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THE *UBER* CASE AND GIG-INDIVIDUALS AGAINST THE BACKDROP OF THE GIG-ECONOMY: DILEMMAS BETWEEN LABOUR LAW AND TECHNO-LAW

Abstract

The “Uber workers” and, more in general, individuals deployed in the platforms, overall considered the “gig economy”, have already been the subject matter of multifarious *dicta* in Italy. However, not only are these court decisions contradictory with each other, but also they are quite nebulous in their underpinning reasoning. Furthermore, there are a few inconsistencies with entrenched principles of the Italian legal system, particularly in the area of labour law. By contract, across the “Channel”, the Uber workers have been “dissected”, from a legal perspective, in a very recent decision of the UK Supreme Court. On such a background, it is becoming vital to ascertain the legal characterisation of “gig individuals”, also in the light of a prospective EU legal framework where this new category could be legislated. Bearing this in mind, seemingly the imminent EU regulation will engender a challenging, yet stimulating, comparative analysis with the common law (and its traditional “tests” of the contract of employment), where it still arduous to envisage any legislation in this micro-area of labour law.

JEL CLASSIFICATION: K12; K14

SUMMARY

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1 Introduction

“To be or not to be, that is the question” is the well-known opening phrase of Prince Hamlet’s monologue in the so-called “nunnery scene” of William Shakespeare’s *Hamlet*.¹

Within the context of labour law, this sentence could translate into the “workers or self-employed dilemma,” which has been puzzling common law and the pertinent

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¹ Act no. 3, scene no. 1.

British statute for some time. However, in approaching the Italian legal system, the dilemma becomes more complex, as a further “phantom” loiters around the beleaguered mind of the Shakespearean character. In fact, Italian scholars, alongside their Supreme Court,² are reminiscent of “Hamletic” figures asking themselves whether “gig-workers”³ should be characterised as self-employed people, employees or “*tertium genus*.”⁴

Bearing this in mind, the goal of this paper is to discuss and analyse from a legal point of view the “war” as well as the pertinent “battles” between the two highest Courts in two countries, more precisely the United Kingdom Supreme Court and the Italian Supreme Court. However, while Courts fiddle, Rome is already burning. Beyond the metaphor, through the lens of a debate which may be already old-fashioned and anachronistic, more urgent matters are already appearing on the horizon. From this perspective, the EU Commission has recently adopted a legal framework the purpose of which is to legislate on this new category of individuals, i.e. gig-workers. Ultimately, technological innovation exposes the backward and awkward nature of a legislation which is vaguely reminiscent of an “ancient regime” possibly close to a fatal demise.

Once again, it seems that both the European Union and the Italian legislation, like the Hamlet of a Shakespearean spark, are still trying to tackle their psychological issues, in dissecting the too numerous and abstract micro-categories of an ostensive legal nature, whereas in the UK the socio-technological context is taken in due account in order to put forward a more balanced categorisation of “gig workers.”

2 The UK legislative background and the amendments to the 2019 Employment Rights act

With the entry into force in the UK of the 2019 amendments to the Employment Rights Act 1996, which took place on 1 January 2021, a number of legal provisions have been subject to a radical alteration to ensure strengthening of the legal basis for the protection of workers’ rights.

² The *Corte Suprema di Cassazione* o, in this work, “Italian Supreme Court” or “ISC”.

³ The term gig-worker already implies a possible qualification of gig-individuals as belonging to a specific legal category, the “British” workers. However, the most neutral way to refer to people involved with the gig economy, before one can come to a clear unequivocal conclusion about their legal *status*, would be gig-individuals. Therefore, to refer to gig-individual, before a clear analysis is carried out, seems to comply with a more rigorous scientific approach, although admittedly the expressions, gig-workers and gig-individuals, are somehow used, in this paper, as synonyms.

⁴ See David Cabrelli, ‘*Employment Law in Context. Text and Materials*’ (Oxford University Press 2014) 59,134. More recently, David Cabrelli, ‘*Employment Law in Context. Text and Materials*’ (4th ed Oxford University Press 2020) *passim*.

In the version of the Employment Rights Act 1996 prior to the 2021 novelty, that is to say the one in force since 2012, the definition of employee, employer, and employment relationship was fundamentally based, under the British statute, on the mere existence of an employment contract, although the case law flourished in this area gave rise to significant deviations from this concept.⁵ On the contrary, as a result of the recent changes, the criterion for identifying the essential elements that characterise the work performance is the management and supervision from a party.

In the light of this, the concept of employee, employer, and employment contract are shaped on the basis of two elements: the first concerns the existence of a contractual relationship between the two parties; the second relates to the fact that one party, given the very existence of that contract, is paid, managed, and controlled by the other party. Finally, a contract of employment should be recognised as such not only based on formal aspects (the name given to it by the contracting parties), but also by virtue of its content.⁶

From this it follows that a bilateral agreement on given content may be defined as a contract of employment even if the *nomen juris* of that agreement, the “label,” does not, *de iure*, relate to employment, although *de facto* such a contract turns out to be “overwhelmed” by these elements. Consequently, it is implied that all agreements which have as their content an employment relationship of this kind become employment contracts. Should this reasoning be correct, it is expected that any individual offered a job under the management and supervision from a counterparty should be treated as an employee.

From this perspective, it may be worth recalling the case of *Ferguson vs. John Dawson & Partners*,⁷ in which the contractor, Dawson & Partners, hired Mr. Ferguson for the latter to carry out work on behalf of the company. During the working hours Mr. Ferguson had a work accident and subsequently asked the company to take on full responsibility for the relevant consequences. The Court, in focusing on whether it was possible to define Mr. Ferguson an employee, came to the conclusion that, although the social security contribution share had not been withheld from Ferguson’s salary, the company was entitled to decide the place of work, including the working time, and dismiss him, therefore he was in fact an employee, since the factual elements were consistent with a contract of service rather than a contract for services.

Bearing this precedent in mind, it is worth recalling that the legislative amendments entered into force as from 2021 make it possible, on the one hand, to identify

⁵ In this paper an exhaustive account of these different Court decisions is given.

⁶ An agreement may be regarded as a contract of employment if “when two parties have an agreement on work to be done, wage, management and supervision of one party, such agreement shall be considered as employment contract regardless of its name” (1, Art. 13.1).

