

The interaction between employment contract and civil law: Cross-perspective on the situation of platform workers

التفاعل بين عقد العمل والقانون المدني: نظرة حول وضعية عاملي المنصات

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Abstract :

The articulation between the employment contract and civil law in the organization of employment relationships has led to the emergence of a body of law specifically applicable to subordinate work. However, new forms of work generated by technological developments and the rise of the platform economy blur the traditional concept of the employment contract by challenging the notion of subordination. Proceeding from the idea that the contractual characterization of subordinate work grants workers access to legal protection, this study therefore seeks to examine how digital platform workers may be integrated into the protective framework of labour law and social security. This issue is of particular importance, as it calls into question the very essence of labour law and its protective function, testing its capacity to adapt to transformations in the labour market. To address this question, the analysis first explores the origins and evolution of the employment contract, situated between civil law logic and statutory regulation, before proposing perspectives for a redefinition of the employment contract in the era of digital transformation.

KEYWORDS: Employment contract, civil law, Subordination, Platform workers, legal Status.

الملخص:

يرتكز عقد العمل على جانبين أساسيين: الجانب التعاقدى الموروث من القانون المدني، والجانب النظامي الذي يتميز بعلاقة التبعية التي تربط العامل برب العمل وتجعله خاضعا له. وهذه الطبيعة المزدوجة هي أصل ظهور قانون لا ينطبق إلا على العمل تحت رابطة التبعية. وبالتالي فإن هذا النهج التعاقدى للعمل التبعية هو الذي يسمح للعامل بالحصول على الحماية القانونية والاستفادة من الضمان الاجتماعي. لكن أشكال العمل الجديدة، الناتجة عن التطور التكنولوجي والتحول الرقمي، والتي انبثقت منها فئات عمل جديدة تحمل اسم عمال المنصات الرقمية، تطمس المفهوم الكلاسيكي لعقد العمل من خلال التشكيك في رابطة التبعية. وانطلاقاً من فكرة أن التكيف التعاقدى للعمل التابع هو الذي يتيح للعامل الاستفادة من الحماية القانونية، تسعى هذه الدراسة إلى بحث كيفية إدماج عمال المنصات الرقمية ضمن الإطار الحماي لقانون العمل والضمان الاجتماعي. وتكتسي هذه المسألة أهمية خاصة لأنها تمس جوهر قانون العمل ووظيفته الحماية، وتختبر قدرته على التكيف مع التحولات التي يشهدها سوق العمل. وللإجابة عن هذه الإشكالية، يتناول التحليل أولاً نشأة

عقد العمل وتطوره، باعتباره يقع عند تقاطع المنطق المدني والتنظيم التشريعي، قبل طرح آفاق لإعادة تعريف عقد العمل في عصر التحول الرقمي.

الكلمات المفتاحية: عقد العمل، القانون المدني، رابطة التبعية، عمال المنصات، النظام القانوني.

Introduction:

Labour law, conceived on protectionist bases towards the worker, is the result of the articulation between the civil law approach to the law of obligations and the statutory conception of the employment relationship. Indeed, labour law reflects the culmination of workers' struggles against modern slavery, or even the exploitation of man by man, which civil law principles were struggling to stem. Endowed with a protective role for the vulnerable party to the contract- One that the ordinary law of obligations was unable to guarantee- labour law nevertheless remains based on a civil principle that conditions access to its protective regime, as well as to social security, on the conclusion of an employment contract, notwithstanding the statutory dimension resulting from mandatory rules of public social order.

This correlation between labour law and civil law in the contractual process governing employment relations has led to the emergence of a legal framework applicable exclusively to subordinate work⁽¹⁾. In other words, the employment contract is recognised only through the existence of a relationship of subordination subjecting the worker to the authority of the employer. However, at a time when the evolution of exchange and communication techniques exceeds all expectations, new forms of work, generated by the development of digital platforms and artificial intelligence acutely raises fundamental questions regarding the persistence of subordination as the central criterion of the employment contract.

These contemporary forms of work sustain an economic model that blurs the classic notions of subordinate labour by making machines -intelligent platforms, algorithms, robots- the main managers of work performed by workers/users who are materially independent yet economically dependent. As a result, heterogeneous statuses of workers emerge, ranging from the service provider registered on a platform (Uber courier, Yassir driver...etc.) to the simple click worker supplying services to digital data collectors and operators.

It would be vain to claim that a single and exhaustive model of work in the digital economy can be identified. Nevertheless, the predominant model- and the first to have triggered reflection on a possible redefinition of the employment contract- is the Uber model, in which the worker connects to respond to a job offer described and allocated by a digital application. Today, an ever-growing number of intelligent service platforms, more or less similar to this model, operate according to comparable mechanisms of recruitment and organisation of work. In this context of widespread "Uberisation" of the economy, the interaction between labour law and civil law is more than ever brought to the fore, fuelling the search for elements capable of determining whether a given work relationship may, or may not, be qualified as an employment contract.

If labour relations within the platform economy are likely to raise questions about their legal qualification, the central issue lies in the extent to which these relations allow the

workers involved to gain access to the protective regime established by labour law and social security law- regimes that have, until now, been based primarily on a contractual conception of subordinate work.

It is therefore at this juncture that the core problematic of this research emerges: can the civil law contractual logic that historically underpins the employment contract still constitute a sufficient foundation for access to the protective regime of labour law in the context of platform work? More broadly, do the difficulties surrounding the legal qualification of platform workers reveal the limits of a system of protection that remains largely conditioned by a contractual conception of subordinate work?

