self-employed* and *dependent self-employed*.

Lawyers of the Republic of Kazakhstan face the following tasks: 1) to identify the main transformations in the country in the field of employment and their impact on the labor mobility of citizens in the digital economy; 2) to study the current state of platform employment and identification of mechanisms for legal regulation of relations that develop in this area; 3) to study the essence of legal relations complicated by varying degrees of mixing elements of labor and civil law relations; 4) to define categories of platform workers depending on the services provided and to develop new theoretical provisions corresponding to the new realities of employment of citizens; 5) to identify the influence of technological factors on the legal nature of such well-established classical concepts as “employer”, “employee”, “labor relations”; 6) to determine the legal status of platform workers based on their categories and to develop specific measures to respect the rights and legitimate interests of these persons; 7) to substantiate characteristic features of platform workers as a legal category and the objective need for social protection of these workers. Some of these tasks are discussed to some extent in this research paper.

Thus, we hope that the results of this research will have a positive impact on the development of legislation in the Republic of Kazakhstan. The issues outlined in this paper are expected to be addressed in the new law “On Platform Employment”, the development and adoption of which is a requirement of the digital economy.

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