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Concept Of Working Time in Platform Work

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Abstract

The labor law aims to protect the employee's health with the working periods and rest periods included in the organization of work, where the rules of public character are intense. To achieve this purpose, for example, weekly and daily working hours are limited by the legislator. These constraints are basically for persons covered by Turkish labor law and with employee status. However, although their legal status is controversial, platform workers perform for remuneration at certain hours of the week or day. Therefore, if a platform worker is accepted as an employee, she/he is evaluated within the scope of Turkish labor law, and the rules regarding the organization of work will be applied to her/him. However, the heterogeneity of online platforms, the different algorithms and business models of each platform, and the wide variety of tasks performed on the online platform can be challenging to calculate working periods. This article aims to contribute to calculating platform workers' working time.

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Keywords

• Working Conditions • Working Time • Platform Work • Platform Worker • Flexibility

Platform Çalışmada Çalışma Süresi Kavramı

Öz

Kamusal karaktere sahip kuralların yoğun olduğu ve iş hukukunun bir bölümünü oluşturan, işin düzenlenmesi içerisinde yer alan çalışma süreleri ve dinlenme süreleri ile işçinin sağlığının korunması amaçlanmaktadır. Bu amaca ulaşabilmek için örneğin haftalık ve günlük çalışma süreleri kanun koyucu tarafından sınırlandırılmıştır. Bu sınırlamalar ise temel olarak Türk İş Kanunu kapsamına giren ve işçi sıfatını haiz kişiler açısındandır. Ancak her ne kadar hukuki statüleri tartışmalı olsa da platform çalışanları bir ücret karşılığı, haftanın veya günün belirli saatleri iş görmektedir. Dolayısıyla platform çalışanları eğer işçi kabul edilecek olursa Türk iş Kanunu kapsamında değerlendirilecek ve işin düzenlenmesine ilişkin kurallar kendilerine uygulanacaktır. Ancak çevrimiçi platformların heterojen yapıda olması, çevrimiçi platformda yerine getirilen görevlerin çok çeşitli olması, her platformun algoritmasının ve iş modelinin farklı olması çalışma sürelerinin hesaplanmasını zorlaştırabilmektedir. Bu makale, platform çalışanlarının çalışma sürelerinin hesaplanmasına bir katkı sağlamayı amaçlamaktadır.

Anahtar Kelimeler

• Çalışma Koşulları • Çalışma Süresi • Platform Çalışma • Platform Çalışanı • Esneklik

Introduction

After the Second World War, standard labor relations have been developed, and employees generally have started to work with a full-time and indefinite-term employment contract, in a relationship of subordination to a specific employer. In this system, known as the standard employment relationship, employees have commenced acquiring a more guaranteed working life in terms of individual, collective, and social security laws.[1] However, this current stability has begun to change daily in light

[1] **SCHOUKENS**, Paul/**BARRIO**, Alberto: "The Changing Concept of Work: When Does Typical Work Become Atypical", European Labour Law Journal, 8(4), 2017, p. 308.

of economic, technological, and political developments.[2] Since the 1970s, a more precarious and flexible working system has emerged.[3] One of the working types in this system that have come to the fore in recent years is a new way of working called "platform work".

Platform work has started to push the boundaries of labor law. The first questions that come to mind are whether the platform workers will be included in the scope of labor law, and if so, which labor law regulations may cause problems; or whether a third legal category named "employee-like person" should be applied to these workers. For this reason, platform work is in the thick of the attention of numerous labor law researchers. To find answers to related questions, it is first necessary to attempt to resolve the issue of scope and definition.

Among researchers, various definitions of platform work have been made.[4] From my point of view, platform work, which is a non-standard employment relationship that creates a tripartite relationship (sometimes quadruple relationship), is a sort of work in which a certain service is provided through or on the online platform, and the customer assigns one or

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2 **EUROFOUND**, New Forms of Employment, Luxembourg 2015, p. 4; **PRASSL**, Jeremias/**RISAK**, Martin: "Uber, Taskrabbit, and Co.: Platforms as Employers Rethinking the Legal Analysis of Crowdwork", Comparative Labor Law & Policy Journal, 37(3), 2016, p. 622; **SCHOUKENS**/**BARRIO**, p. 312 *ff*.

3 **OECD**, New Forms of Work in the Digital Economy, OECD Digital Economy Papers, No. 260, Paris 2016, p. 23; **KOUNTOURIS**, Nicola: "The Legal Determinants of Precariousness in Personal Work Relations: A European Perspective", Comparative Labor Law & Policy Journal, 34(1), 2012, p. 28.

4 **EUROFOUND**, Employment and Working Conditions of Selected Types of Platform Work, Luxembourg 2018, p. 9; **LENAERTS**, Karolien/**WAYAERT**, Willem: The Platform Economy and Precarious Work, Hauben, Harald (ed.), Policy Department for Economic, Scientific and Quality of Life Policies, Luxemburg 2020, p. 13; **KILHOFFER**, Zachary *et*., Study to Gather Evidence on the Working Conditions of Platform Workers, Luxemburg 2019, p. 25; **ILO**, World Employment and Social Outlook 2021: The Role of Digital Labour Platforms in Transforming the World of Work, Geneva 2021, p. 33; **KATSABIAN**, Tammy/**DAVIDOV**, Guy: "Flexibility, Choice, and Labour Law: The Challenge of On-demand Platforms", University of Toronto Law Journal, 2022, https://www.utpjournals.press/doi/full/10.3138/utlj-2021-0113 (Access: 04.27.2022). p. 4; **BAYCIK**, Gaye/**CİVAN**, Orhan Ersun/**TOLU YILMAZ**, Hazal/**BOSNA**, Berrin: "Platform Çalışanlarını Yasal Güvenceye Kavuşturmak: Sorunlar ve Çözüm Önerileri", Galatasaray Üniversitesi Hukuk Fakültesi Dergisi, 1, 2021, p. 719; **YILDIZ**, Gaye Burcu: "Dijital Emek Platformları Üzerinden Çalışanların Hukuki Statülerinin Belirlenmesi", Sicil, 46, 2021, p. 29.

more tasks related to this service to the online platform, then, the platform worker performs the requested tasks return to remuneration which is paid by the online platform or the customer.

Another fact on which there needs to be more consensus is the types of platform work. Typically, platform work is split into two distinct subcategories. The first of these is called "crowdwork".[5] In this subcategory, as a rule, the tasks are performed by a person from anywhere in the world via a computer connected to the Internet. The second is "work-on-demand via app".[6] Here, as a rule, the customer and the platform worker meet in a certain geographical location. In other words, the customer assigns a task related to traditional working activities like transportation, cleaning, delivery, etc., through the online platform, and the platform worker in the geographic vicinity of the customer fulfills the relevant tasks.[7]