To address this problematic, it appears useful to revisit the historical foundations of the employment contract. By examining its evolution through the interaction between the employment relationship and the law of obligations, it becomes possible to identify new avenues for the legal qualification of platform workers and, consequently, for their access to labour law protection. This research relies on a comparative legal analysis of French, American, and Algerian case law and legislation, as well as relevant European directives, to examine indicators of subordination and economic dependence, and to assess the appropriate legal classification of platform workers. The study aims to clarify the interaction between civil law and labour law in the context of platform work by analysing the role of subordination in the qualification of the employment relationship and by exploring alternative legal frameworks capable of extending labour protection to workers operating outside the traditional employment contract.

The importance of this issue hardly needs to be demonstrated, it calls into question the very essence of labour law- namely, its protective function- and measures its capacity to adapt to transformations in the labour market, with a view to extending protection to platform workers. The methodology adopted is analytical in nature. It consists in examining the employment contract through the combined lenses of civil law and statutory labour law, using the situation of platform workers as a privileged illustration of this interaction, in order to renew reflection on the protective role of labour law.

From this perspective, the analysis will first focus on the origins and evolution of the employment contract, situated between civil law logic and statutory regulation, as well as on the foundations upon which it was built (I). It will then turn to the fundamental issue of redefining the employment contract in the era of digital transformation, in a context marked by the questioning of the relationship of subordination, with the aim of adapting the digitisation of work to the requirements of employment security and legal protection (II).

I. Employment contract between statutory relationship and civil law approach: origins and evolution

The correlation between the contractual ideology that enshrines the autonomy of the parties, and the notion of subordination that excludes this autonomy, underpins the singular conception of the employment contract. The relationship of subordination, in this sense, goes beyond a mere technical criterion for contract qualification; As Alain Supiot rightly notes in :

“*Critique du droit du travail*”, it constitutes the cornerstone of a legal framework that governs the exercise of power by one party (the employer) over another (the worker)².

The relationship of subordination is the fundamental element from which the concept of social public order emanates, necessary for safeguarding the interests of the worker, considered the vulnerable party in the contract, and which the general law of obligations alone cannot protect. By tracing the historical evolution of this duality between contractual freedom and protective subordination, we can better understand the contemporary challenges posed by new forms of work, including digital platforms. Consequently, the employment contract oscillates between a civil law approach **(I.1)** and a statutory dimension rooted in social public order **(I.2)**.

I.1- Evolution of the civil conception of the employment contract

The beginnings of the contractualization of employment relations were marked by the predominance of the civil law approach which assimilated the employment contract to a service contract. The historical evolution of the employment contract has, subsequently, experienced twists and turns in keeping with the times. Indeed, under the influence of workers' demands, the employment contract had initially taken on a statutory turn, which moved away from the law of obligations, only to return later to contractual bases, while retaining protective statutory rules grounded in social public order **(A)**. But this evolution is not the end of its accounts in the era of the platform economy, and the contemporary employment increasingly questions its guiding principles, due to the omnipresence of triangular work relationships that blur the link of subordination **(B)**.

A. Historical aspect of the employment contract and evolution of the civil law approach

The service contract, governed by the law of obligations, was the tool that organized labor relations before the advent of a protective right for workers. Work was therefore conceived as a simple provision of services, legally symmetrical, and regulated solely by the agreement of the parties, and just like other civil law contracts, it was therefore based solely on the agreement of the parties, a reflection of the civil law ideal of contractual freedom, itself a fundamental achievement of the workers' struggle under the French Revolution of 1789.

However, the practical inequality between employer and worker, which obliges one person to serve another person, soon revealed the limitations of this approach. The contractual freedom of the civil law was ultimately not suitable for workers. Indeed, this approach implied the freedom to terminate contracts, recognized in the law of obligations. But the worker being the subordinate party to the employer, he is therefore confronted with the rise of employers' powers who arbitrarily resorted to the abusive breach of contract solely for the purpose of satisfying their interests. To remedy this, it was necessary for judicial and then legislative temperaments to work in favor of maintaining the employment relationship, arguing the necessity to recognize the inequality of the parties to the contract and to protect workers against abuses by employers. This was followed by the gradual introduction of protective measures for workers, being the vulnerable party in labor relations. This upward

protective vocation will be crowned by the advent of a labor law that enshrines the durability of employment relationships and job security³.

The civic propensity in the legal arrangement of employment relationships was then limited by the emergence of legislation designed to protect the worker. The employment contract, so called since the beginning of the 20th century, in its first version, took the form of a membership contract, perceived at the time as being the only possible formula to respond both to the particularity of the employment contract, and the need to protect the worker, subordinate and vulnerable. But this approach will yield ground in favor of the contractualization of labor relations, and a reoccurrence, subtle but certain, to the civil foundations of the labor contract.

After a decline in the employment contract, in its civil law approach, which lasted until the 80s, and as a result of the awareness of the harmful effects of too much statutory rigidity in employment relations, we are witnessing the renewal of the employment relationship, on less rigid, even more contractual bases, without starting again from the conception of the contract of service hiring, exclusively civil, but the expression of a dualism that will henceforth characterize this agreement of a particular nature⁴. The employment contract will therefore have a contractual dimension governed in part by the law of obligations, and a statutory dimension subject to social public order.

This duality, combining civil law flexibility with statutory protection, provides the conceptual framework needed to understand contemporary labor arrangements, including those in the platform economy.

B. The contemporary approach to the employment contract and its new challenges

In its contemporary version, the employment contract is an agreement whereby one party (the employee) undertakes to provide work for the benefit of the other (the employer) in return for remuneration. The execution of such an agreement is made possible only through the inequality of legal positions, which implies the subordination of the worker to the employer. Moreover, the employment contract is a consensual contract that does not require any formality for its validity. In Algeria, as elsewhere, the mere fact of working for an employer suffices to establish an employment relationship⁵. There again, it is indeed the bond of subordination, placing the worker in a situation of inferiority, that justifies a specific adjustment of the common law of evidence, known in civil law, to ensure equality of defense before the judge and to protect the worker against potential abuse⁶.

