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To the International Association of Judges – IAJ-UIM

The Romanian Magistrates' Association (AMR), professional and national, apolitical, non-governmental organization, stated to be of „public utility” through the Government Decision no. 530/2008 – with the headquarter in Bucharest, Regina Elisabeta Boulevard no. 53, District 5, e-mail amr@asociatia-magistratilor.ro, tax registration code 11760036 – legally represented by Judge dr. Andreea Ciucă - President, sends the following

ANSWERS TO THE FORTH STUDY COMMISSION QUESTIONNAIRE "The Judicial Workplace and the Intersection with Judicial Independence"

1. Provide a brief description of the presence of the "gig" or "platform" economy in your country. If possible, base your answer on official public data or academic reports, although we recognize that in some cases data may not be available.

The activity of working platforms is not separately legislated in Romania, with the exception of the alternative transportation activity which is regulated by Government Emergency Ordinance No. 49/2019. This contains provisions on the organization, authorization and control of the activities of alternative transport by car and driver intermediated by digital platforms.

Government Emergency Ordinance No 21/2023 also established measures for the implementation of Regulation (EU) 2019/1.150 of the European Parliament and of the Council of June 20, 2019 on promoting fairness and transparency for undertakings using online intermediation services, as well as for amending and supplementing Competition Law No 21/1996.

This Emergency Ordinance shall apply to: a) providers of online intermediation services and providers of online search engines that provide or offer to provide services to businesses using online intermediation services; b) professional users of websites, who have their seat or residence in Romania and who, through the online intermediation services or online search engines, offer goods or services to consumers located in the territory of the European Union, regardless of the place of establishment or residence of the providers of those services and regardless of the applicable law.

The presence of work platforms as a form of economic activity is particularly evident in urban areas, being in continuous development and manifesting itself in areas of activity such as renting of premises, delivery of products, passenger transportation and product sales platforms.

As the activities provided through online platforms are not regulated as a distinct category, no official statistics or reports could be identified analysing the share of this type of platforms in the overall economy, the number of providers or the evolution of these data. However, the existence of numerous articles in the press or in various legal journals (mostly in the context of the adoption of the legislation on alternative transportation in 2019 and the draft directive of the European Parliament in 2024, adopted in April 2024) shows that the gig or platform economy is a growing phenomenon in our country.

In this context, we also refer to the fact that various social sectors are calling for the regulation and expansion of activities carried out through online platforms. Thus, with reference to the law on tourism, the organizations of tourism service providers have requested that the status of online booking platforms be clarified and legislated in terms of the legal framework for rooms for rent and accommodation in the circular economy.

2. How does this development affect the traditional employee/employer relationship? What is the status of platform or gig workers in your country: employees, independent contractors or a third category? Is there any jurisprudential divergence regarding the status of these workers? Cite relevant examples.

The activity through online platforms is carried out either by concluding an individual employment contract with the platform owner or by authorizing the service provider as an authorized person or, where appropriate, by setting up a limited liability company which concludes a collaboration contract with the platform.

Of these two forms, only the first is regarded as an employment relationship. In this case, the most frequent problems are represented by non-compliance with working hours, because the specific nature of the employment contract implies the achievement of a fairly high daily target and the worker often has to devote more than 8 hours a day to meet it. On the other hand, some platforms introduce forms of remuneration in relation to the number of hours worked which incentivize workers to perform a very high volume of work.

One particular aspect of the work provided through online platforms is that while they initially used the labour of residents who chose to supplement their income in this way, they are now increasingly using the labour of immigrants. Thus, there are situations where the labour of these immigrant workers is used for more than 12 hours a day, sometimes without weekly rest.

Furthermore, the fact that the work is not carried out in a specific place but requires them to move according to the requests from the platform, interspersed with periods of inactivity between orders, makes it difficult to monitor compliance with workers' rights.

With regard to the way of carrying out the activity as an individual provider by setting up a limited liability company or as an authorized person, the challenges faced by providers relate to the obligations to pay taxes and VAT, in accordance with the statute of the forms of activity. Another problem is the lack of social insurance if these providers do not individually take out an insurance contract to cover pension entitlements.

With regard to some of the negative effects of digital work, it has been emphasized in the doctrine that digital workers may face several forms of moral and/or psychological harassment, as they are subject to stress and physical exhaustion. The definitions given to these types of harassment by Government Ordinance No 137/2000 on the prevention and sanctioning of all forms of discrimination and by Law No 202/2002 on equal opportunities and equal treatment between women and men were taken into account.

Firstly, in the case of platform workers, the negative psychological consequences are caused by the very nature of their work, a concrete example being workers who moderate the content of websites based on user-generated content and remove content flagged as inappropriate so that the user is presented with a relatively clean image of the website. These workers are thus constantly exposed to inappropriate content, which can have long-term psychological effects such as insomnia, nightmares, anxiety.

On the other hand, the majority of platform workers' tasks are simple and repetitive micro tasks that do not coincide with the high level of education of the workers. Also, one of the social risks generated by digital work is the tendencies of platforms to exploit platforms to create a superior experience for their customers to the detriment of the workers, which materializes in a stressful work environment, leading to physical and mental exhaustion of the workers.