⁷ Case [1976] EWCA Civ 7 Taken by Royal Courts of Justice on 22/7/1976.

employment contracts which could be defined as “concealed” or hidden yet giving rise to rights and obligations for both parties as if they pertained to a contract of service. On the other hand, they raise burning questions about the real scope of the agreement that is concluded between two parties. As to the latter, the dilemma is when two parties choose, explicitly and genuinely, not to enter into an employment relationship (a contract of service), because they are totally uninterested in it, despite the fact that the actual relationship does meet all the characteristics of a contract of service (the one existing between an employer and employee).⁸

From a closer perspective, an absolute and rigorous implementation of the – new – approach propounded by the British statute – substance over form – may bear a risk, namely being against the contractual principle of autonomy of the parties, which is the quintessence of an agreement governed by common law. This tension could reach its pinnacle in circumstances where a person performs their work based on a contract which relates to an employment relationship but at the same time is devoid of an employment contract flavour. The reasons for this may be different: for example, such person already has a contract of employment that fully protects their rights. The definition and determination of an employment contract consequently appears to be very complex if the parties agree not to conclude an employment contract or if the worker themselves does not recognise their legal status as an employee.⁹

According to what has been reported so far, the 2019 amendments may appear as a significant deviation from the common law principles of contract law in England and Wales, because workers are more aware of their rights. Ultimately, they should be able to choose more consciously how to shape the employment relationship,¹⁰ but with a legislation that, as a fall-back option, is in a position to protect them.

⁸ From an English law perspective, a holistic examination of the area of the employment relationship, including the “quasi-dependent”, may be found in Zoe Adams, Catherine Barnard, Simon Deakin and Sarah Fraser Butlin, *Deakin and Morris Labour Law* (7th edn Hart Publishing 2021) 106,136.

⁹ The reference goes to the case *Massey vs. Crown Life Assurance* 1978. Mr. Massey was an employee of the Crown Life Assurance from 1971 to 1973 and then, by mutual agreement, he became a self-employed, although his employment, including rights and obligations, remained the same, the only change being that the Company did not pay the pension insurance. The question, therefore, was whether Mr. Massey could continue being defined an employee also after the novation of the original agreement between him and the Company. The Court held that it could no longer be defined as an employee at the time of the dispute, because the nature of the contract, albeit still relating to an employment relationship, had changed. Both parties, in fact, had agreed to change the legal status of employee. This case may corroborate the view that an agreement between the parties shall be complied with and that the employment contract makes no exception to the rule of contract law. Ultimately, the parties are given the right to determine their own legal relationships. Case [1978] 1 WLR 676.

¹⁰ Nguyen Le Thu, ‘Legal Considerations for Determination of Employment Relation and Employment Contract’ [2021]37 VNU Journal of Science: Legal Studies 42,48.

3 “Uber vS. Aslam and others” before the uk supreme court

In this case, two drivers working for the Uber online platform, previously qualified as self-employed gig workers, claimed that they were entitled to the national minimum wage under the National Minimum Wage Act 1998, as well as the annual paid leave under the Working Time Regulations 1998. Rights under these two pieces of legislation are granted to employees and workers alike. More in detail, the controversy was prompted by the claims lodged by five Uber drivers before the Court. In order for these two rights to be acknowledged, the conundrum for the Employment Tribunal was the qualification of Uber’s drivers as workers, a characterisation which Uber had always unceremoniously objected until then. In other words, the crucial aspect was the solution of the conundrum relating to the qualification of the relationship between Uber and its drivers, that is if the latter were “working under contracts with Uber.”

The Employment Tribunal held that the applicants did meet the criteria set out in Section 230(3)(b) of the Employment Rights Act 1996. This decision was based on three different lines of reasoning.

First and foremost, Uber exercised substantial control over drivers, since the company complied with a behaviour that was significantly reminiscent of an employer’s *modus operandi*: the platform, in fact, used to deduct a percentage from the drivers’ weekly pay, and this occurred without any notice given to the drivers. In that regard, the Employment Tribunal pointed out that the explanations encompassed in an American judgement (namely the North California District Court case of *Uber Technologies Inc. vs. Berwick*) were convincing enough to infer that not only did Uber sell a software package, but it also substantially operated a taxi service.

Second, in the contracts that Uber concluded with its drivers, called “Partner Terms,” it was explicitly pencilled that a driver is an employee or business partner of an entity referred to as “Partner of Uber;” however, diabolically, such Partner of Uber is the driver themselves in almost all cases, which means that the connection between Uber and the driver was far from being “loose” and remote. Although Uber sought to deny any closeness between its own organisation and the drivers, given the intermediation of such – indeed evanescent – partner, the Employment Tribunal held that drivers should be characterised as Uber workers. Indirectly, this engendered the further question of whether they could possibly be identified as employees as well, given the actual circumstances of the *Aslam* case.

This second argument is supported by the fact that, according to the Employment Tribunal itself, the same drivers were subject to continuous monitoring and control. Although drivers were left with a small margin of autonomy, the monitoring activity carried out was very penetrating and invasive to the point that they were subject to penalties, should they miss a certain number of trips.

A further aspect that should be added is that Uber drivers were not able to negotiate with their customers the rates to be applied for the service, since they needed to accept the terms and conditions arranged by Uber.

4 The spill-overs of *Aslam*

The decision by the Employment Tribunal, subsequently confirmed by the Court of Appeal,¹¹ has significant consequences.

First and foremost, the attention of the public has turned to the existence of the structure of the gig economy. Secondly, the Government have announced a review, to be carried out every six months, regarding modern working methods, with particular attention to new forms of self-employment that do not fall within standard forms of work.¹² Finally, there are undeniable repercussions on other pending cases such as, for example, the *Dewhurst vs. Citysprint* case.¹³ In this controversy, a delivery man, previously characterised as an online platform worker, was given worker protection.¹⁴

Despite this, it must be pointed out that the approach of the British Courts to the gig economy has not always “unleashed” a uniform extension of worker rights to all platform workers. The reference goes, still in the UK, to the Central Arbitration Committee decision, relating to the work conditions reported by Deliveroo workers. The conclusion of the Committee was that the applicants were self-employed platform workers rather than workers, for the reason that the riders only theoretically could be replaced with other people, for their work-performance through the platform,¹⁵

¹¹ The Appeal Question remained the same, that is, limited to the definition of the status of the worker who claimed the minimum wage and the salary paid. Also, Judge Eady pointed out (*UNISON v Lord Chancellor* [2017] UKSC 51, at [6]) the need for the correct application of Workers' Rights: “Relations between employers and workers are generally characterised by an imbalance of economic power. Recognising the vulnerability of workers to exploitation, discrimination and other undesirable practices and the social problems which may arise from them, Parliament has intervened at length in these reports in order to confer legal rights on workers, rather than letting their rights be determined by contractual freedom. More recently, further measures have been taken in the framework of legislation implementing EU law. To ensure the effectiveness of the rights conferred on workers and to obtain the social benefits provided by Parliament, they must be concretely enforceable”.