This particular commitment, therefore, takes the existence's presumption of a contractual relationship by the mere fact of providing paid work for the account of others, from the moment it is sufficient to grant him access to the legal system organizing work and social protection. This presumption highlights the relationship of subordination that characterizes the employment contract, and contingent on the border between organized labor and servitude, in the sense of modern slavery. Thus, the very essence of the employment contract lies in the subordinate relationship that binds the employee to his employer without making him his servant, since it is a legally organized work, and which

confers on the subordinate worker the right to remuneration, at rest, at social protection... etc.

By placing the worker under the authority of the employer, the employment contract allows the employee to act according to instructions and bear disciplinary consequences for any violations. The employment contract thus constitutes the tool granting access to legislative regimes with a protective vocation in terms of human work. This vocation is in reality only the expression of the interaction maintained between the common law of obligations and labor law.

Moreover, the contract of subordinate employment, as it is conceived of the transition between the civil conception of the labour relation of work and its statutory dimension, cannot be immutable to the variations of its time. That is why, even today, it is subject to multiple challenges as the world of work evolves. Technological progress and the digitalization of work lead to overlaps with the classic conception of the employment contract and call into question the relationship of subordination that characterizes it, thus blurring the frontiers of this civil law-labour law interaction. This raises the essential question of access for certain categories of workers, including digital workers, to the protective regime of labour law.

I.2- From the statutory dimension of the employment contract

The statutory dimension that characterizes the labor contract, also linked to the presence of a relationship of subordination, is the cornerstone of the protectionist postulate of labor law, and thus represents all the peculiarity that distinguishes the employment relationship among other contractual regimes organized according to the theory of obligations in civil law.

Also, the advent of a protective legal order, attentive to workers' rights, being the vulnerable part of the employment relationship, he drew the outlines of a particular contractual relationship between the worker and his employer. This relationship is subject to the rules of public social order, which ensures that the employment contract is established with respect for the principle of favour, and can therefore only derogate from the law by contractual rules more favorable to the employee than those legislated by law. The analysis of social public order from the perspective of the law of obligations (A) demonstrates the statutory dimension of the employment contract, which therefore confers on it all its particularity (B).

A. Value of social public order in the contractual relationship

Civil law enshrines the principle according to which it is forbidden to derogate from laws and provisions inherent in public order and/or good morals, by special agreements ⁽⁶⁾. These are so-called mandatory rules whose contractual freedom cannot justify derogation, for the simple reason that they are designed to protect supreme interests, or set minimum protection requirements which could not support any consensus. If public order is thus composed of rules from which it is not allowed to derogate, this one is conceived differently in labour law since it is a question of social public order ⁷.

Indeed, while the classical public order is combined with imperative rules to which it is not permitted to resort, the social public order in employment relations conditions the

possibility of derogation from the law on the establishment of a more favorable situation for the employee through the application of said derogation⁸. In doing so, and while the contract in civil law is mostly organized by suppletive rules that allow the parties to derogate from them by mutual agreement, the contract in labor law is subject to mandatory rules, but which still allow for derogation, by conventional means, in a way more favorable to the worker.

However, social public order does not raise controversy over the contractualization of employment relations, nor does it oppose the theory of the contract in general. Moreover, the classical public order is also present in the law of obligations, whenever it involves guaranteeing the interests of vulnerable people, such as minors or individuals in a state of incapacity, and every time it is a question of safeguarding common goods or values to which no derogation is possible. This same public policy is omnipresent in labour law, particularly in the rules that organize the dismissal regime, and in those that regulate the use of fixed-term employment contracts... etc. These rules, called public order, are more precisely referred to as absolute public order to dissociate them from those which it remains possible to derogate by agreement and with the aim of providing additional benefits to employees, or, where applicable, to complete or explain the law.

But in any case, the very idea of public order, social or absolute, assumes a statutory aspect on the employment contract, from the moment it is integrated into an order of legal minima, whose contractual derogation is oriented solely towards the purpose of preserving the interests of workers. The statutory dimension therefore distinguishes the employment contract from other civil law contracts in that it confers on it protection against possible abuse of the employer's power.

B. Particularity of the employment contract by its statutory dimension

The analysis of social public order shows us that we are really in a contractual relationship that gives rise to an employee status. The latter integrates its holder, subordinate to his employer, into a protection scheme meticulously organized by law, first by covering him with rules of social public order throughout his professional career, then by introducing him into a social security system.

Thus conceived, the work report encompasses two distinct dimensions. To the contractual dimension as such, which makes it a genuine contract subject to the general rules of the law of obligations, is added an extracontractual dimension, which makes it, as an author rightly expresses it, an "act-condition"⁹. This second dimension subjects the employee to the management and administration power legally recognized by the employer, but in return, confers on him rights related to his status as an employee while integrating him into a work community. These rights stemming from the salariat take precedence over the contractual rights, arising from the contract and its legal regime.

Furthermore, social public order in labour law only has legitimacy through collective bargaining. The workers participate, through negotiation, in the development of conventional rules applicable to employment relations, on the same footing as legislative rules. It follows that the worker is not excluded from the statutory dimension of the employment relationship, since he participates, by agreement, in determining the working conditions to which he

submits himself and the protective rules that apply to him, generally, more favorable than the law. The employment contract is ultimately based on a contractual dimension subject to social public order and a statutory dimension subject to collective bargaining. That is the whole originality of this contract.