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5 **CHERRY**, A. Miriam: "Working for (Virtually) Minimum Wage: Applying the Fair Labor Standards Act in Cyberspace", Alabama Law Review, 60(5), 2009, p. 1088; **DE STEFANO**, Valerio, The Rise of the "Just-in Time Workforce": On-demand Work, Crowdwork and Labor Protection in the "Gig-Economy", International Labour Office, Inclusive Labour Markets, Labour Relations and Working Conditions Branch, Geneva 2016, p. 2; **ALOISI**, Antonio: "Commoditized Workers: Case Study Research on Labor Law Issues Arising from a Set of "On-Demand/Gig Economy" Platforms", Comparative Labor Law and Policy Journal, 37 (3), 2016, p. 660; **BERG**, Janine: "Income Security in the On-Demand Economy: Findings and Policy Lessons from Survey of Crowdworkers", International Labour Office, Inclusive Labour Markets, Labour Relations and Working Conditions Branch, Conditions of Work and Employment Series, No. 74. 2016, p. 2; **ILO**, Digital Labour Platforms and the Future of Work: Towards Decent Work in the Online World, Geneva 2018, p. 3 *ff.*; **HOVCROFT**, Debra/**BERGAVALL-KÅREBORN**, Birgitta: "A Typology of Crowdwork Platforms", Work, Employment and Society, 33(1), 2018, p. 23 *ff.*; **YAYVAK NAMLI**, İrem: "Dijital Çağ'da Yeni Bir Çalışma İlişkisi Modeli: "Crowdworking", Sicil, 42, 2019, p. 129 *ff.*; **ROSIN**, Annika: "Platform Work and Fixed-term Employment Regulation", European Labour Law Journal, 12(2), 2021, p. 157.

6 **CORUJO**, Borja Suarez: "The Sharing Economy: The Emerging Debate in Spain", Spanish Labour Law and Employment Relations Journal, 6(1-2), 2017, p. 31; **KULLMANN**, Miriam: "Platform Work, Algorithmic Decision-making, and EU Gender Equality Law", International Journal of Comparative Labour Law and Industrial Relations, 34(1), p. 5; **AYKAÇ**, Hande Bahar: "Platform Ekonomisi Çalışması: İş Hukukunda Yarattığı Sorular Üzerine Bir Değerlendirme", Sicil, 44, 2020, p. 71; **ROSIN**, p. 157; **DE STEFANO**, p. 1; **ILO**, 2021, p. 75.

7 For the other categorization *see*. **LENAERTS/WAYAERT**, p. 15.

When the pertinent opinions in the doctrine are examined, the common point of the classifications emphasizes the "location of tasks". In this context, it is discussed whether the task is carried out in the form of virtual work on a computer connected to the Internet, where the worker and the customer indirectly meet, or through the application upon request, which the parties in a certain geographical location can directly encounter.

My take on this is platform work can be categorized under two main headings. While making this classification, the location where the tasks are performed is stressed. Because it is seen that the right of the platform or the customer to give orders and instructions to the worker over the location of the tasks performed decreases and increases. Within this framework, tasks are carried out through an "internet-connected computer" or an "application" installed on smartphones. The first headline can be considered as "virtual work". In this type of work, the tasks performed within the scope of virtual work are carried out via a computer connected to the Internet. What is significant here is that the customer's request can be performed by someone anywhere in the World or the State. In this context, virtual work should be divided into two subtitles. These are "working in virtual world" and "crowdwork".

The other is, I find it appropriate to call it, "on-demand location-based work". The most preferred term in the doctrine is "work on-demand via app". However, in this type of work, tasks can not only be assigned or found through the app but also the computer. Therefore, using the term "via apps" would exclude demand/supply over the computer. In this way of working, unlike virtual work, the significant thing is that the customer and the platform worker are in a certain geographical location. While the customer uploads a task through the online platform, the platform worker, generally located in the customer's geographic area, performs the relevant task.

Delving into the advantages and disadvantages of platform work with respect to labor law is an additional matter of concern. Regarding the positive features, the initial is remuneration.[8] According to the survey conducted among the platform workers, it is found that one of the main motivations for working on online platforms is complementary wages.[9]

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[8] **KILHOFFER** *et*., p. 72; **ILO**, 2018, p. 73.

[9] **CHARTERED INSTITUTE OF PERSONNEL AND DEVELOPMENT**, To Gig or not to Gig? Stories from the Modern Economy. Survey Report 2017,

Furthermore, platform workers have spatial and temporal flexibility, leading people to work more and whenever, wherever they want.[10] Additionally, platform workers such as women, young people, people with disabilities, and elders who have difficulties finding a job in standard labor relations can work through online platforms.

Aside from the advantages noted earlier, platform workers also confront some disadvantages. Based on the surveys, the most emphasized negative aspect of the platform work is earning a low income for their services.[11] The other negative aspect has arisen around the term "precarity". On some online platforms, once the platform worker accepts the task, there must be a substantial reason for them to turn it down. Suppose the task is rejected several times without a valid reason. In that case, the account of the platform worker may even be deactivated so that they cannot work on the platform concerning again. Besides, the "reputation system" strengthens the precarity. For example, in *Uber*, if the reputation point drops below 4.6 stars, the system deactivates the driver's account.

Another negative feature that platform workers may face is discrimination, especially based on gender, race, color, and age.[12] The last negative effect of platform work on platform workers that I want to mention is the poor working conditions.[13] The idea that platform work is built

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https://www.cipd.co.uk/knowledge/work/trends/gig-economy-report (Accessed: 07.27.2023), p. 35 *ff*.

[10] **SCHOR**, B. Juliet *et*.: "Dependence and Precarity in the Platform Economy", Theory and Society, 2020, p. 838; **ROSIN**, Annika: "The Right of a Platform Worker to Decide Whether and When to Work: An Obstacle to Their Employee Status?", European Labour Law Journal, 13(4), 2022, p. 532; **PRASSL/RISAK**, p. 626; **DE STEFANO**, p. 5.

[11] **KILHOFFER** *et*., p. 73.

[12] **CHERRY**, Miriam A.: "Age Discrimination in the On-demand Economy and Crowdwork", Berkeley Journal of Employment and Labour Law, 40(1), 2019, p. 46 *ff*.; **TODOLÍ-SIGNES**, Adrian: "Algorithms, Artificial Intelligence and Automated Decisions Concerning Workers and the Risks of Discrimination: The Necessary Collective Governance of Data Protection", Transfer: European Review of Labour and Research, 25(4), 2019, p. 469 *ff*.; **KOTKIN**, J. Minna: "Uberizing Discrimination: Equal Employment and Gig Workers", Tennessee Law Review, 87(1), 2019, p. 80 *ff*.; **KULLMANN**, 2018, p. 7 *ff*.

[13] **EUROPEAN AGENCY FOR SAFETY AND HEALTH AT WORK**, Protecting Workers in the Online Platform Economy: An Overview of Regulatory and Policy Developments in the EU, 2017, https://osha.europa.eu/en/publications/protecting-workers-

based on flexibility brings the idea that platform workers determine the working time they wish and work as long as they want.[14] However, those who work on competitive online platforms may spend longer working hours to perform more tasks.[15] Similarly, the desire to earn more income can push platform workers to work more. Furthermore, platform workers may face various problems in terms of occupational health and safety.[16] Health problems that develop due to overwork can be given as an example of this situation. In sum, platform work's positive and negative features signify that its workers should be safeguarded to the same degree as traditional employees.

There are also differing opinions in the doctrine and court decisions on the status of platform workers as well as platform work and types of platform work. Some consider these workers as employees, some as independent contractors, and some as employees-like persons, which is accepted as a third category between the worker and the self-employed person.[17] Why is that determination crucial? Because in Turkish labor law, a

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online-platform-economy-overview-regulatory-and-policy-developments (Accessed: 05.15.2023), p. 25.