¹² Matthew Taylor, Greg Marsh, Diane Nicol and Paul Broadbent ‘Good Work: The Taylor Review of Modern Working Practices’ Department for Business, Energy & Industrial Strategy (London) 2017 online accessed 17 June 2022: <https://www.gov.uk/government/publications/good-work-the-taylor-review-of-modern-working-practices>.

¹³ ET/220512/2016 of 5 January 2017.

¹⁴ In this case, the General Court found that the procedure for hiring drivers involved a two-day training period in which guidance was given on how to carry out the work. In addition, uniforms and other equipment had to be made available. These factors are not likely to qualify a worker as self-employed.

¹⁵ Remarkably, the recognition by the Courts of the status of worker is not always beneficial to the subject at stake. In “*Pimlico*” (*Pimlico Plumbers Ltd and Another (Appellants) vs. Smith (Respondent)* [2018] UKSC 29), the applicant, previously qualified as a self-employed person, was subsequently qualified as a worker could not claim the large amount of leave arrears that he believed to be due.

whereas *de facto* they were under an obligation to perform their obligations personally.¹⁶

More in general, it becomes apparent that the Courts, including the British ones, are not the ideal places for the formulation of elements of social policy and labour:¹⁷ when a certain individual is qualified as a worker in the contract, other elements about the work agreement such as working hours and remuneration may as well fade away.¹⁸

The *Aslam vs. Uber BV case*, as decided by the Employment Appeal Tribunal, showcases a peculiarity: as the Court decision is deemed to be effective exclusively *inter partes*,¹⁹ the theory of the precedent would turn out to be partly contradicted. To further elaborate, the function that is carried out by decisions²⁰ is to provide guidance for the solution of future cases that may arise before the Courts: “a decision in a case with no value to anyone other than the litigants, the lawyers and judges involved in the case would be absurd.”²¹

Another peculiar aspect entailed in *Aslam* is the principle of the predominance of the reality test over the ostensive will crystallised by the parties in the contractual documents. In the present case, the EAT held that, although it is very uncommon for a Court to give precedence to the factual elements in relation to the elements of a contractual relationship,²² in the present case the Court was empowered to disregard written agreements between the parties where possible. Consequently, it was necessary to assess and ascertain the unspecified terms of the contractual relationship itself that may have reflected such a reality.

The dominance of factual elements over contractual ones derives, in the specific case, from the further consideration that the subject matter of the judgment not only is a commercial, ordinary relationship, but it is also an employment one, which implies a different contractual power between the parties, where legal and sociological gaps between the two must be filled in.²³

¹⁶ At common law, the personal nature of services is one of the quintessential features of the contract of service. See below footnote 49.

¹⁷ In this sense Lord Sumption, *The Limits of Law*, The 27th Sultan Azlan Shah Lecture, Kuala Lumpur, 20 November 2013, <https://www.supremecourt.uk/docs/speech-131120.pdf>. Accessed 10 July 2020

¹⁸ Philip Larkin, ‘Relationship between Employment Status and Scope of Social Security Protection: The United Kingdom Example’ in Ulrich Becker and Olga Chesalina (eds), *Social Law 4.0. New Approaches for Ensuring and Financing Social Security in the Digital Age*, [Nomos 2021].

¹⁹ The *Aslam* Tribunal decision “only applies to the two drivers who brought the case”, pursuant to the same Court.

²⁰ In this sense Supreme Court in *R (UNISON) v Lord Chancellor* [2017] UKSC 51.

²¹ *R (UNISON) v Lord Chancellor* [2017] UKSC 51, [67]–[69].

²² This principle is more often than not applied to the Italian legal system. See ISC, 14 May 2009, no. 11207; ISC, 18 February 2009, no. 3894; ISC 17 June 2009, no. 14054.

²³ Gemma Pacella, ‘Drivers di Uber: Confermato che si Tratta di Workers e non di Self-employed’ (2017)2 *Labour & Law Issues* 3, 50-62; Vincenzo Pietrogiovanni, ‘L’importanza di chiamarsi Lavoratori, ossia delle

Uber complained against the decision of EAT to the UK Supreme Court,²⁴ which, in turn, unanimously rejected the appeal lodged.²⁵ The UK Supreme Court held that, given the dearth of a written contract between the drivers and Uber, the nature of the legal relationship had to be reconstructed starting from the behaviour of the parties.²⁶ Hence, it was impossible to consider the platform as an intermediary between drivers and customers, given that it was Uber which concluded the contracts with the passengers and hired the drivers to perform the services covered by the contract. In the light of this factual background, the Court came to the conclusion that it was impossible to classify the employment relationship of drivers as “autonomous” in view of the unilateral determination by the tariff platform and the contractual terms of performance of the service, the possibility for Uber to condition the ability of the driver to agree to perform

Corti del Regno Unito alle (p)rese con il Lavoro a Chiamata sulle Piattaforme’ [2019] Labour & Law Issues 45-67.

²⁴ Robert Upex, ‘Workers and the Gig Economy: an Appraisal of the Supreme Court’s Decision in the Uber Case’ [2021] Coventry Law Journal, 25,38; Adam Lambert and Peter Summerfield, ‘UK Supreme Court Delivers Verdict in Uber case’ [2021] Compliance and Risk 8,10; Alan L Bogg and Michael Ford, ‘The Death of Contract in Determining Employment Status’ [2021]137 Law Quarterly Review 392,399; Zoe Adams, ‘One Step Forwards for Employment Status, still Some Way to Go: the Supreme Court’s Decision in Uber v Aslam under Scrutiny’ [2021]80 Cambridge Law Journal 221,225; Douglas Brodie, ‘Confronting the Gig Economy’ [2021] Judicial Review 103,108.

²⁵ Supreme Court of the United Kingdom, 19 February 2021, *Uber BV and others v Aslam and others*, UKSC no. 5.