Ultimately, if such is the complexity of situating the employment contract within the contractual order of the law of obligations, it nevertheless remains that, in comparative labour law, the contractual dimension, characterized here by the relationship of subordination, is what allows the integration of the employee into the protective framework of labour law and social security. Consequently, questioning the role of subordination in the employment contract for certain professional categories, particularly those operating within the platform economy, may hinder their access to this protection, unless their status as workers without a traditional employment contract is recognised.

This historical evolution explains why the emergence of digital platform work now raises fundamental questions regarding the continued relevance of the traditional employment contract, which will be examined in the following section.

II- Digital evolution and employment contract: Maintenance or redefinition?

The emergence of diverse working relationships, under the platform economy, raises profound questions about the contemporary world of work, particularly regarding the adequacy of the existing legal framework and the potential need to redefine the employment contract. The platform worker is no longer recruited by a traditional employer to whom he or she is legally and economically subordinate; instead, the worker integrates into an automated recruitment process on a platform to provide software-driven work, which is controlled and evaluated by algorithms¹⁰. This evolution challenges the traditional legal categories that have long structured labor relations, and calls for a nuanced reflection on the interaction between civil law principles and labor law protections.

Situating these novel relationships within the classical legal framework is far from straightforward. The historical articulation between labor law and the general law of obligations, which has traditionally structured employment relationships, is now at the center of a debate over whether the employment contract should return to its civil law roots, potentially abandoning some social achievements, or whether the status of the salaried worker should be preserved, with or without a traditional employment contract.

The diversity of digital work arrangements generates uncertainty about the scope of labor law protections and the very definition of subordination. Discussions regarding the legal status of platform workers, and the qualification of labour relations in the digital economy, have produced multiple solutions, some of which are not lacking in originality. For instance, subordination might be reinterpreted economically rather than legally, maintaining the protective regime of employment without a classical subordinate relationship. The self-employed worker status also retains a certain interest for cover employment relationships that no longer fit the traditional employee-employer model.

The structural limits of contemporary law in the context of platform work **(II.1)** feed a complex and ongoing debate on how to qualify platform workers and ensure their access to legal protection and social security **(II.2)**. These difficulties naturally lead to a closer examination of the legal solutions that have been adopted or proposed to reconcile the realities of platform work with the principles of labor law, even though these solutions remain partial and subject to further evolution. Such considerations inevitably lead to examining legal and policy solutions that attempt to reconcile platform realities with labor law principles, even if these solutions remain partial and evolving.

II.1- Limits of contemporary law in the regulation of work via platforms

Despite international reforms aimed at framing the digitalization of work, the law continues to face challenges in addressing the disorganization of labor relations, particularly in countries where digital transitions are more recent. These challenges are visible both in the law's difficulty to adapt to the particularities of platform-mediated work **(A)** and in its limited capacity to counteract the consequences of digitalization on employees' rights and job security **(B)**.

A. Difficulty in responding to the particularity of the working relationship via platforms

Classical labor law, shaped by the principle of subordination, struggles to accommodate the novel forms of work generated by digital evolution and artificial intelligence. Indeed, Platform work often involves a triangular relationship, where the employer's identity merges with the machine, or again, the algorithm commissioned to organize and supervise the professional activity, as well as the user profile interferes with the client, complicating then traditional notions of authority and accountability ¹¹.

And while the relationship of subordination requires the worker to comply only with his employer's directives, artificial intelligence, characteristic of smart platforms, forces service users, without legal reference, to submit to the commands of a machine, or an algorithm. And how much even the algorithm in question is man-ordered, it is as difficult to assign the status of employer to a machine as to the person who owns it, but which is absent in practically all stages of the execution of the contracted employment relationship with the employee.

This difficulty arises in the same way with regard to responsibility. If labour law holds the employer responsible for its obligations towards the worker as well as the latter for its commitments towards the employer, smart platforms and robotization make it difficult to recognize a responsible person when the machine has caused any harm or when the algorithm has failed to function.

The question of liability is, indeed, one of the major complexities that embodies the difficulty of adapting the law to the specificities of work on platforms, where the will to harm cannot be attributed to a machine, any more than the prejudicial act can be considered as the consequence of a fault committed by the machine. There is currently no specific liability regime to cover damages caused by artificial intelligence systems, including smart platforms, regardless of the contractual framework ¹².

We are therefore digging even deeper into the issue of qualification of contractual relationship between work via platforms, and the difficulty for labour law to cover it. Also, one resolves to admit that the difficulty of designating a responsible person for a prejudicial act caused by an algorithmic process puts platform workers more on the path of the statutory approach where the question of responsibility is more nuanced.

B. Complexity of countering the consequences of work's digitalization on the protection of workers

The relationship of subordination traditionally grants the worker access to legal protection. Platform workers, however, lack this direct subordination, making their integration into the protective labor regime uncertain. Moreover, contemporary law does not have enough perspective to counteract the consequences of the digital age on work. The changing world of work introduces new risks and unpredictabilities, demanding not only the inclusion of platform workers in existing protection frameworks but also potential adaptation of these frameworks to evolving labor market conditions.

These questions highlight the profound transformations brought about by intelligent platforms in the world of work. They also reveal the growing inadequacy of the traditional mechanisms governing employment relationships, especially the classic bond of subordination, in addressing the new labour arrangements generated by digitalisation. Recognising this mismatch requires rethinking the foundations of employment relations and the legal framework that structures them.

In sum, the challenges highlight both the limits of traditional employment law and the urgency of rethinking legal structures to accommodate the realities of digital work.

II.2- Legal qualification of platform workers, what solutions?

Debates around platform work oscillate between two main lines of thought: independence versus maintained subordination. Between these positions, various hybrid solutions have emerged, seeking either to adapt the employment contract to digital work or to propose new legal forms. The discussion can be framed around three approaches: self-employed status (A), maintaining the employment contract (B), or redefining it ad hoc (C).