14 **KILHOFFER** *et*., p. 76; **ILO**, 2021, p. 166.

15 **AYKAÇ**, p. 77.

16 **ILO**, 2021, p. 171.

17 For discussions on the subject, *see*. **CHERRY**, A. Miriam/**ALOISI**, Antonio: "Dependent Contractors in the Gig Economy: A Comparative Approach", American University Law Review, 66(3), 2017, p. 642 *ff*., **DAUGAREILH**, Isabelle: "The Legal Status of Platform Workers in France", Comparative Labour Law & Policy Journal, 41(2), 2020, p. 407 *ff*.; **MASON**, Luke: "Locating Unity in the Fragmented Platform Economy: Labor Law and the Platform Economy in the United Kingdom", Comparative Labour Law & Policy Journal, 41(2), 2020, p. 332 *ff*.; **KULLMANN**, Miriam: "'Platformisation' of Work: An EU Perspective on Introducing a Legal Presumption", European Labour Law Journal, 13(1), 2021, p. 68; **DEFOSSEZ**, Delphine: "The Employment Status of Food Delivery Riders in Europe and the UK: Self-employed or Worker?", Maastricht Journal of European and Comparative Law, 29(1), 2022, p. 28 *ff*.; **KILHOFFER**, Zachary et., p. 67; **PRINCE**, J. Samantha: "The Shoe is about to Drop for the Platform Economy: Understanding the Current Worker Classification Landscape in Preparation for a Changed World", University of Memphis Law Review, 52(3), 2022, p. 634 *ff*. For some court decisions on the subject *see*. O'Connor v. Uber Technologies, 82 F. Supp. 3d 1133 (N.D. Cal. 2015); Razak v. Uber Technologies, 18-1944 (3d Cir. 2020); Uber BV and others v. Aslam and others, [2021] UKSC 5; Arachchige v Rasier New Zealand Ltd & Uber BV, [2020] NZEmpC 230 EMPC 211/2019; Cotter v. Lyft 60 F. Supp. 3d 1067 (N.D. Cal. 2015); Canadian Union of Postal Workers

person's status is determined under the binary system as an employee or self-employed person. In this system, employees are evaluated in the scope of labor law, and self-employed workers are handled within the sphere of other branches of law, such as commercial law or law of obligations. If the status of a platform worker is determined as an employee, this worker falls under the protective umbrella of the labor and social security laws. For example, in Türkiye, the minimum wage or job security is regulated in the Labor Code, No. 4857; Being a member of a union, signing a collective agreement through a union, or striking through a union is regulated in the Trade Unions and Collective Agreement Code, No. 6356; Benefiting from short and long-term insurance branches, unemployment insurance or general health insurance is regulated in the Social Security Code, No. 5510.

One of the main reasons for the emergence of labor law and its development as a separate branch of law is the idea of protecting the weak party, the employee, in the contractual relationship. Because the core element of the employment contract established between the employee and the employer is the "subordination". This subordination can emerge in various forms, and the meaning given to this term changes according to the countries' statutory approach and/or case-law approach.[18] In other

v. Foodora Inc., 2020 CanLII 16750 (ON LRB); Joshua Klooger v. Foodora Australia Pty Ltd., [2018] FWC 6836; The Independent Workers' Union of Great Britain v. the Central Arbitration Committee, [2021] EWCA Civ 952; Deliveroo Australia Pty Ltd v. Diego Franco, [2022] FWCFB 156; STSJ; Asturias 1818/2019, 25 de Julio de 2019 in Spain; STSJ 6611/2019 in Spain; BAG - 9 AZR 102/20 in Germany.

18 *See*. **FUDGE**, Judy/**TUCKER**, Eric/**VOSKO**, Leah: "Employee or Independent Contractor? Charting the Legal Significance of the Distinction in Canada", Canadian Labour & Employment Law Journal, 10, 2002, p. 201; **DAVIDOV**, Guy: "The Three Axes of Employment Relationships: Characterization of Workers in Need of Protection", University of Toronto Law Journal, 52(4), 2002, p. 336; **BAŞTERZİ**, Süleyman: "Avukatla Bağıtlanan Sözleşmenin Hukuki Niteliği, İş Sözleşmesinin Vekâlet ve Diğer İş Görme Sözleşmelerinden Ayrılması", Sicil, 17, 2010, p. 179 *ff.*; **OLEA**, Manuel Alonso/**RODRIGUEZ-SANUDO**, Fermin, Labour Law in Spain, Alphen aan den Rijn 2010, p. 48; **CREIGHTON**, Breen/**MCCRYSTAL**, Shae: "Who Is a Worker in International Law", Comparative Labor Law & Policy Journal, 37(3), 2016, p. 706 *ff.*; **ROGERS**, Brishen: "Employment Rights in the Platform Economy: Getting Back to Basics", Harvard Law & Policy Review, 10(2), 2016, p. 484 *ff.*; **WAAS**, Bernd: "The Legal Definition of the Employment Contract in Section 611a of the Civil Code in Germany: An Important Step or Does Everything Remain the Same?", Italian Labour Law e-Journal, 12(1), 2019, p. 26; **RISAK**, Martin/**DULLINGER**, Thomas, The Concept of 'Worker' in EU Law Status Quo and Potential for Change, Brussel 2018, p. 17;

words, not only does the legislator determine the meaning of the terms such as employee, self-employed, or subordination in legal documents, but also in countries where there is no legal regulation, courts develop various tests and seek answers about the subordination factor. Thus, with a statutory approach and/or judicial approach, the courts decide which legal status the putative employee takes place in the case before them.

If this subject is discussed in terms of platform work, the organizational structure of many online platforms is based on classifying their workers as "independent contractors". Therefore, online platforms consider that the obligations arising from labor and social security laws do not bind them per the relevant classification. Although online platforms assort the platform workers in this way, it is important to determine whether there is any subordination between them. In this context, if it can be said that there is personal and legal dependency in terms of Turkish labor law, platform workers can be accepted as employees of the online platform and/or the customer and can find a place for themselves under the protective umbrella of labor law.

An essential outcome of being within the spectrum of labor law is to be the subject of employee health provisions. In this respect, one of the areas where the State's intervention is considerably intense is the organization of work. In this scope, one of the crucial points in labor law is the limitation of working hours, in other means, the concept of working time. In this Article, the determination of the status of the platform workers is out of context. Instead, I focus on how we should calculate the working time of platform workers. In this regard, I presumed the status of the platform worker as employee. Because, in terms of the Turkish Labor Code, legal regulations on working time apply only to employees.

I. Standardization of Working Time

A. International Labour Organization's Standards on Working Time

From a historical perspective, the regulation of working time has become one of the oldest concerns of the International Labour

MENGATTI, Emanuele: "Taking EU Labour Law Beyond the Employment Contract: The Role Played by the European Court of Justice", European Labour Law Journal, 11(1), 2020, p. 32; **BRODIL**, Wolfgang/**GRUBER-RISAK**, Martin, Arbeitsrecht in Grundzügen, Wien 2022, p. 15.