²⁶ As far as the brief but already extensive literature about *Aslam* is concerned, see Julian Fulbrook, ‘Reverberations from Uber v Aslam in Personal Injury Claims?’ [2021] Journal of Personal Injury Law 59-67; Sheryn Omeri, ‘Uber-careful: Implications of Modern “Gig Economy” Litigation for the Employer’s Common Law Duty of Care’ [2019] Journal of Personal Injury Law 59,65; Stewart Healey, ‘Uber BV v Aslam [2021] UKSC 5’ (2021) Employment Law Bulletin 163, 2-4; Douglas Brodie, ‘Confronting the Gig Economy’ (n 22); Snigdha Nag, ‘Uber and the “Gig” Economy’ (2016)160 Solicitor Journal (43), 34-35; Sarah-Jane Van Den Bergh and Carl Richards, ‘Uber Taxi Drivers are “Workers”, not Self-employed Contractors’ [2017] Corporate Briefing 7-8; David Morgan, ‘Uber: more Journeys to Come’, [2021]66 Journal of the Law Society of Scotland 4, 12-14 ; Carolyn Brown, Susan Ball and Sarah Halstead, ‘The Supreme Court’s Ruling in Uber: Employment Status is Uber Tricky?’ [2021] Tax Journal 6; Alessio Bertolini and Ruth Dukes, ‘Trade Unions and Platform Workers in the UK: Worker Representation in the Shadow of the Law’ [2021]50 Industrial Law Journal 662-688; IDS Employment Law Brief (case comment), Employment status: Uber drivers are workers, (2016) IDS Employment Law Brief 1058, 3-5; IDS Employment Law Brief (case comment), ‘Employment Status: Court of Appeal Majority Holds that Uber Drivers are “Workers” [2019] IDS Employment Law Brief 1109, 3-7; IDS Employment Law Brief (case comment), ‘Employment Status: EAT Confirms Uber Drivers are Workers’, [2017] IDS Employment Law Brief 1083, 3-5; Alan Bogg and Michael Ford, ‘Between Statute and Contract: Who is a Worker?’ [2019]135 Law Quarterly Review 347,353; Alan Bogg and Michael Ford, ‘The Death of Contract in Determining Employment Status’ (n 22) 392,399; K. Brearley, ‘Uber BV and Others v Aslam and Others’ [2021]44 Company Secretary Review 170-172; P. Botsford (case comment), ‘UK Supreme Court Finding against Uber Answers Questions Posed by Gig Economy’ [2021] IBA Global Insight Internet; D. Morgan, ‘Employment Status: Flexibility or Security - What’s the Best Gig?’ [2017] Employment Law Bulletin 5,7; Compliance & Risk (case comment), ‘Supreme Court Rules that Uber Drivers are Workers’ [2021] Compliance & Risk 1,17; Farm Law (case comment), ‘Uber BV and Others v Aslam and Others’ [2021] Farm Law 14-16; A. Prendergast (case comment), ‘Uber’s “Labels” Rejected again “Worker” Status Confirmed by UK EAT’ [2017] Industrial Relations News 42, 22,23.

a certain ride, the power of control exercised by the driver evaluation system as well as the measures put in place by Uber in order to limit the communication between passenger and driver to the strict minimum.

Since then, there have been other rulings which have stepped into the shoes of the ET with regard to the qualification of the gig-workers.²⁷ A peculiar case concerns the qualification of a courier of the Yodel Delivery Network platform that has reached the point of involving the EU Court of Justice. In the latter case, the claimant asked for the application of the working time safeguards laid down for workers, despite the *ex ante* self-qualification of the individual, within the contract, as self-employed. The Employment Tribunal of Watford, in assessing the contract, particularly the substitution clauses therein, remitted the question to the Court of Justice. In this respect, the query related to the European Directive no. 2003/88, a piece of legislation governing some aspects of the working time. This legislative instrument prevented the application of the national laws of the Member State, pursuant to which the worker must personally perform the work in order to fall within the scope of the Directive. In other words, the national court asked whether the mere presence, in the employment contract, of replacement clauses was incompatible with the qualification of worker. The Court of Justice, with an extremely concise order, held that the Working Time Directive does not apply to workers who may be covered by substitution clauses without, however, going into the issue of the right of the worker to be replaced.²⁸

²⁷ See, for instance, *Dewhurst vs. Citysprint UK Ltd*, EW No. 2202512/2016; *Independent Workers' Union of Great Britain (IWGB) vs. Rooffoods*, England and Wales High Court, 5 December 2018; *Independent Workers' Union of Great Britain (IWGB) v Rooffoods ('Deliveroo')*, EWHC No. 3342, Case No. CO/810/2018; 14 November 2017.

²⁸ CJEU, 22 April 2020, C-692/19, *B. vs. Yodel Delivery Network*. The decision of the Court of Justice has been highly criticised by scholars, because the concept of worker used by the Court of Luxembourg does not bear the same meaning as the homonymous one before British Courts. Ultimately, it is argued that "not only is the Community law concept of "worker" not the same of that of "employee" such as it is understood in the domestic law of the different Member States, but that also the Community law concept of "worker" is not consistent even within the different Community law texts". (Georges Cavalier and Robert Upex, 'The Concept of Employment Contract in European Union Private Law' [2006] ICLQ 589). In a nutshell, the peculiar characteristics of the European notion of worker would be essentially three: the submission to the hetero direction, the receipt of a salary, the exercise of real and effective activities. From this it derives that the category of worker in the law of the European Union possesses an extremely wide scope in how much it comprises various typologies of job without resort to intermediate figures (intermittent job, partial job, formative activity of internship) between subordination and autonomy. (Gemma Pacella, 'The Euro-Unitary Notion of Employee to the Test of the Gig-Economy: the European Court of Justice' [2020] *Labour & Law and Issues* 6,18).

5 The segmentation of gig-workers: further (Italian) dilemmas

In turning the attention to the Italian legal system, a question has been raised as to whether a Uber driver²⁹ or a Foodora rider³⁰ should be regarded as an employed person