A. Independent work and renunciation of subordination

Without the need to protect digital workers from the precariousness and risks of employer exploitation concealed in the impersonal process of the digital platform, the status of self-employed worker would be the most appropriate and the least problematic for service providers via the platforms. This solution firstly marks a return to the service contract, which is the first version of the employment contract solely governed by the law of obligations (a). If this is the qualification of the contract, the service provider via the platforms, if he makes it an organized activity, could then take the qualification of self-entrepreneur (b).

a. Reoccurrence to the service contract

The solution that may seem the simplest, but not necessarily the most appropriate, to qualify platform workers is the return to the notion of the service contract. Considering the contractual relationship between the connected worker and the platform manager as a simple

service contract, amounts to abandoning all social benefits conferred by labor law, and subjecting the relationship in question to general civil law rules. It is not considered in this case that there is a weak party, subordinate to the other party of the contract, who controls and gives orders.

But the hiring of service does not allow to benefit from an organized status. These are contracts subject to the law of obligations, just like sales or rental contracts. This solution would deprive service providers via digital platforms of the protective regime of labor law and cannot be covered by the social security system. Affiliation to social security, even voluntary, could only be considered in the event of an organized status, which would ultimately lead to a self-employed status.

In terms of labour law, this hypothesis could lead to thinking about a right of activity that would focus on the organization of activity rather than the regulation of the work relationship. Protective rules could be envisaged, but with much less priority for the worker, considered as a service provider. These rules are already present in Uber and similar formulas, when the platform secures the driver or courier's route, calculates the remuneration and consequently guarantees it... etc.

b. Self-employment status for digital worker

The status of the self-employed worker remains the privileged one in the absence of a better adapted legal solution. This is the status of the self-employed person, who is confused with the merchant, or the individual company, but which is most suitable for platform workers. However, if an adaptation effort must be made, it would be to consider a self-employed status that combines the autonomy of the merchant with the protection of labour law. This ideal is dependent on the legal systems still under construction in comparative law, and cannot, for the time being, be exhaustive of all existing digital working formulas ¹³.

While the status of the independent worker was a confused notion in Algerian law, the unprecedented law on self-employment, enacted in 2022 ¹⁴, finally seems to recognize the independent worker as a particular status that is so different from that of the merchant, than that of the individual entrepreneur in the form of a company. The self-employed worker benefits from specific facilities and advantages in terms of taxation and practice procedures. This statute constitutes a kind of amalgamation between commercial activity and wage-earning activity, combining the commercial autonomy of the self-employed with the protective conditions set by labour law, particularly in relation to age, working conditions... etc. The self-employed person may also change to merchant status when, for three consecutive years of activity, their turnover exceeds the threshold set for self-employment ¹⁵.

The list of activities eligible for self-employment introduced by Executive Decree No. 23-197 offers a wide range of services that may correspond to digital work, and also directly includes digital services and related activities; as well as the home services ¹⁶. Both are suitable for the platform worker, who could therefore, within the meaning of Algerian law, be qualified as a self-employed worker. But in the reality of the field, the applicability of the self-employment status to the drivers of the YASSIR platform is still uncertain due to the confusion that persists between self-employment which involves a complete ownership of

production's means, and the provision of services via a platform managed by a company.

In any event, the status of self-employed worker, even if it were possible to recognize it for the platform worker, could not offer the latter protection identical to that of the subordinate worker, that is why the current towards maintaining the employment contract to cover the benefits via the platforms deserves as much consideration.

B. Maintain the employment contract in its classic version or readapt it to platforms?

The elements that constitute the employment contract become blurred within the triangular relationship characteristic of platform work, making the contractual link between worker and employer difficult to discern, if not obscuring its legitimate components entirely. In the most common model, digital work involves a provider, referred to as a digital worker, who connects to a platform designed and/or managed by a digital company to perform a service commissioned by the platform on behalf of a client.

While qualifying the worker as self-employed may appear pragmatic when assessing contractual relationships established through platforms, particularly between the worker and the company holding the orders, it remains difficult to abandon subordination as the central pillar defining the employment contract and the foundation of labour law's protective function. The question that arises, therefore, is how to recognize and define subordination within this triangular arrangement.

In reality, the debate over subordination, the decisive criterion of the employment contract, is far from new. From the very inception of the contract of subordinated labour, and throughout its evolution between civil origins and statutory dimensions, two competing interpretations have emerged regarding the definition of subordination. For some, subordination carries a legal meaning derived from the employment contract itself, placing one party under the authority of the other. For others, subordination is primarily economic, arising when the worker depends on the contractor to meet their essential needs¹⁷.

Even today, in the argument in favor of maintaining the employment contract, we end up with these same divergences regarding the definition that must be given to the relationship of subordination, between the conservatives of the notion of legal subordination specific to the employment contract in its classical version (a) and the advocates of economic dependence as another version of subordination (b). Between the two, a final orientation goes towards the search for certain clues that make subordination presumed (c).

a. Advocacy of the employment contract based on legal subordination

In a context of a health pandemic that had highlighted the increased need for online services, thereby generating the proliferation of digital service platforms, the discussion around the legal qualification of new employment relationships contracted via platforms has more than ever imposed itself. Let us examine, by way of example, the situation in France and in the United States.