Organization (ILO).[19] The key reason for the adoption of the relevant regulations which institute limits on work hours for ILO is to protect workers' health, more broadly, their well-being.[20] Initially, the preamble of the Constitution of ILO states that "*regulation of the hours of work, including the establishment of a maximum working day and week*" is immediately required. [21] For this purpose, ILO adopted over 30 Conventions that have dealt with working time issues.[22]

Looking back to 1919, the first Convention of ILO was about working time. Hours of Work (Industry) Convention, 1919 (No. 1)[23] limits the working hours of persons employed in any public or private industrial undertaking.[24] Pursuant to Article 2, with some exceptions, the working hours shall not exceed eight hours in the day and forty-eight hours in the week. Moreover, Article 6 stipulates that public authority can exempt certain classes of workers whose work is essentially intermittent from the working hours regulations.

Another Convention about working time is Hours of Work (Commerce and Offices) Convention, 1930 (No. 30). [25] This Convention is an extension of the protection taken into account in Convention No. 1 to the workers employed in commerce and offices.[26] Here, the term of hours of work is also defined. According to Article 2, it delineates "*the time during which the persons employed are at the disposal of the employer; it does not include rest periods during which the persons employed are not at the disposal of the*

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19 **ILO**, Report III (Part 1B)-General Survey of the Reports concerning the Hours of Work (Industry) Convention, 1919 (No. 1), and the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30), Genova 2005, p. 1.

20 **ILO**, Ensuring Decent Working Time for the Future, Geneva 2018, p. 5; **ILO**, Working Time and Work-life Balance Around the World, Geneva 2022, p. 1.

21 For the ILO Constitution *see*. https://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453907:NO (Accessed: 02.23.2023).

22 **ILO**, Measurement of Working Time, Report II, 2008, https://www.ilo.org/wcmsp5/groups/public/---dgreports/---stat/documents/publication/wcms_099576.pdf (Accessed: 05.16.2023). p. 1.

23 For the Convention *see*. https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C001 (Accessed: 02.22.2023).

24 Article 1 defines the industrial undertakings for the purpose of the Convention.

25 For the related Convention *see*. https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C030 (Accessed: 02.22.2023).

26 **ILO**, 2018, p. 9.

employer".[27] As seen, the definition is grounded on the parameter of being at the employer's disposal, and it is accepted as the opposite of the rest periods.[28] Furthermore, as in Convention No. 1, Article 3 of Convention 30 expresses that the work hours shall not surpass forty-eight hours in the week and eight hours in the day. Article 7 set out permanent exceptions which may be allowed for certain classes of persons whose work is intrinsically intermittent. Moreover, the same Article allows exceptions given the work's nature, the population's size, or the number of persons in shops and establishments. Last but not least, not only Convention 1 but also Convention 30 does not answer the question of whether the standby time is included in working time.[29]

After the unemployment rate at the global level increased, the necessity to protect people who suffered from it arose. For this purpose, ILO adopted Forty-Hour Week Convention, 1935 (No. 47), which likewise deals with the standardization of working time. With this Convention, the Member States, which ratify it, declare that they endorse the principle of the forty-hour week without any reduction in the standard of living.

ILO also adopted a Recommendation named Reduction of Hours of Work Recommendation, 1962 (No. 116).[30] The general principle of the Recommendation is "taking actions for the progressive reduction of hours of work, considering the different economic and social circumstances in the different States aside from the diversity of national practices for the regulation of hours and other conditions of work".

Another situation that may be related to working time of platform workers is part-time work which is a well-common form of non-standard employment relationship. Correlated for part-time work, the main instrument addressing to it is Part-Time Work Convention, 1994 (No. 175).[31]

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27 The same definition is taken up in ILO Conventions such as the Reduction of Hours of Work (Public Works) Convention, 1936 (No. 51), Article 2/5 and the Reduction of Hours of Work (Textiles) Convention, 1937 (No. 61), Article 3/1.

28 **ILO**, 2005, p.17.

29 **ILO**, 2005, p. 17.

30 For the related Recommendation *see*: ttps://www.ilo.org/dyn/normlex/en/f?p=1000:12100:::NO:12100:P12100_INSTRUMENT_ID:312454 (Accessed: 02.28.2023).

31 For the related Convention *see*. https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:12100:0::NO::P12100_ILO_CODE:C175 (Accessed: 03.01.2023).

According to Article 1-(a), the term part-time worker means "*an employed person whose normal hours of work are less than those of comparable full-time workers*". Comparable full-time worker is also defined and it refers that the worker who has "*the same type of employment relationship; is engaged in the same or a similar type of work or occupation; and is employed in the same establishment or, when there is no comparable full-time worker in that establishment, in the same enterprise or, when there is no comparable full-time worker in that enterprise, in the same branch of activity as the part-time worker concerned*". As seen, part time workers work less than normal hours of work. However, the Convention 175 do not determine the threshold for separating full-time or part-time work. The relevant Convention has left it to the Member States.

B. European Union's Standards on Working Time

European Union (EU) labor law also focuses primarily on working conditions, which encompasses regulations concerning working hours, part-time and fixed-term employment, temporary staff, and worker mobility. These aspects are crucial in upholding employment rates and social security standards across the EU. Within this scope, the right to fair working conditions was first established in the European Pillar of Social Rights. Principle 10 concerns a healthy, safe, well-adapted work environment and data protection.[32] "*Workers have the right to a high level of protection of their health and safety at work*" stated in Article 10.

The other document of the EU, the Charter of Fundamental Rights, standardizes the concept of working time. It is regulated as "*Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave*" in Article 31/2.

The main document which regulates certain aspects of the organization of working time for workers is Working Time Directive (2003/88/EC) which should be interpreted in the light of the Charter of Fundamental Rights.[33] It is stated in Article 1/1 that the purpose of

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32 For the European Pillar of Social Rights *see*. https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/economy-works-people/jobs-growth-and-investment/european-pillar-social-rights/european-pillar-social-rights-20-principles_en (Accessed: 04.26.2023).

33 For the Directive *see*. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003L0088&from=EN (Accessed: 04.11.2023). Also

Directive 2003/88 is establishing a set of minimum standards pointed at enhancing the quality of life and work of workers by aligning the national regulations regarding certain aspects, especially the concept of working time.[34] In this light, individuals who fall within the scope of the Directive should be "workers".

In Article 2/1, working time means "*any period during which the worker is working, at the employer's disposal and carrying out his activity or duties, in accordance with national laws and/or practice*". Besides, it defines the concept of rest period as "*any period which is not working time*", which is opposed to the concept of working time. It shows there is no place for any intermediate category.[35] In this regard, for a period to be considered as working time, it is necessary that the worker is physically present at the location designated by the employer and remains available to the employer to be able to provide their services immediately.[36] The Court of Justice of the European Union (CJEU) has also discussed whether standby time should be considered working time.[37]

For interpreting Directive 2003/88, "worker" has a crucial meaning. The worker or employment relationship definition is not in Directive 2003/88/EC. About this topic, the Court-case law guides. In this connection, it is evident from the Court's previous cases that to apply Directive 2003/88, the concept of worker must be defined in conformity with objective criteria which differentiate the employment relationship by reference

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see. **NOWAK**, Tobias: "The Turbulent Life of the Working Time Directive", Maastricht Journal of European and Comparative Law, 25(1), 2018, p. 120 *ff*.

34 Case C-214/20, MG v. Dublin City Council, 11 November 2021, para. 37; C-909/19, BX v. Unitatea Administrativ Teritorială D., 28 October 2021, para. 35; C-742/19, B. K. v. Republika Slovenija (Ministrstvo za obrambo), 15 July 2021, para. 47.