²⁹ With regard to the services offered by Uber, two more legal aspects have arisen, especially in Italy, compared with the one being analysed here. The former is closely connected with the investigations carried out by the Milanese Public Prosecutor's Office, which requested, and subsequently obtained, the application of the preventive measure of the judicial administration on the basis of a well-founded fear of the existence of the crime of illicit intermediation and exploitation of labour pursuant to Art. 603-bis, Italian Criminal Code, perpetrated by the companies affiliated to Uber Italy srl against the messengers. See Milan Tribunal, decree no. 9 of 27 May 2020. On this specific matter, see Alessandro Quattrocchi, 'Le Nuove Manifestazioni della Prevenzione Patrimoniale: Amministrazione Giudiziaria e Contrasto al "Caporalato" nel caso Uber' [2020] Giur. Pen. Web no. 6; Andreana Esposito, 'I Riders di Uber Italy Srl' [2020] RIDL 558; William Chiaromonte, 'Rider senza Tutele. Sfruttamento su Due Ruote' [2021] Nigrizia 2; Cristina Inversi, 'Caporalato Digitale: il Caso Uber Italy Srl' [2021] Lavoro e Diritto 335. The second problem relates to unfair competition between taxi drivers and Uber drivers, both of which are designed to meet the same requirement, namely customer transport. For further information, see Stefania Serafini, 'La Concorrenza Sleale per la Violazione della Normativa Pubblicitaria del Trasporto Urbano non di Linea: Il Caso Uber' [2016] Corriere Giuridico 368; Cristina E Papadimitriou and Marco Percoco, 'Le Piattaforme Digitali tra Opportunità e Incertezze Normative: il Caso Uber' [2019] Rivista Giuridica del Mezzogiorno 451 ff.; Luca Belviso, 'Il Caso Uber negli Stati Uniti e in Europa fra Mercato, Tecnologia e Diritto. Obsolescenza Regolatoria e Ruolo delle Corti' [2018] MediaLaws 156; Diletta Tega, 'Uber in Piazza del Quirinale n. 41: la «Gig Economy» arriva alla Corte Costituzionale' [2017] Le Regioni 580-590; Valerio Cosimo Romano, 'Nuove Tecnologie per il Mitridatismo Regolamentare: il Caso Uber Pop' [2015] Mercato Concorrenza Regole 133; Paolo Tullio, 'In tema di Concorrenza Sleale sui Rapporti tra Uber e le Cooperative di Radiotaxi' [2017] Diritto dei Trasporti 917. As to the case law, see, see Milan Tribunal, ordinance 25 May 2015; Rome Tribunal, ordinance 7 April 2017. For the sake of completeness of analysis, see the Court of Justice of the European Union decision, which follows up on a reference for a preliminary ruling made by a Spanish judge, where the question was whether Uber was a transport service: *Asociación Profesional Élite Taxi v Uber Systems Spain SL* (2017) C-434/15. The decision made by the Grand Chamber is of a particular importance, because it highlights the adverse implications of the "Uber system": "from information before the Court ... the brokering service provided by Uber is based on the selection of non-professional drivers using their own vehicle, to which the undertaking provides a demand without which (i) such drivers would not be induced to provide transport services and (ii) persons wishing to make an urban journey would not use the services provided by such drivers. In addition, Uber has a decisive influence on the conditions under which this service is provided by such drivers. On the latter point, it seems, inter alia, that Uber determines at least the maximum tariff by means of the application of the same name, that the company receives that amount from the customer before paying a part of it to the non-professional driver of the vehicle, and which has some control over the quality of vehicles, drivers and their behaviour, which may, in certain circumstances, lead to their exclusion". [2017] C-434/15, [39]. See Ewan McGaughey, 'Uber, the Taylor Review, Mutuality and the Duty not to Misrepresent Employment Status' [2019] 48 Industrial Law Journal 2, 194-195. The problem has also been addressed with the case *HKSAR vs. Yuong Ho Cheung* ([2020] 23 HKCFAR 311). See Samuel Yee and Ching Leung, 'How Do Statutes "Speak" in Recent Technology Advancement Cases?' [2021] XX Statute Law Review 1 ff.

³⁰ Mario Midiri, 'Nuove Tecnologie e Regolazione: il «Caso Uber»' [2018] Riv. Trim. Dir. Pub. 1017.

under a type of coordinated and continuous collaboration³¹ suitable to take the contours of a hetero-organisation.³²

With particular attention to the so-called “Uber phenomenon,” some scholars are of the opinion that, “if the digital platform, far from being a mere place of encounters between service providers and users, acts as a true employer, exercising its powers, in regulatory and protective terms the response is found in the law.”³³ At the same time, it has been pointed out that very often, however, in the work carried out through platforms there are not enough traces either of hetero-direction or of hetero-organisation,³⁴ since the notion of subordination cannot be extended beyond measures in order to extend the status of protection granted to employees even to employment relationships that cannot be traced back under the umbrella of Art. 2094, ICC.³⁵

The problem of subordination by the platform or platforms arises when the actual provider of the service is charged not only for the consideration given to their work (because they retain a part of it), which is imposed unilaterally, but also for the performance of services according to specific modalities the ultimate purpose of which is to guarantee certain quantitative standards of the service to be rendered to the end user. For example, Uber adopted – certainly at the time of the controversy – an activity

³¹ It is recalled that the European Commission itself has specified that the emergence of these new forms of work leads to a structural change in the employment relationship affecting, inter alia, even the same boundaries between self-employed and subordinated workers to the point that this line of demarcation becomes increasingly blurred. To this he added that “in order to meet the requirement of subordination the service provider must act under the direction of the collaboration platform, which determines the choice of activity, remuneration and working conditions”. European Commission (2016), A European agenda for collaborative economy, COM 2016, 356. More specifically, the Commission called on the Member States to “fair working conditions and adequate and sustainable social protection”, by also assessing “the adequacy of their national employment rules considering the different needs of workers and self-employed people in the digital world as well as the innovative nature of collaborative business models”.

³² The same problem had arisen in relation to the qualification of the pony-express employment relationship. See Marco Biasi, ‘Dai Pony Express ai Riders di Foodora. L’attualità del Binomio Subordinazione-Autonomia (e del Relativo Metodo di Indagine) quale Alternativa all’Affannosa Ricerca di Inedite Categorie’ [2017] Adapt University Press.

³³ Roberto Voza, *‘Il Lavoro reso mediante Piattaforme Digitali. Il Lavoro Nelle Piattaforme Digitali’* [2017] QRGL 70.

³⁴ Enrico Raimondi, ‘Il Lavoro nelle Piattaforme Digitali e il Problema della Qualificazione della Fattispecie’ [2019]5 Labour & Law and Issues 2,67.

³⁵ Remarkably, the platform cannot be qualified as an employer, for the reason that it would only cater for the function of building a digital labour market by facilitating the match between the supply and demand of goods and services. According to the same line of reasoning, Scholars have pointed out that, in the case just described, “the trumpets of labour law remain silent as long as the platform is limited to promoting the mere commercial exchange of a good or a service through the Internet or apps, without any emphasis on the work required”. (Our translation, albeit not literally, from Italian) (Roberto Voza, *‘Il Lavoro Reso mediante Piattaforme Digitali’* (n 30), 72).

of evaluation of the service provided through user feedback or other technological tools installed in the equipment or working tools to provide the service.³⁶

In the light of the above, at least in Italy, there would be a knack for framing the collaboration within the digital platform pursuant to Art. 2094, Italian Civil Code (“ICC”): the unilateral dismissal from the platform has therefore been connected to the subsistence of a disciplinary power. The control carried out on the workers is the main “symptom” of subordination.³⁷

Most scholars³⁸ have maintained that the condition of objective economic dependence on a platform cannot be considered a technical-functional subordination to an employer. The same outcome can be achieved when certain factual elements exist. These can be interpreted as indicators of a subordination, albeit under the *caveat* that

³⁶ Should the assessment be negative, including the circumstance where the driver does not agree to answer 80% of the calls, the platform disconnects the individual in such a way as to deprive him/her of the possibility of profit.