1-The French approach

The French Court of Cassation had validated on the date of March 04, 2020, and for the first time in its jurisprudential journey, the requalification of the contractual relationship

between the company Uber and a former driver, into an employment contract¹⁸. The events of this case already reflected all the complexity of the triangular relationship that characterizes work on a platform. Knowing that the company Uber was connecting VTC drivers and customers, through a digital platform, in this representative dispute, the driver, whose account had been closed, had initiated proceedings before the labor court, in order to obtain the requalification of his contractual relationship with the company Uber, into an employment contract. Upon arrival before the Court of Appeal, it ruled in favour of this requalification. Brought by Uber before the Court of Cassation, this one validated the decision of the Court of Appeal¹⁹.

The arguments put forward by the Court of Cassation supported the existence of a legal relationship of subordination between the driver and the company, when connecting to the service platform. She considered that during the connection, the driver was not performing his service as a self-employed worker but as a subordinate worker to the platform.

To develop its reasoning, the Court of Cassation relied on the search for indications of subordination in the work relationship between Uber and the driver on the one hand, and the dismissal of the thesis of independent work on the other hand. If the criteria for self-employment relate to the freedom to establish one's clientele, set rates and define service conditions, the relationship of subordination rests on the power to issue directives, monitor their execution and sanction the transgression of the instructions given. These indices of subordination, if they are present in the contractual relationship subject to the conflict, could be used to qualify it as a subordinate labor relationship²⁰.

The lack of decision-making autonomy is considered as the first indicator of subordination. Indeed, by using the Uber application to carry out a ride, proposed and described by it, the driver does not constitute his own clientele, does not freely set his rates, and does not determine the conditions for performing his transport service. The path is imposed on him by the application, and therefore, society. The destination is not previously known to the driver, and he cannot choose his route, as does an independent taxi driver. The second subordination index concerns the control. The Uber application exercises continuous control over the driver's trajectory. If the latter does not follow their itinerary, tariff corrections are applied. The other aspect of control lies in checking customer satisfaction through the application, providing space for complaints.

This control exercised on the provider is followed by a third clue which is equally revealing of subordination, it is the sanction that varies according to the seriousness of the breach committed by the user worker (here the driver), in the image of the disciplinary process in an ordinary working relationship. Thus, in case of rejection of rides three times by the provider registered on the platform, the company can temporarily disconnect it from its application. In case of exceeding a certain rate of order cancellations or reports of 'problematic behaviors', the worker (the driver) risks losing access to his account²¹.

In view of the French Court of Cassation, all these elements established the existence of a relationship of subordination between the driver and the company Uber, as soon as the platform worker (the driver) connected to the digital service platform. Moreover, even if one could argue for the status of self-employed worker on the grounds that the platform worker,

like the Uber driver, has no obligation to connect to the platform, and that absence, regardless of duration, does not entail sanctions, the characteristics of subordination arise immediately upon connection and execution of the work²². It is therefore, from this point of view, a matter of a subordinate employment relationship rather than that of a self-employed worker.

Everything appears as through the driver were participating in an organized transport service, with Uber unilaterally defining the conditions of performance. This situation moves further away from the contractual logic typical of the law of obligations, in which the parties jointly set the conditions of performance, and aligns more closely with the statutory dimension of the employment contract, and which is inseparable from the relationship of subordination. In other words, despite the apparent autonomy granted to the worker, the organisational framework imposed by the platform reproduces mechanisms similar to those of traditional employment relationships.

These characteristics apply, wholly or partially, to most platform workers following similar processes, such as Uber couriers, or Yassir drivers in Algeria... Even if the terms governing the execution of the working relationship differ from one platform to another, or from one country to another, they share the common features of defining the service, managing the fees and exercising control. The question that arises is whether reclassifying these working relationships as employment contracts is suitable for all platform work situations and remain sustainable over time.

It appears that the answer is negative, since the approach taken by the French Court of Cassation was not decisive in determining the qualification of employment relationships via platforms. Subsequent reforms have aimed instead to reaffirm the self-employed status of platform workers, while ensuring their access to legal protection and social security²³.

2-The American orientation

In the United States, the HRW (Human Right Watch) report published in May 2025 on the Gig-workers goes further in highlighting the indices of subordination in the employment relationship that binds the worker to the company Uber. The Report titled "The Gig Trap..." examines the practice of seven major digital platform companies in the USA, namely: Amazon Flex, DoorDash, Lyft, Favor, Shipt, Instacart and finally Uber. In the same way as the Uber judgment rendered by the French justice system, but with more specific arguments, the HRW Report ergotes the presence of a hidden subordination under the guise of independent work, much simpler and more accessible as a work formula for both the worker and the company. This hidden subordination is described by the Report as algorithmic exploitation that goes beyond legal subordination, exposing workers to the violation of their basic rights under cover of a false qualification of self-employed workers²⁴.

The arguments of the American Report thus go in favor of recognizing the employment relationship and the status of employees for platform workers so that they can access legal protection likely to guarantee them decent working conditions and fair wages.

It seems that the maintenance of the employment relationship and the status of salaried worker in these two steps (French and American) follow the logic of the recognition of subordination to justify platform workers' access to legal protection. Without this recognition,

the civil law approach would bring these contracts into the realm of service contracts.

b. Safeguarding of the employment contract on the basis of economic dependence

According to the reasoning of this line, when the worker has a high degree of technical independence in performing the service via the platform, it is economic dependence that comes to take over the classic version of subordination to justify the application of labour law²⁵. Platform workers, in fact, enjoy an autonomy that prevents the employer from exercising its control over the technical execution of work, merely setting objectives, leaving to the connected workers total control of the means to achieve it. But this does not prevent their economic dependence from the moment they receive remuneration in return for the work performed via the platform on which they depend.

This argument may have motivated the French legislator to adopt a legal approach in disagreement with the position of the Court of Cassation in the 2020 Uber judgment. Indeed, the 2021 Ordinance organizing the representation of platform workers²⁶, and the 2022 Ordinance strengthening the autonomy of platform workers²⁷ qualify these latter as independents, while granting them access to social dialogue and the right to representation in collective bargaining of their working conditions.