35 **GARCIA-MUNOZ ALHAMBRA**, Manuel Antonio/**HIESSL**, Christina: "The Matzak Judgment of the CJEU: The Concept of Worker and the Blurring Frontiers of Work and Rest Time", European Labour Law Journal, 10(4), 2019, p. 348; **MITRUS**, Leszek: "Potential Implications of the Matzak Judgment (Quality of Rest Time, Right to Disconnect)", European Labour Law Journal, 10(4), 2019, p. 389. "*… Those two concepts being mutually exclusive, a worker's standby periods must be classified as either 'working time' or a 'rest period' for the purpose of applying Directive 2003/88, the latter not providing for any intermediate category*." Case C-214/20, MG v. Dublin City Council, 11 November 2021, para. 35.

36 C-909/19, BX v. Unitatea Administrativ Teritorială D., 28 October 2021, para. 40.

37 *See*. Title II.

to the rights and duties of the persons concerned.[38] For the purpose of applying Directive 2003/88, the concept of 'worker' may not be interpreted differently according to the law of Member States but has an autonomous meaning specific to EU law. By the criteria set out in the case law, employment relationship means "*for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration*".[39]

Lastly, certain workers in particular transportation industries, such as transport by air, rail or, road, are subject to distinct regulations regarding their work hours as stated in specialized guidelines. For instance, Directive 2002/15/EC on the Organisation of the Working Time of Persons Performing Mobile Road Transport Activities is one of them.[40] The purpose of the Directive is to establish the basic standards for scheduling work hours in the context of mobile road transport activities, to enhance the safety and well-being of individuals who perform such work. According to Article 2, this Directive covers not only mobile workers employed by undertakings established in a Member State but also self-employed drivers. In addition, Article 3 defines the term working time for the purposes of this Directive. For mobile workers, working time means "*the time from the beginning to the end of work, during which the mobile worker is at his workstation, at the disposal of the employer and exercising his functions or activities*", and "*the times during which he cannot dispose freely of his time and is required to be at his workstation, ready to take up normal work, with certain tasks associated with being on duty*". For self-employed drivers, "*the time from the beginning to the end of work, during which the self-employed driver is at his workstation, at the disposal of the client and exercising his functions or activities other than general administrative work that is not directly linked to the specific transport operation under way*" is accepted working time.

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38 Case C-742/19, B. K. v. Republika Slovenija (Ministrstvo za obrambo),15 July 2021, para. 49.

39 *See*. C-66/85, 3 July 1986, Lawrie-Blum v. Land Baden-Württemberg, para. 17; C-742/19, B. K. v. Republika Slovenija (Ministrstvo za obrambo), 15 July 2021, para. 57; C-147/17, Sindicatul Familia Constanța, Ustinia Cvas and Others v. Direcția Generală de Asistență Socială și Protecția Copilului Constanța, 20 November 2018, para. 41.

40 For the Directive *see*. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32002L0015 (Accessed: 04.21.2023).

C. Turkish Labour Law Standards on Working Time

The 1982 Constitution is at the forefront of the official sources of Turkish labor law. Although it did not bring any regulation regarding working time, Article 50, titled "*Working Conditions and the Right to Rest*", is closely related to it. It states that "*Rest is the right of workers*" and "*The rights and conditions of paid weeks and holidays and paid annual leave are regulated by law*".

In Türkiye, three main Codes regulate labor relations between employees, employers, and the State. These Codes are the Turkish Labor Code (TLC), No. 4857; the Code on Regulation of Relations Between Employees and Employers in the Press Profession, No. 5953 (briefly called Press Labor Code); and the Code of Maritime Labor Law, No. 854. If an employee is not within the scope of one of these three Codes, the provisions of the Turkish Code of Obligations, No. 6098 apply to her/his. Since the Code with the widest personal application area is the TLC, this Code will be explained here.

Initially, due to economic, social, and technological changes, the principle of flexibility in terms of working time adopted in the TLC. Thus, the parties attain the opportunity to regulate the working conditions according to their needs through a collective agreement or employment contract.[41] In this context, the regulations that provide flexibility include the distribution of weekly working hours to working days, overtime, compensatory work, short working, and equalization.

Working time is regulated in Article 63 of the TLC. However, there is no definition of working time in the relevant Article. Instead, Article 3/1 of the Regulation About Working Times Regarding Labor Code defines it as "*the time that the employee carries out his/her job*". Also, in the same Article, "*the periods written in the first paragraph of Article 66 of the Labor Code are similarly counted as working time. Rest breaks given in accordance with Article 68 of the same Code are not counted as working time*". Pursuant to this Article, it is accepted that there are two types of working time in Turkish labor

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41 **SUBAŞI**, İbrahim: "İş Hukukunda Çalışma Süreleri", A. Can Tuncay'a Armağan, İstanbul 2005, p. 311; **BEDÜK**, Mehmet Nusret, "Çalışma Sürelerinin Denkleştirilmesi Esneklik Mi, Yoksa Keyfilik Midir? İş Hukuku Uygulamasında Çalışma Sürelerinin Denkleştirilmesi ve Fazla Çalışma Konusunda Bir Değerlendirme", Selçuk Üniversitesi Hukuk Fakültesi Dergisi, 19(2), 2011, p. 205.

law. The first is the "actual working time"; the other is the "hypothetical working time".[42]

Actual working time is when the employee carries out work they are obliged to do.[43] For example, in sewing pockets for pants, any time the employee sews pockets is counted as the actual working time. As can be seen, the period from when the employee is at the employer's disposal to when they are no longer is considered as working time.[44] Nonetheless, the working time is a concept beyond the actual working time.

Hypothetical working time purports that the periods that the employee is not actually at work but are counted as working time due to the characteristics of the job, social or technical reasons, or being at the employer's disposal. Article 66 of the TLC lists the instances considered hypothetical working periods. In this context, the following periods are counted from the daily working time of the employee:

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42 **CANİKLİOĞLU**, Nurşen: "4857 Sayılı Kanuna Göre Çalışma Süresi ve Bu Sürenin Günlere Bölünmesi", Toprak İşveren, 2005, p. 2; **ODAMAN**, Serkan: "Liberal İş Hukuku Mantığı Çerçevesinde Türk İş Hukukunda Denkleştirme Uygulamasına Yönelik Bazı Tespitler", Marmara Üniversitesi Hukuk Fakültesi Hukuk Araştırmaları Dergisi, 20(1), 2014, p. 69 *ff*., **HAFIZOĞLU**, Ece Sıla: "Çalışma Süreleri", İstanbul Kültür Üniversitesi Hukuk Fakültesi Dergisi, 15(1), 2016, p.128; **TUNÇOMAĞ**, Kenan/**CENTEL**, Tankut, İş Hukukunun Esasları, 8. Baskı, İstanbul 2016, p. 154 and 155; **EYRENCİ**, Öner/**TAŞKENT**, Savaş/**ULUCAN**, Devrim, Bireysel İş Hukuku, 8. Baskı, İstanbul 2017, p. 267; **BAŞBUĞ**, Aydın/**BODUR**, Yücel, İş Hukuku, 5. Baskı, İstanbul 2018, p. 161; **SENYEN-KAPLAN**, Emine Tuncay, Bireysel İş Hukuku, Yenilenmiş 10. Baskı, Ankara 2019, p. 365 *ff*.; **EKMEKÇİ**, Ömer/**KORKUSUZ**, Refik, Turkish Individual Labour Law, İstanbul 2020, p. 85 *ff*.; **SÜZEK**, Sarper, İş Hukuku, Yenilenmiş 19. Baskı, İstanbul 2020, p. 798; **GÜVEN**, Ercan/**AYDIN**, Ufuk, Bireysel İş Hukuku, 6. Baskı, Eskişehir 2020, p. 420; **EKMEKÇİ**, Ömer/**YİĞİT**, Esra, Bireysel İş Hukuku Dersleri, İstanbul 2020, p. 319; **MOLLAMAHMUTOĞLU**, Hamdi/**ASTARLI**, Muhittin/**BAYSAL**, Ulaş, İş Hukuku, Güncellenmiş 7. Bası, Ankara 2022, p. 1262 *ff*.; **BEDÜK**, p. 202.