³⁷ Alessia Consiglio, ‘Il Lavoro nella Digital Economy: Prospettive su una Subordinazione Inedita?’ [2018]4 Labour & Law and Issues 78,116.

The above conclusion has been criticised. First, it was pointed out that the unilateral disconnection from the platform and the related monitoring carried out by the employer cannot be considered as symptomatic indicators of subordination. In this direction, disconnection can be qualified as withdrawal from a relationship of duration compatible, of course, with the autonomous nature of collaboration in the digital enterprise. A dismissal may be classified as such only on condition that there is an employment relationship upstream, contrary to withdrawal, being a power, it can be conventional and can find its specific discipline in special rules in the light of the type of contract chosen by the parties or ascertained by the judge. From this it follows that the only limit applies to the obligation of notice pursuant to Art. 3 Law no. 81/2017. With regard to the supervision exercised by the platform, it is necessary to distinguish between the way in which it is carried out or the result of the work which is carried out by the worker. The subordinate nature of the employment relationship made through digital platform, in the last measure, was preached on the basis of the thesis of the double extraneousness (*alienità*) supported by the Italian Constitutional Court with the Court decision no. 30/1996: In that judgment, the Court held that “in the strict sense” subordination is a concept which is both more meaningful and qualitatively different from the subordination found in other contracts, such as those involving the working capacity of one of the parties. The difference is determined, according to the Italian constitutional judges, by the combination of two conditions that are never found in other cases: the first is constituted by the extraneousness (*alienita*) - in the sense of exclusive destination to others - of the result for the attainment of which the performance of job is used; while the second is represented by the extraneousness (*alienità*) of the productive organization in which the performance is inserted (so called hetero-organization). The text-based conclusion of the Consultation is as follows: “when supplemented by these two conditions, subordination is not simply a way of being of the performance inferred in the contract, but is a qualification of the performance resulting from the type of settlement of interest chosen by the parties with the conclusion of an employment contract, involving the incorporation of work in a production organisation over which the worker has no control, being established for a purpose in respect of which he has no legally protected (individual) interest”. Enrico Raimondi, ‘Il Lavoro nelle Piattaforme Digitali e il Problema della Qualificazione della Fattispecie’, (n 34).

³⁸ Also supported by a constant jurisprudential orientation according to which “as such an indefectible element of the employment relationship, and a discretionary criterion, at the same time, compared to that of self-employment, is the personal subjection of the employment provider to the power of management, disciplinary action and supervision of the employer, which is inherent in the way in which the work is carried out”. ISC, 10 September 2019, no. 22632

they are pieces of evidence of the existence of a governing power. By adopting this hermeneutical perspective, therefore, the unilateral power to dictate contractual conditions, such as remuneration of the benefit or checks on the performance of work, are symptoms of a mere difference in contractual power which may also be present in an independent employment relationship.³⁹

Ultimately, the conclusion inferable from the foregoing is that, in order to assess an employment relationship, it will be necessary to distinguish on a case-by-case basis the actual manner in which the contractual relationship is conducted, with the ultimate aim to view and therefore characterise the individual providing the service either as an employee or a self-employed or occasional worker.⁴⁰

The status of riders has potentially come to a conclusion, hopefully, with judgment no. 1663/2020 of the Italian Supreme Court. This Court decision does not depart from the Court of Appeal of Turin with regard to the application of Art. 2(1), Legislative Decree no. 81/2015. More in detail, the Italian Supreme Court pointed out that Art. 2(1) of the 2015 piece of legislation needed be interpreted as a law principle.⁴¹ In the light of Decree Law no. 1/2019 as amended by Law no. 128/2019, this piece of legislation may be applied to work performance managed by a platform.⁴²

The objection to the decision of the Court of Appeal is concerned with the classification of the contentious case within a *tertium genus*, a third further category, at a crossroad between autonomous and subordinate employment contract,⁴³ therefore, pursuant to the common law jargon, between and independent contractor and an employee.

With regard to the perimeter of the protections of paid employment applicable to hetero-organised collaborations, the Italian Court allows for a selective application of the protections of paid employment to hetero-collaborators organised by excluding those closely related to the essence of subordination or the exercise of the employer's

³⁹ Guido Smorto, 'La Tutela del Contraente Debole nella Platform Economy' [2018] GDLRI 423 ff.

⁴⁰ Silvia Ciucciuvino, 'Analisi e Proposte sul Diritto del Lavoro al Tempo di Industria 4.0 Le Nuove Questioni di Regolazione del Lavoro nell'Industria 4.0 e nella Gig Economy: un Problem Framework per la Riflessione', [2018] Dir. Rel. Ind. 1. See Legislative Decree no. 81/2015 and Law no. 128/2019, conversion law of Decree Law no. 101/2019.

⁴¹ In that regard, it is argued that, by that provision, the legislator would only have valued "certain factual indices deemed significant (personality, continuity, hetero-organisational) and sufficient to justify the application of the rules laid down for the employment relationship, exempting from any further investigation the judge who recognizes the competition of such elements in the specific case and who cannot, in the appreciation of them, draw a different conviction in the qualifying summary judgment".

⁴² The Italian Supreme Court has delayed its final decision pending the promulgation of the law of conversion despite the object of the decision held previous facts.