In reality, by moving in this direction, we fortuitously recognize the specificity of the work of platforms that imposes forms of salaried employment adapted to the activities of the digital economy, so as to allow platform workers to claim a protective status, without there being any need to requalify its service as an employment contract, thus establishing a new approach to the salaried employment relationship²⁸.

c. Maintenance of the employment contract on the basis of presumed subordination

Between the search for elements of legal subordination and the recourse to the economic dependence notion, arises the latest attempt to find a resolution to the problem of legal qualification of employment relationships via platforms, and consequently, the legal status of providers who work there. The European Parliament Directive of April 24, 2024 on the improvement of working conditions through platforms, establishes the recognition of a professional status for platform workers, based on a legal presumption of employment relationship, and therefore, of subordinate relationship²⁹. The Directive invites the Member States to simplify the conditions of this presumption which allows platform workers access to legal protection and the improve their living and working conditions.

This solution is however not as simple as it appears, because it is a presumption that remains rebuttable, as it depends, as the European Directive specifies, on the demonstration of elements attesting to the exercise of a management or control power, and it is these same elements, in fact and in law, that constitute the very notion of legal subordination. Consequently, it is not certain that the Directive introduced a genuine presumption of subordination to establish the employment relationship³⁰. We, therefore, return to the same questions about the status of platform workers when the elements that allow the presumption of subordination are inexistent, or difficult to establish in an algorithmic work environment.

C. Proposals for redefining the employment contract

The contemporary working world is confronted with the greatest disquiet it has ever

known, that of seeing disappear the social benefits conferred by a legal system, which today, is no longer able to support the challenges posed by artificial intelligence and platform economy. After the limits of the law of obligations in the framework of employment contract, having brought its organization by the protective regime of labor law, the hour is at the limits of contemporary labor law, in regulating platform workers, due to the erosion of key elements of the employment contract, including the relationship of subordination, in favor of a triangular relationship, which neither labour law nor the law of obligations are able to recognize, without adequate adaptation initiatives.

Challenged with this dilemma, solutions have been proposed to supervise the platform workers, and some have already proven themselves for several years. These proposals, for the most part, are based on this same interaction between labour law and the civil law, and dispute the existence of subordination, or the extent of autonomy, to be situated in one or the other legal regime, or between the two.

Assimilated employment contracts are the most used. With distinct formulas, they are governed by contemporary law to cover employment relationships that struggle to fit into the classic model of labor relations (a). Less assertive, collaborative work is also an option that may be conceivable and subtly inspires the world of work (b). Failing that, the ultimate solution is to think of an ad-hoc employment contract for platform workers (c).

a. Assimilated employment contracts

Without going into the details of each contract formula that can be or has been assimilated to the employment contract, some experiences and proposals combine the autonomy of self-employment with the characteristic wage-earning of the employment contract, by ensuring that the worker can claim legal and social protection without needing to establish a relationship of subordination. The temporary CDI and the wage portage that have been introduced into the French labor code³¹, can be cited as an example of this alliance between the autonomy of the contractors and the wage-labour.

The temporary permanent contract (Contrat Intérimaire in French) consists of the conclusion of permanent contract between a transitional labour company and a temporary employee, for the execution of successive missions, giving rise to mission periods and intermission periods during which remuneration is guaranteed. In the wage-portage, the umbrella company hosts the worker on the project, who must provide proof of a qualification, negotiates alone with the user company the conditions for carrying out their mission³².

Some authors draw comparisons between platform workers and homeworkers³³, as both categories partially operate outside the traditional scope of labor law³⁴. This analogy finds support in certain legal frameworks, such as German law, where homeworkers retain a degree of independence while benefiting from targeted legal protections³⁵. Similarly, under Algerian law homeworkers (Travailleurs à domicile) are granted specific labor protections, even though they are not fully subordinated³⁶. Although these workers maintain autonomy over certain aspects of their activity, they are legally assimilated to salaried employees, thereby benefiting from labor protections despite the absence of full subordination.

This model can be adapted to platform workers, and several proposals have suggested

doing so. For instance, the concept of the outsourced worker has been introduced as a broader extension of the homeworker³⁷, potentially facilitating the integration of platform workers into a protective legal framework. It is important to note that the term “at home” functions primarily as a legal presumption, meaning that work performed outside the company is treated similarly to homework, regardless of the physical location of execution, while still recognizing the independence of the worker.

These framing formulas, where the triangular relationship between the worker, the intermediary and the beneficiary of the service becomes visible in the applicable legal regime, move us away from the civil law logic of the contract and bring us closer to a statutory conception of labour law. In such configurations, the worker may benefit from certain labour protections without necessarily being bound by a traditional employment contract.

This perspective highlights the possibility of extending labour law protection beyond the strict boundaries of the classical employment relationship, particularly in situations characterised by economic dependence and integration into an organised production process. Such mechanisms therefore illustrate how labour law can adapt its protective function to new forms of work organisation while preserving its fundamental objectives.

b. Think about collaboration

Since the relationship of subordination is blurred in work arrangements via digital platforms, it may seem appropriate to reform these foundations of working relationships. Thinking about a labour law based on collaboration can be a good alternative to the loss of the notion of subordination. Collaborative work does not know the control and hierarchy of subordinate work. It is based on a different mode of organization that advocates cooperation, coordination, communication and coaching. There are many examples, even in traditional companies, such as Chrysler Automobile, which has eliminated middle management, or Orange in France, which has implemented 'collaborative manager' as a kind of coaching, instead of hierarchy, or, to a lesser extent, General Electric in the USA which eliminated annual employee evaluations, or even Publicis Groupe in France which created "intrapreneur" nurseries, a system that assimilates employees to entrepreneurs within the company³⁸.