43 **ODAMAN**, Serkan, Esneklik Prensibi Çerçevesinde Yargıtay Kararları Işığında Türk İş Hukukunda Çalışma Süreleri ve Yöntemleri, İstanbul 2013, p. 7 and 8. "*… actual working time spent by the employee at the job she/he is employed, and in accordance with Article 66 of the Code, the situations considered as having been worked even if the employees have not actually performed in the job they are employed as hypothetical working time should be included in the working time.*" HGK., 01.06.2021, E. 2017/2682, K. 2021/659 (https://www.lexpera.com.tr).

44 **SÜMER**, Halûk Hâdi, İş Hukuku, Gözden Geçirilmiş 26. Baskı, Ankara 2022, p. 139.

a) The time required for employees to descend or leave wells, tunnels, or main working places in mines, stone quarries, or whatsoever works to be performed underground or underwater.

b) If the employees are sent by the employer to other places outside their workplace, the time spent on the road.

c) The periods spent by the employee while he/she is at work and ready to work at any time, without working and waiting for the work to be done.

d) The periods spent by the employee without performing his/her main duties by being sent to another place by the employer or being busy at the employer's home or office or any place related to the employer.

e) The periods for breastfeeding which is specified by female employees to nurse their children.

f) For all kinds of works such as the construction, protection, or repair and alteration of railways, highways, and bridges, where employees must be brought to and from their workplaces at a distance from their place of residence, the time spent in their collective and regular transportation.

In addition to these periods listed in the TLC, hypothetical working time is regulated in the Occupational Health and Safety Code, No. 6331. According to Article 17, the period spent in employees' occupational health and safety training is counted as working time. If the training periods exceed the weekly working hours, these periods are considered as overtime.[45]

The TLC limits the daily and weekly working hours. As attested by Article 63/1, "*the working time is a maximum of forty-five hours per week*". However, the working time of employees working in underground mining jobs is "*… a maximum of thirty-seven and a half hours a week*". It is necessary to accept that Article 63/1 is relatively mandatory.[46] Therefore, while the parties can determine the working time, for example, 35 hours, they cannot determine it as 50 hours. Finally, it is possible to accept periods such as rest and smoking breaks as working time with individual or collective agreements.[47]

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45 For the other hypothetical working time regulated in legal documents *see*. **HAFIZOĞLU**, p. 128.

46 **GÜVEN/AYDIN**, p. 420.

47 **SÜZEK**, p. 803.

The working time is also limited daily. The daily working time is obtained by dividing the weekly working time determined in the Codes or the contract by the working days[48] Article 63/2 states, "*with the agreement of the parties, the normal weekly working time may be distributed differently to the working days of the week in workplaces, provided that it does not exceed eleven hours per day*". More, the daily working time of employees working in underground mining is recognized as "*maximum of seven and a half hours a day"*. Similarly, the night work of the employees can be at most seven and a half hours (Article 69/3).[49] The TLC is not the only regulation regarding daily working hours in Turkish labor law. Furthermore, it is seen that the daily working time is limited in some other legal documents.[50]

II. Does Standby Time Count as Working Time?

The platform work is built on the term "flexibility". Therefore, workers may fulfill their tasks whenever and wherever they want. For example, when a task is assigned within the scope of *Clickworker*, the completion time of the task is specified as hours, days, or months by the customer. Let us imagine the customer wants the task of transcribing a voice recording completed within ten days. The worker working within the scope of *Clickworker* can accept this task and fulfill it within ten days if she/he wishes, or she/he can skip it. After receiving the task, she/he can complete the task by working for one hour or six hours a day, as long as she/he does not miss the delivery date.

At this point, the following question may come to mind: How is the working time calculated in the platform work? As stated above, the actual working time is the time spent by the employee while performing her/his duty. Calculating this time is relatively easy. For example, the actual time is the time from the *Uber* driver accepting the ride request to the end of

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48 **BEDÜK**, p. 203; **ODAMAN**, 2014, p. 73.

49 However, night work for more than seven and a half hours can be made in the job carried out within the scope of tourism, private security, health services, petroleum exploration, and drilling activities pursuant to the Turkish Petroleum Law No. 6491, provided that the written consent of the employee is obtained.

50 For instance, *see*. Regulation on Jobs Required to Work a Maximum of Seven Hours or Less per Day in accordance with Health Regulation Limits (No.: 28709, Date: 07.16.2013). In terms of the jobs specified in the relevant Regulation, it is foreseen that employees performing some jobs, such as lead and arsenic works, glass industry works, mercury industry works, etc., can work for seven and a half hours a day.

the ride. Nonetheless, should we take the standby time, for example, for the *Uber* driver, the time from being active in the system to accepting the task as working time?

The decisions of the CJEU on which periods to count as working time can be helpful in answering the question. The CJEU is leading the way in this regard with its doctrine on working time. In this context, according to the definition of working time stated in Article 2/1 of Directive 2003/88/EC, if the three conditions specified there are met, it is seen that the relevant periods are considered as working time. These conditions are: (1) the worker must be at work; (2) she/he must be at the employer's disposal; (3) she/he must be carrying out his activity or duties.

One of the significant cases on this topic is *D.J. v. Radiotelevizija Slovenija* (Case No. C-344/19)[51]. In that case at hand, the applicant worked in shifts as a specialist technician in the transmission centers. Because of the distance between the applicant's home and the workplace, he had to accommodate the vicinity of the workplace. However, it was possible to leave the transmission center after his shifts. Nevertheless, he had to be contactable when the employer called and, if needed, he had to reply and return to the center within a time limit of one hour. Under these circumstances, the employer calculated his salary based on the time solely he worked, exclusive of considering his standby time. For this reason, he lodged an action claiming the same pay rate for the hours he was on standby time.

The question risen in this case was "*If the employee is not required to be at the workplace but can be reached when called and is able to attend the workplace concerned within a time limit of one hour, if necessary, should we count the standby time as working time within the meaning of Article 2 of Directive 2003/88?*". Initially, the Court accepted that a period during which the worker performs no genuine activity for the benefit of his/her employer does not necessarily establish a rest period for the application of Directive 2003/88. Suppose the worker is required to be physically present at the place determined by the employer and to remain available to the employer. In that case, the working time exists there. Secondly, if the standby system restraints imposed on the worker have on the latter's opportunities to pursue his or her personal and social interests and does not allow

[51] For the case *see*. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62019CJ0344&from=en (Accessed: 04.13.2023).

him/her to manage his/her own time, the standby time should be accepted as working time in the means of Directive 2003/88. Contrariwise, in the absence of such constraints, the time related to the provision of work carried out during that period constitutes working time.