⁴³ Carlo Spinelli, 'Le Nuove Tutele dei Riders al Vaglio della Giurisprudenza: Prime Indicazioni Applicative', [2020]6 Labour & Law and Issues 89.

hierarchical-disciplinary power in view of the fact that these collaborations remain autonomous.⁴⁴

Despite the qualifying question relating to services rendered via digital platform seems to be resolved, the Palermo Court has stepped up to the place⁴⁵ with a recent judgment in which the work relationship of riders is characterised as a contract of service, therefore “dependent,” to use a “Continental” jargon.⁴⁶ In that ruling, the Tribunal (which is the first instance Court in Italian labour law controversies) held that the employment relationship was subordinate in nature, since there was no freedom, among others, as regards the choice of working time. Furthermore, the service appeared to be organised through a digital platform whereby the employer was in a position to control the “working energies” of the individual providing the work. Additionally, the employer was endowed with managerial and supervisory powers, of a disciplinary nature too.⁴⁷

⁴⁴ Umberto Carabelli, ‘Introduzione’ in Umberto Carabelli and Lorenzo Fassina (eds), *La Nuova Legge sui Riders e sulle Collaborazioni Etero-Organizzate* [Ediesse 2020]22,23; Marco Barbieri, ‘Contraddizioni Sistematiche e Possibili Effetti Positivi di una Legge di Buone Intenzioni e Cattiva Fattura’ in Umberto Carabelli and Lorenzo Fassina (eds), *La Nuova Legge sui Riders e sulle Collaborazioni Etero-organizzate* [Ediesse 2020]100. Some scholars have spelled out that the *decisum* of the Italian Supreme Court may suggest that it is not a matter of independent job to which to apply the protections of the subordinate job, rather a matter of job that, just in its ordinary course, develops some peculiar characteristics. These characteristics can be viewed and justified by the same legal system (the Italian one in this case) as equivalent, from a functional point of view, to those of the dependent employment. This equivalence is as such as to justify the full application of the body of law of the dependent employee (*lavoratore dipendente*), with the exclusion of the protections that will turn out to be ontologically incompatible. Orsola Razzolini, ‘I confini tra Subordinazione, Collaborazioni Etero-Organizzate e Lavoro Autonomo Coordinato: una Rilettura’ [2020]30 Dir. Rel. Ind. 345. On the Italian issue of the “subordination”, see Adalberto Perulli, ‘Il Diritto del Lavoro e il “Problema” della Subordinazione’ [2020]6 Labour & Law Issues 2, 92,132.

⁴⁵ Palermo Tribunal, judgment no. 3570/2020. In the present case, a rider from the Glovo platform appealed to the Court of Palermo on the grounds that he had worked as a cyclist continuously until 3.3.2020, when he was disconnected from the platform and never reconnected. In the light of this the rider challenged the conduct of that platform as oral dismissal, discriminatory and retaliatory adding the claim of the subordinate nature of the employment relationship in the light of the concrete modalities of performance of the job in relation to the phase of execution of the orders received.

⁴⁶ Giuseppe Santoro-Passarelli, *Il Lavoro mediante Piattaforme Digitali e la Vicenda Processuale dei Riders* [2021] Dir. Rel. Ind. 111.

⁴⁷ The Palermo Tribunal states that “in essence, therefore, beyond the ostensive and self-declared (in contract) freedom of the rider, and of the applicant in particular, to choose the working time and whether or not to render the service, the organisation of the work carried out exclusively by the party agreed on the digital platform in its own availability is reflected in the integration of the hetero-organisational premise, also in making available to the employer by the worker his working energy for substantial periods of time (and unpaid) and in the exercise by the defendant of management and control powers, as well as of a strictly disciplinary nature, which are constituent elements of the case of employment under Art. 2094 Italian Civil Code” (our translation from Italian). Vincenzo Ferrante, ‘Ancora in tema di qualificazione dei lavoratori che operano grazie ad una piattaforma digitale’ [2021] Dir. Rel. Ind 215; Gabriele Fava, ‘Nota alla Sentenza del Tribunale di Palermo n. 3570/2020 pubbl. il 24/11/2020 – Il rapporto di Lavoro dei Riders’ [2021] Lavoro Diritti Europa.

In a symmetric way, the Turin Tribunal held that Art. 2094, ICC, shall be interpreted in an evolutionary way. The judicial goal is to make the discipline encompassed within the ICC applicable to “the new ways of working made possible by technological evolution that has allowed for disintegration of the workplace and its physical places, and which makes a process of “modernization” of the notion of subordination inevitable.”⁴⁸

6 The EU Proposal of Regulation for gig-individuals

In the paragraphs above, reference has been made to the way platform workers have been characterised by the judiciary, mainly in the UK, but also in Italy. Now the attention will briefly turn to EU legislation.

At the end of 2021, the European Commission adopted a Proposal “on improving working conditions in platform work.”⁴⁹

This document kickstarts with the underpinning philosophy of its objectives: 1) “promotion of the well-being of its peoples and sustainable development of Europe based on a highly competitive social market economy, aiming at full employment and social progress;” 2) “The right of every worker to working conditions which respect their health, safety and dignity.”

Admittedly, a close neighbour of the right of workers is digital transformation: in the light of this, not only is the platform economy an innovative business model, but it is also a new opportunity for consumers as well as businesses. In this way, this prospective piece of European Union legislation states that the algorithmic management “also conceals the existence of subordination and control by the digital labour platform on the persons performing the work. The potential for gender bias and discrimination in algorithmic management could also amplify gender inequalities.” It constantly stresses that the correct understanding of how algorithms influence or determine certain decisions (such as access to future task opportunities or bonuses, imposition of sanctions or the possible suspension or restriction of accounts) “is paramount, given the implications for the income and working conditions of people working through digital labour platforms.”⁵⁰ Finally, it is concluded by the EU prospective statute that, given these shortcomings, establishing a legal presumption “that an employment relationship exists between the digital labour platform and a person performing

⁴⁸ Our translation, albeit not literal, from Italian.

⁴⁹ Brussels, 9.12.2021 COM(2021) 762 final 2021/0414 (COD) Proposal for a Directive Of The European Parliament and of the Council on improving working conditions in platform work.

⁵⁰ Brussels, 9.12.2021 COM(2021) 762, 2.

platform work, if the digital labour platform controls certain elements of the performance of work”⁵¹ is essential.

In this system of presumptions, a way to rebut one of them – the legal one – is “to prove that the contractual relationship at stake is in fact not an ‘employment relationship’ in line with the definition in force in the Member State concerned. The burden of proof that there is no employment relationship will be on the digital labour platform.”⁵² The duty of Member States is “to have in place appropriate procedures to verify and ensure the correct determination of the employment status of persons performing platform work, so as to allow persons that are possibly misclassified as self-employed (or any other status) to ascertain whether they should be considered to be in an employment relationship – in line with national definitions – and, if so, to be reclassified as workers.”⁵³ *Quod erat demonstrandum*: this has already happened in one

⁵¹ Art. 4. This legal provision goes on by stipulating as follows: “The article defines criteria that indicate that the digital labour platform controls the performance of work. The fulfillment of at least two indicators should trigger the application of the presumption. Member States are also required to ensure effective implementation of the legal presumption through supporting measures, such as disseminating information to the public, developing guidance and strengthening controls and field inspections, which are essential to ensure legal certainty and transparency for all parties involved”.

⁵² Art. 5.