It is even possible to go back further in time to evoke the model of holacracy, which appeared in 1967, based on the formalized implementation of collective intelligence, it allows for the dissemination of decision-making mechanisms through a fractal organization of self-organized teams³⁹.

This idea could well apply to work provided through collaborative platforms that offer goods, services and content to consumers, which are produced, made available or sold by contributors. And for good reason, in collaborative work, there is no need to claim any relationship of subordination between an employer and their team of workers. The return to civil law in this perspective could make one think of a company or business contract. And if we remain on the employment contract, it would then be necessary to redefine its principles in order to break with subordination and the balance of power, even at the risk of losing the social achievements that are the compensatory consequence.

In any case, the traditional hierarchical silos are less and less adapted to the data of the

digital age. Innovation and promptness are becoming determining elements of growth, and the intervention perimeters of the different services are increasingly blurred by algorithmic processes. In response to this data, companies are called upon to abandon the vertical organization model for a horizontal one, probably not categorically, but in a gradual way⁴⁰.

The notion of subordination specific to wage-earners can only lose ground to the benefit of this horizontal organization of human resources. However, it would be unlikely to assume that the loss of subordination is synonymous with the consolidation of employees' rights if organizational alternatives are not attentive to the rights of platform workers, particularly collective ones.

c. A tailored employment contract

If it must be recognized that the classic employment contract is not adapted to digital work, any more than other similar contracts have proven themselves in this area, the ultimate possible solution would be to propose a new employment contract, in an ad-hoc formula, perfectly adapted to the digital worker, and which would be covered by labor law. This solution could only be made possible on the condition of avoiding to include any definition of subordination link or employee qualification in the labor code, which, by freezing the classic notion of orderly work, prove to be unsuited to future developments in work and the erosion of the boundaries of salaried employment.

In this case, it would not be necessary to establish a relationship of subordination to recognize the existence of an employment contract, which, without bringing the digital worker back into the nets of the employer power that could control and sanction him, would nevertheless allow him-here to benefit from the protection conferred by labour law.

This redefinition of the employment contract, through the abandonment of subordination, is not intended to break the interaction between the law of obligations and the employment contract, which is no longer at all focused on the relationship of subordination that can allow access to protection, but which is more oriented towards the statutory dimension that sets out a set of rights for workers, taxable in all cases, while safeguarding the civil law approach, from the moment a contract is concluded without distinguishing the balance of power.

This approach is moreover more or less conveyed in the French reform concerning the right to collective bargaining of platform workers introduced by Ordinance No. 2022-492⁴¹. Indeed, the latter maintains the status of the self-employed worker, evokes commercial relations, but not the employment relationship. However, the predominant commercial vocation in this economic model does not prevent considering the self-employed worker, who has the specificity of being dictated by a platform under algorithmic control, as a vulnerable party that must be protected. Only because the rules stemming directly from labour law are unadapted to the commercial context of the service, we resort to the rules resulting from collective bargaining to organize and secure work. These so-called conventional rules can even be more favorable than the law for the worker⁴².

Conclusion:

After examining the various proposals for the legal qualification of work carried out through digital platforms, two diametrically opposed solutions emerge in response to the challenges of adapting labor law to new forms of employment. Between these extremes, intermediate solutions may appear attractive, but they remain limited and cannot provide a durable, general framework, as they address working relationships on a case-by-case basis.

The first approach is to create a specific legal status for digital workers, resembling that of independent contractors and relying primarily on service contracts. In this scenario, legislative support would be necessary to integrate platform workers into the social security system by assimilating them to employees. In the absence of such measures, platform workers would be subject to the general rules of the law of obligations, without benefiting from the protections afforded by labor law.

The second approach seeks to maintain the foundations of the employment contract, including the subordination link, while adapting it to the realities of platform work. This approach recognizes specific indicators that can establish a form of subordination suited to the platform context. For instance, it considers that the worker's ability to be disconnected from the platform functions as a sanction comparable to disciplinary measures under a traditional employment contract, and that the control exercised over the worker through the platform—even if intermittent—constitutes an extension of the employer's power of direction.

This study ultimately demonstrates that neither strict independence nor rigid subordination offers a sustainable model. The future of labour law lies in a hybrid statutory framework detached from the classical criterion of subordination.

Platform work thus increasingly stands apart from the law of obligations, without entirely abandoning it. Within this dual framework granting the employment contract both contractual and statutory dimensions, the worker is subject to the algorithm organizing their tasks while simultaneously being integrated into a working community governed by the same system. The contractual dimension is presumed from the moment any task or service assignment generated by the algorithm is accepted by the platform worker, effectively constituting an agreement between the worker and the platform operator.

From these reflections, several recommendations emerge to ensure platform workers' access to protection while respecting the specificity of their work:

- 1- Improve the independence of platform workers without depriving them of protection, for instance by allowing them to choose the legal framework of their activity.
- 2- Expand the social security system to cover all workers, whether in a subordinate relationship or economically dependent.
- 3- Organize a new status for independent workers that integrates protections and autonomy.
- 4- Redefine the concepts of "employee" and "worker" to provide a more inclusive legal framework, enabling labor law to fulfill its protective mission in all cases.

Ultimately, platform work requires a reconfiguration of labor law that balances autonomy, flexibility, and social protection. Neither pure independence nor traditional subordination alone provides an adequate solution. A hybrid statutory-contractual framework, tailored to the realities of algorithmic work, appears to be the most sustainable path forward, ensuring that the growth of the digital economy does not come at the expense of fundamental workers' rights.

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