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Rethinking Labour Law in the Context of

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Outline:

• **What** did tech. revolutions bring to workers?
• **What** urged changes in work arrangements?
• **Why** these changes bother us?
• **How** should/ could we proceed in the future?

„secure and adaptable employment” – *Principle 5 EPSR*

„social protection regardless of employment type” – *Principle 12 EPSR*
4th v. 2nd revolution? / Threat or new opportunity?

1784
Steam engines, mechanized cotton spinning

1870
Widespread use of machinery in manufacturing, electrification

1969
First computer-based controllers, Internet revolution

Today
Cyberphysical systems (collaboration among value-chain participants through internet and networks)

LL & SS

Pollution: What We Can Do
What urged changes in work arrangements?

Market pressure:
- global competition
- crisis (economic/financial)
- uncertainty in demand
- investor’s pressure (↑ return)

New Tech.:
- automatisation / robots
- artificial intelligence
- digitalisation
- cyber space

Costs ↓

Efficiency Profits ↑
What type of changes did it bring?
Gig/on-demand/ sharing/ collaborative economies

• **BUSINESS STRUCTURE CHANGES**
  • organizational fragmentation
    • franchising, outsourcing, transfer of undertakings etc.
    • „external dumping”
  • implementation of new tech. (platforms, robots)
  • going flexible
    • e.g. WT or work place +
    • „internal” dumping (changing typical with atypical workers)
      • e.g. in Ireland zero-hour contracts due to EU economic governance measures
        (source: O’ Sullivan et. al, 2017)

• **LABOUR MARKET FRAGMENTATION**
  • standard v. non-standard
  • highly skilled /special talents v. very low skilled (3D jobs)
  • (reduced need for middle skilled)
  • high wage earners v. low wage earners
Why these changes bother us? ...features ....

„STANDARD”

• Stable
  • Open-ended contract
  • Full-time

• Controllable
  • At employer's premises
  • Direct arrangement
  • Bilateral relationship

• Protected by:
  • LL and collective agreements
  • SS legislation

„NON-STANDARD” / „ATYPICAL”

• Instable:
  • Shorter/ flexible working hours
  • Fixed duration
  • On-demand
  • Lower remuneration and/ or
  • Income insecurity

• Less subordination (grey zone between employment and self-employment)

• Diversity, hybridization and aggregation of employment

• Career fragmentation

• Non-unionisation

• SS access – limited or no
Forms of ……

„STANDARD“
• Open-ended
• Full-time
• (with fixed WT)

„NON-STANDARD“ / „ATYPICAL“
• „Standard“ non-standard’s:
  • Part-time
  • Fixed-term
  • Temporary agency work
  • Domestic work
  • Apprentices/student work

• New non-standard (flexible)
  • Marginal work (mini jobs)
  • On-demand work
  • Casual work
  • Voucher work
  • Crowd work/platform work
  • Economically dependent self-employed (grey zone)

• Portfolio workers
• Owner managers
• Interim management
Elements of „standard” present in „non-standard”....

Source: Schoukens and Barrio. The changing concept of work: When does Typical work become atypical, ELLJ, 8(2017) 306-332, p. 314
Legal framework concerns for atypical workers

Market access requirements
Liability regime
Protection of users
+

**Employment law:**
- control (e.g. WT)
- who is employer?
- employment or self-employment?
- when is atypical innovative and should be fostered and when is it abusive?

**Social security:**
- no coverage or limited
- contribution base
- contribution rate

**Taxation rules**
- same or lower

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Implicit state subsidies (in tax and SS)
Undermining standard labour
Croatian example....

• Formally atypical and self-employed are mostly covered, but huge differences in:
  • type of contributions paid
  • contribution base and
  • contribution rate

  • cheaper labour
  • incentive to employ atypical
  • lower level of future benefits
  • (e.g. pensions)
  • need for state transfers
Croatian example....(ESPN report)

<table>
<thead>
<tr>
<th>Social insurance type</th>
<th>For employees</th>
<th>For self-employed</th>
<th>Self-employed in agriculture and forestry</th>
<th>Occupational training without employment contract</th>
<th>Student work</th>
<th>Other income recipients (contract for service, author’s contract)</th>
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</thead>
<tbody>
<tr>
<td>Pension insurance (from gross earnings or contribution base)</td>
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<tr>
<td>- 1st Pillar</td>
<td>15%</td>
<td>15%</td>
<td>5%</td>
<td>15%</td>
<td>-</td>
<td>7.5%</td>
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<tr>
<td>- 2nd Pillar</td>
<td>5%</td>
<td>5%</td>
<td>5%</td>
<td>5%</td>
<td>-</td>
<td>2.5%</td>
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<tr>
<td>- For WAHJ</td>
<td>from 4.86% to 17.58%</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>5%</td>
<td>(covering physical injury, disability and death)</td>
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<tr>
<td>Health insurance (on top of gross earnings or contribution base)</td>
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<tr>
<td>- health insurance</td>
<td>15%</td>
<td>15%</td>
<td>7.5%</td>
<td>15%</td>
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<td>7.5%</td>
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<tr>
<td>- health and safety contribution</td>
<td>0.5%</td>
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<td>0.5%</td>
<td>0.5%</td>
<td>0.5%</td>
<td>-</td>
</tr>
<tr>
<td>Unemployment insurance</td>
<td>1.7%</td>
<td>1.7%</td>
<td>1.7%</td>
<td>-</td>
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</tbody>
</table>
Main dilemmas/ challenges (1)

• Can / should we stop the wheel of technological advancement?
  • No
• Can we prevent shifts from standard to alternative WA?
  • I doubt it.
• Can we make them less attractive?
  • Yes
• How can we do that?
  • at least by partially preventing rising inequalities?
  • same labour cost in taxation and SS
  • allowing access to social protection for all economically active persons
    • formally and effectively
    • COM(2018) 123 final

Shift from „work type related” to „income related” tax and SS
Future entitlements & sound budgetary and SS financing
Main dilemmas/ challenges (2)

• Can we treat in employment law as standard something that is obviously different?
  • Depends, partially
  • Example in WT travelling from worker’s home to place of work where no habitual place of work
  • C-266/14 Federación de Servicios Privados

• Will we need more labour market correction measures:
  • Yes
  • Active (re-activation) labour market measures
    • workability
    • employability
...and one more thing ...

The 2nd IR „created” LL!
Will 4th IR decompose it?
Or is there still a chance to make labour law great again?

....you will hear more after the lunch break...

Thank you for your attention!