Another case of the CJEU concerning working time is *Federación de Servicios Privados del sindicato Comisiones obreras (CC.OO.) v. Tyco Integrated Security SL* (Case No. C-266/14)[52].[53] In the case at issue, Tyco, as an employer, closed all province workplaces and deployed all workers to the center office. Each used a company vehicle in which they travel daily from their homes to the customers' places where they are to perform work, by a schedule provided the day before by Tyco. Besides, they utilized the same vehicle to return home at the end of the day. The distances from those workers' homes to the places are sometimes more than 100 km, which means workers had to spend around three hours on the road. However, the employer did not count the period spent traveling between home and customers' places as working time. In this context, the debatable question is whether "the period spent traveling between home and customers' places" constitutes "working time" as that concept which is defined in Article 2 of Directive 2003/88 or, conversely, should it be accepted as a "rest period".

The Court accepted the time spent by those workers traveling each day between their homes and the premises of the customers as working time within the meaning of Article 2 of Directive 2003/88.[54] Initially, in its defense, Tyco alleged that the workers were not performing their activities or duties while traveling.[55] Nevertheless, the Court did not accept this argument. It ruled that the workers' journeys are an essential part of technical services to customers.[56] Secondly, the Court assessed whether the

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52 For the Case *see*. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62014CJ0266&from=en (Accessed: 04.15.2023).

53 See also. **MCCANN**, Deirdre: "Travel Time as Working Time: Tyco, the Unitary Model and the Route to Casualisation", Industrial Law Journal, 45(2), 2016, p. 244 *ff*.; **DE GROOF**, Sarah: "Travelling Time is Working Time According to the CJEU - At Least for Mobile Workers", European Labour Law Journal, 6(4), 2015, p. 386 *ff*.

54 C-266/14, para. 51.

55 C-266/14, para. 31.

56 C-266/14, para. 32.

worker was at the employer's disposal. Court concluded that during those journeys, the workers had to obey instructions, which the employer could change or cancel. Also, those workers could not freely determine their time and pursue their interests.[57] Lastly, the Court ruled that if a mobile worker performs his/her duties during a journey to a customer or vice versa, the time should also be accepted as working time.[58]

In *Ville de Nivelles v. Rudy Matzak* case (Case No. C-518/15)[59], the applicant had the status of volunteer firefighter.[60] In correlation with that, Mr. Matzak, as a volunteer firefighter, filed a lawsuit arguing that the employer was unsuccessful in paying him his remuneration for his services, specifically those in standby time. Here, the Court was tasked with answering preliminary questions. Firstly, the Court accepted the applicant as a "worker" within the meaning of Directive 2003/88.[61] Then, it responded to the question of whether Member States may derogate certain categories of firefighters recruited by the public fire services from obligations such as the concepts of working time and rest periods. The answer to this question was negative because, according to the Court, Article 2 is not one of the Articles that can be derogated for services listed in Article 17.[62] Then, the Court responded to whether the standby time, during which a worker is required to respond to their employer's calls within eight minutes while at home, should or not be considered as working time.[63] In this context, the Court concluded that the prerequisite for the applicant to be physically present at a specific location determined by the employer and the limitations placed on him due to the need to reach his workplace within eight minutes objectively limited his ability to engage

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57 C-266/14, para. 39.

58 C-266/14, para. 43.

59 For the Case *see*. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62015CJ0518&from=en (Accessed: 04.17.2023).

60 About Matzak case also *see*. **RISAK**, Martin, "The Position of Volunteers in EU-Working Time Law", European Labour Law Journal, 10(4), 2019, p. 363 *ff*.; **MITRUS**, 2019, p. 387 *ff*.; **GARCIA-MUNOZ ALHAMBRA/HIESSL**, p. 345 *ff*.

61 "*… he was integrated into the Nivelles fire service where he pursued real, genuine activities under the direction of another person for which he received remuneration; it is for the referring court to verify whether that is the case.*" C-518/15, para. 31.

62 C-518/15, para. 33-39.

63 C-518/15, para. 53.

in personal and social activities.[64] As a result, the standby time that a worker spends at home with the duty to respond to calls from his employer within eight minutes must be regarded as working time.[65]

MG v. Dublin City Council case (Case No. C-214/20)[66] is also about calculating the hours worked during periods of standby time. In the case at issue, MG was a firefighter on a part-time basis. He was not obliged to be present at a specific location during his standby time. Nonetheless, if he received an emergency call to participate in an intervention, he had to make every effort to reach the fire station within five minutes and not take exceeding ten minutes to respond. In that context, MG demanded that the standby time as working time. However, his claim was rejected, and he initiated legal proceedings against it. The Court first accepted that Directive 2003/88 covers the entire standby time that hinders the possibility of freely managing the time when professional services are not required and pursuing their interests.[67] Through an overall assessment of the facts of this case, the Court concluded that standby time for a firefighter did not count as working time because he was allowed to pursue another professional activity during this period and was not obligated to participate in every intervention from the fire station. Furthermore, it was not significantly constrained in his ability to manage his time freely.[68]

After all these decisions, the Court determines whether the services in the standby time will be counted as working time or not, according to one of three categories. The first one is that the worker is at the workplace without performing. The second one is at a place other than the workplace under significantly restricted opportunities for other activities. The last one is at another place than the workplace with no or few restrictions on other activities, and the worker can pursue her/his interest. The Court accepts the standby time as a working time in the first and second categories but not the last.

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64 C-518/15, para. 63.

65 C-518/15, para. 66.

66 For the case *see*. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62020CJ0214&from=en (Accessed: 04.17.2023).

67 C-214/20, para. 38.

68 C-214/20, para. 48.

III. How Should Working Times Be Calculated in Platform Work?

As mentioned above, platform workers enjoy great flexibility in choosing when they want to work, how long they want to work, or where they want to work. Nevertheless, this flexibility shows itself at a diverse level for every platform.[69] In other words, it is not possible to calculate a generally valid working time for every online platform. The absence of a single type of online platform, the existence of a large number of online platforms, the different algorithms and business models of each platform, and the wide variety of tasks performed on the online platforms make it hard to calculate the working time for all forms of platform work. From this perspective, the two types of platform work have contrasting approaches to scheduling work time.[70]

Crowdwork allows workers to have more independence and flexibility regarding when they work. In contrast, on-demand location-based work requires online platforms to regulate services by imposing quality standards and restricting providers' ability to select tasks and clients. Therefore, I take *Uber*, within the scope of on-demand location-based work, and *Armut*, within the scope of crowdwork, as examples.

A. Calculating the Working Time of Uber Workers

Uber is one of the first platforms that come to mind among the transport platforms.[71] When *Uber*'s system is examined, it is seen that, first of all, the customer and the driver become a member. After that, when the driver wants to perform work, she/he activates his/her account and starts to wait for the task received in her/his car. When a customer demands a drive task, a drive request is seen on the screen of the driver's phone. The driver has two alternatives at that time: She/he can accept and perform or reject the task. After accepting the task, she/he heads to the location to pick the customer up. Next, she/he takes the customer to the point determined, and the task is over. As seen, we can divide the time of the driver into two parts. The first is when the driver activates her/his account and waits for the task to be accepted (standby time). The second part is the

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69 **LENAERTS/WAYAERT**, p. 34.