⁵³ Art. 3. In the UK, the control test has soon become a myth, because of the evolution of the industry. In fact, it was held soon that it should be interpreted less literally. After the WWII, the case *Stagecraft v Minister of Pension* ([1952] S.C. 288) held an artiste working for a company engaging circus and theatrical personnel should have been regarded as employee. Although it was impossible to decide how to perform, given the high technicality, the control was nonetheless inferable, because there was the possibility to direct the end to which the artist’s individual skills are put. Similarly, in *Cassidy v Minister of Health* [1951] 2 K.B. 343, the control was replaced by the “organisation test/integration test”, pursuant to the statements of Lord Denning, hence the Lord Denning Test. This was confirmed by *Stevenson, Jordan & Harrison Limited v MacDonald & Evans Ltd.* [1952] 1 T. L.R. 101, where it was affirmed, among the other things: “Under a contract of service, a man is employed as part of the business and his work is done as an integral part of the business”. The organisation test is echoes in *Whittaker v Minister of Pensions* ([1967] 1 Q.B. 156) which is another example to demonstrate the existence of a contract of service based on the “organisation test: “The worker is an employee if he is part of the organisation he belongs to”. It is with *Ready Mixed Concrete Ltd v Minister of Pension* ([1968] 2 QB 497) which showcases the first example of application at judicial level of the “economic reality” test. The economic reality test, which is still the current one, *Market Investigations v Minister of Social Security* ([1968] 3 All ER 732), researchers were in charge of carrying out market research for MI. A controversy arose between the company and the Minister as to the payment of social security. It was held that a contract of service did exist because there was control, provision of tools & equipment, hiring of helpers, the financial risk (on the company itself), opportunity to profit from good work. Historically, as far as casual workers are concerned, the mutuality test, as part of the economic test, has been used. In some Court decisions (*O’Kelly v Trusthouse Forte plc* [1983] I.C.R. 728; *Carmichael v National Power plc* [2000] I.R.L.R. 43; *Montgomery v Johnson Underwood ltd* [2001] IRLR 269; *Nethermere (St Neots Ltd) v Taverna* [1984] I.C.R. 612; *Montgomery v Johnson Underwood ltd* [2001] EWCA Civ 318), the mutuality test has been used to solve some dilemmas. Montgomery was registered as agency worker for the defendant and was allocated to work for the client. A dispute arose as to whether the employer was the agency or the client. He was not employee of either of them. Irreducible element of the employment the “control” and the “mutuality”. Finally, a quintessential element entailed in a contract of service is the personal nature of the service. In *MacFarlane v Glasgow City Council* [2001] IRLR 7, EAT, a gym instructor

legal system, namely in the UK legislation, albeit quite paradoxically. In fact, Great Britain is a country that has already left the EU.

7 The prospective labour law and the human element: when “hamlet” becomes fashionable (once again)

The positive aspect of the legislative intervention which has recently unfolded in the European legal landscape is the tentative protection afforded to what is traditionally defined in labour law as the vulnerable party. There is no doubt that the proposal recognises the platform as the presumptive employer. This contribution has shown that, based on the British judicial stances in this area (the Uber case before the London Courts), the identification of a party as the employer does not imply the characterisation of the relevant counterparty as an employee. The employing party as the “employer” is only crucial for purposes of ruling out the subsistence of a contract for services, therefore, in the English common law, the one existing between a self-employed, therefore a sole trader, versus a client. Nevertheless, at least another two options are available to any Court: the pure contract of service (the “dependent”, to use the “Continental” terminology); the worker’s contract between a worker and an employer, a relationship devoid of a fundamental right, *i.e.* the entitlement to challenge a potential unfair dismissal. In this scenario, it is likely that any prospective legislation in the European Union will leave room for an automatic characterisation of platform individuals as “workers,” rather than “employees,” yet with a counterparty to be defined as “employer.”

Although this is an aspect already highlighted by scholars, the legalisation of this leads to further reflections.

First and foremost, the underpinning philosophy of the law – labour law in particular – is that it is conceived not only for humans but also robotic systems. In this sense, it is therefore anachronistic to reflect on the status to be accorded to the gig-worker, while the new challenge is to preserve human uniqueness.

used to work for the Council, however, if he was not in a position to take a class, he could arrange the replacement by collecting him by a list of instructors approved by the Council. The replacement instructor would have been paid by the Council. In this case it was held that a contract of service did exist as the delegation to MacFarlane was occasional. There was personal nature of the service. In *Express and Echo Publications Limited v Tanton* [1999] ICR 693, no contract of employment because of a clause specifying that, if Mr Tanton could not or did not want to drive (he was a driver), he would have arranged “at his own expense entirely for another suitable person (provided he was trained and suitable) to perform the services”.

business.⁵⁴ Technological and digital innovation creates waste and pollution. In terms of physical waste, we refer to the disposal of obsolescent devices, the replacement of smartphones, computers, and the scrapping of household appliances whose methods cannot be qualified as sustainable. As regards the second aspect, it should be pointed out that the spread of new technology sparks off environmental pollution, because the servers that manage the traffic of communications through apps require a lot of energy to process the amount of data that they exchange on a daily basis. The ultimate consequence is a significant emission of carbon dioxide.⁵⁵

Ultimately, it is possible to envisage that in a near future things might radically change. Whereas the crucial aspect is currently the qualification of the labour position of gig-individuals,⁵⁶ the new challenge may firstly become the urgency to preserve human jobs, and secondly the effective protection of privacy and data protection of consumer. The reference here is to automated vehicles: they could become the “new” gig-workers. In this scenario, scholars now face new challenges: the development of technology requires the legislation to prevent possible damage to the privacy of customers. However, for this further conundrum there will be a further dilemma, and a further Hamlet.

⁵⁴ Tania Novitz, ‘Gig Work as a Manifestation of Short-termism: Crafting a Sustainable Regulatory Agenda’, [2021]50 *Industrial Law Journal* 636, 661.

⁵⁵ AM Al-Khouri, ‘Environment Sustainability in the Age of Digital Revolution: A Review of the Field’ [2013] *American Journal of Humanities and Social Sciences* 101, 122; Brett H Robinson, ‘E-waste: An assessment of global production and environmental impacts’ [2009] *Science of the Total Environment* 183, 191; Adele Bianco, ‘Rifiuti Informatici, Inquinamento Digitale. Il Lato Insostenibile della 4^a Rivoluzione Industriale’ [2021] *Società Mutamento Politica* 183,192.

⁵⁶ Again, at least in the UK, the stances that they can be even “employees” are very limited, the dilemma being whether they are workers or not. And the relevant response to this burning question is that they are workers, although they are not self-employed.