For example, the author of the study mentioned the case of Uber, where if a passenger forgets a good in the car during the ride, the driver will return it at his or her leisure, without being paid. The same platform gives passengers the option to pay less if they use a shared ride with other passengers than if they use a standard ride.

Although passengers benefit by paying less for the same journey, this is to the detriment of the workers, who have to pick up more passengers from different points, resulting in delayed journeys and therefore a poorer passenger experience. Thus, they will have incentives to give drivers poor qualifications, putting the worker at a disadvantage at the expense of passenger comfort.

Although it can be considered as an answer to many of the problems faced by the parties of an employment relationship, digital work, regardless of the form in which it is performed, exposes

workers to a number of psychosocial risks, such as harm to their physical and mental health, but also to their well-being. The most conclusive example is the one provided by the Sars-CoV-2 pandemic, which redefined employment relations, but also brought to the attention the problem of the burnout syndrome faced by the digital workers. In this context, internationally, both states, through amendments of the legislation, and employees, through internal policies try to reduce the burnout phenomenon, one of the most important measures being the regulation of the digital workers right to disconnect (Alexandra-Georgiana Vâlcălaru, The Psychosocial Risks Encountered by Employees in the Digital Economy. The Right to Disconnect, p. 231, 236, https://pub.law.uaic.ro/files/articole/2021/vol.2_2/16.valcelaru.pdf).

With regard to these issues we have in mind that in April 2024 the European Parliament adopted the Platform Work Directive, but Member States have two years (from publication in the EU Official Journal) to incorporate the provisions of the Directive into their national legislation.

3. What is the impact of artificial intelligence on the labour market of your country? If possible, base your answer on official public data or academic reports. Outline the positive and negative impacts.

As far as the public sector in Romania is concerned, there is no impact of artificial intelligence on human resources, as there are no examples of the implementation of tools based on artificial intelligence that would determine the resizing of the different state sectors or that would significantly influence the work to date.

However, given the importance of the impact that the development of artificial intelligence is expected to have, on July 11, 2024, a national strategy in the field of Artificial Intelligence for the period 2024-2027 was approved with the objective of contributing to "the adoption of digital technologies in the economy and society in conditions of respect for human rights and promoting excellence and confidence in artificial intelligence". At the same time, the adopted strategy aims "to support the central public administration in Romania to uphold, in a well-founded manner, the efforts of standardization, operationalization and regulation of the development of AI and to enhance its positive effects, will contribute decisively to highlighting and capitalizing on the national innovative potential in the field of AI, as well as to managing the risks posed by the evolution of AI".

As specified in the executive summary of the National Strategy in the field of Artificial Intelligence 2024-2027, global projections estimate that by 2030 approx. 70% of companies will be using at least one AI technology (computer vision, natural language processing, virtual assistants, automation/robotization, machine learning), and the technology will generate

additional economic results of approx. 1.2% annual increase in global GDP, with disruptive effects on countries, companies, labour market.

Under these conditions, this national strategy will represent an important precedent for central public authorities in Romania in proactively approaching the adaptation of measures in line with the realities of the accelerated evolution of digital infrastructures on a global scale.

The Employment Strategy 2021-2027 has a number of strategic or specific objectives that can be correlated with those of the Artificial Intelligence Strategy: (SO3) Developing a highly qualified human resource with skills and competences adapted to the requirements of the labour market; (SO2) Developing the skills of the workforce in order to ensure quality employment in competitive sectors, generating green jobs; (SO4) Strengthening the adult vocational training system to better connect it to the requirements of the labour market. SO4 refers to a PwC report which estimates that the adoption of new technologies in Romania will affect 275 thousand employees, as automation and AI will gradually eliminate repetitive activities. The objective aims to encourage the use of tools that increase the accessibility and efficiency of adult training: simulators, virtual reality, augmented reality (point 3.2.7. of the National Strategy for Artificial Intelligence 2024-2027).

In the private sector there is a greater dynamism in the forms of using artificial intelligence, but from the practice of the labour litigation sections at the level of the courts of appeal (the highest jurisdiction in Romania in the field of labour litigation) there were no examples of dismissals caused by the reorganization of companies as a result of the implementation of tools based on artificial intelligence.

This does not mean that certain developments regarding the reallocation of employee roles within companies or the reduction in the number of employees were not based on the dynamics of the activity influenced by the implementation of such tools. However, in the reasoning of the decisions challenged before the courts relating to employment relationships, no situations have been identified that paint a picture of the direct impact of artificial intelligence on these issues.

4. Do you have any laws regulating and/or relevant judicial decisions about artificial intelligence on the labour market? What are the challenges for employers, such as privacy, transparency, secrecy, plagiarism, and the claim that artificial intelligence will be replacing workers? What are the concerns of employees?

So far, no laws regulating the use of artificial intelligence in the labour market have been enacted and no relevant judicial decisions have been identified on this issue.

Employers' concerns voiced in the public space focus in particular on ensuring data and infrastructure privacy in the context of increasing connectivity, as well as on focusing

recruitment processes and the configuration of employment relationships in a way that maximizes the actual value of the human factor.

From the employees' point of view, the concerns expressed relate to the prospect of job losses, the fundamental change in the content of work and the difficulty of adapting employees to new demands.

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