70 **ANGHEL**, Razvan: "Implications of CJEU Jurisprudence on the Delimitation of Working Time by Rest Time in the Collaborative Economy", Lex ET Scientia International Journal, 26(2), 2019, p. 8.

71 *See*. https://www.uber.com/tr/tr/ (Accessed: 07.18.2023)

time between the task accepted, and the drive concluded. The second part is obvious to be accepted as actual working time. However, the first part is the main part that needs to be discussed on whether it is accepted as hypothetical working time. Before giving an answer to this question, the two cases can be beneficial to scrutinize.

In *Uber BV and others v. Aslam and others* [72], one of the questions answered by the Court is "*What periods during which a driver is employed under a worker's contract count as working time?*".[73] To answer this question, the Court first referred to the Directive 2003/88. It reminded when the worker is required to be at or near the place of work, the time spent on call counts as working time. Then, the court recognized a driver's workplace as the place where his vehicle is currently located.[74] Subsequently, the Court accepted the tribunal court's verdict. All time spent by a driver working under a contract with *Uber*, including time spent "on duty" available to obtain a ride request and logged into the *Uber* app in London, is deemed "work time" for purposes.[75] But also the Court recalled that if the reality is that *Uber*'s market share in London is such that its drivers cannot, in practice, hold themselves out as available to other transport platforms, then they are effectively working at the disposal of *Uber* as part of the pool of drivers it requires to be available within the area at any one time. However, if it is indeed the case that drivers are also able to hold themselves out as being open to other transport platforms when waiting for a journey, the same analysis would not apply.[76]

In *B v. Yodel Delivery Network Ltd.* case (Case No. C-692/19)[77], the Employment Tribunal asked a question that can be related to platform workers' working time to the CJEU. In that case, B., a neighborhood parcel delivery courier, carried on his business solely for Yodel. According to the service agreement between B. and Yodel, B. used his vehicle to deliver the parcels handled by Yodel and used his mobile phone to keep in touch

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72 [2021] UKSC 5. For the case *see*. https://www.supremecourt.uk/cases/docs/uksc-2019-0029-judgment.pdf (Accessed: 04.27.2023).

73 [2021] UKSC 5, para. 131. Also *see*. **FREDMAN**, Sandra/**DU TOIT**, Darcy: "One Small Step towards Decent Work: Uber v Aslam in the Court of Appeal", Industrial Law Journal, 48(2), 2019, p. 272 and 273.

74 [2021] UKSC 5, para. 134.

75 [2021] UKSC 5, para. 134.

76 [2021] UKSC 5, para. 135.

77 For the case *see*. https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62019CO0692&from=en (Accessed: 04.25.2023).

with that undertaking. Furthermore, he was not required to perform the delivery personally. He could hire someone else to do it for himself. Yet, Yodel had the right to refuse the substitution if the chosen person doesn't have the required skills and qualifications equivalent to B. However, B. was still responsible for any mistakes made by the substitute appointed.

Regarding his working time, he received the packages to deliver to his home from Monday to Saturday every week. He had to take place between 7:30 AM and 9:00 PM. Still, he had the freedom to choose the delivery time and the most convenient route, except for situations where a specific time for delivery had been set. Even though the agreement between Yodel and B., he was labeled as an independent contractor, B. argued that he should have been classified as a worker under Directive 2003/88. In this context, one of the questions asked by the Employment Tribunal was how to calculate a worker's working time in situations where she/he is not obligated to work fixed hours and can choose her/his own hours within certain boundaries, as outlined in Article 2(1) of Directive 2003/88.[78]

Initially the Court recalled that there is no definition of the worker in Directive 2003/88.[79] In this context, it is seen that the Court refers to the definition of worker it has made.[80] At the end of its examination, the Court concluded that B. had a great deal of latitude in relation to Yodel.[81] In reaching this conclusion, the Court emphasized B.'s right to appoint subcontractors or substitutes to carry out the tasks at issue.[82] Within this framework, the Court concluded that Directive 2003/88/EC, which concerns specific aspects of the organization of working time, prohibits a person who is considered a "self-employed independent contractor"[83] under a services agreement with her/his employer from being categorized as a worker for the purpose of that Directive.[84]

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78 C-692/19, para. 20.

79 C-692/19, para. 27.

80 C-692/19, para. 29.

81 C-692/19, para. 35.

82 C-692/19, para. 38.

83 The legal status of the person who performs work in UK law is determined under three headings. A person can be an employee, a self-employed or a worker. Therefore, this concept expressed by the Court corresponds to the concept of the worker.

84 C-692/19, para. 46.

When the doctrine is examined, *Davies* also made an evaluation on this subject. *Davies* considers time spent waiting to be assigned to work more likely to be working time.[85] According to her, it is important to recognize that working time goes beyond the actual task being performed. For instance, in transportation or food delivery tasks, logging into the relevant app and waiting in a specific location should also be considered as working time for Work Time Regulations (1998) purposes, along with the time spent performing the tasks. Platforms can log workers out if no work is available within a reasonable time or if they consistently turn down available work. However, in certain situations, such as an IT worker browsing an app from home for work opportunities, it is more about seeking work than being available for the employer's use, which makes it difficult to determine what constitutes working time.[86]

As *Mitrus* stated, the opinion of advocate general *Pitruzzella* in case *D. J. v. Radiotelevizija Slovenija* also may guide.[87] According to him, there are several criteria that can determine whether standby periods are classified as working time or rest time.[88] These are:

- Whether or not there is an obligation to respond to calls,
- Any discretion the worker has in dealing with calls (whether he or she can take action remotely, whether he or she can be replaced by another worker),
- Whether sanctions are stipulated for failing to take action or for responding to a call late,
- The urgency of the action that is required,
- The level of the worker's responsibility, specific characteristics of the profession,
- The distance that must be covered between the place the worker is and the place where he or she must take up his or her duties,
- Geographical constraints that might slow down the journey to the place of work,

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85 **DAVIES**, C. L. Anne: "Wages and Working Time in the Gig Economy", King's Law Journal, 31(2), 2020, p. 258.

86 **DAVIES**, p. 258.

87 Also *see*. **MITRUS**, 2023, p. 40.

88 Opinion in Case 344/19, para. 111. For the Opinion *see*. https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62019CC0344 (Accessed: 04.25.2023).

• The need to wear work clothes and the availability of a service vehicle.

The relevant decisions and opinions in the doctrine show that for a worker's standby periods to be counted as working time, the worker should be under the employer's orders and instructions during this period.

Regarding Turkish labor law, the question is also whether standby periods can be counted as working time. In other words, does the time spent by the *Uber* driver waiting for a task fall within the scope of Article 66-1(c) of the TLC? It is worth remembering that, according to subparagraph (c), "*the periods spent by the employee while he/she is at work and ready to work at any time, without working and waiting for the work to be done*" are accepted as working time. Here, the main reason why these periods are recognized as working time is also that the employee is under the employer's orders and instructions. During the relevant periods, the employee is waiting for an order from the employer at any time. Therefore, we need to determine whether the *Uber* driver is waiting for the employer's orders and instructions during the standby time in a similar way.

My take on this is that the standby time from the moment the driver is active within the scope of *Uber* to the moment she/he accepts the task request from the customer should not be counted as working time according to Turkish labor law. As stated above, one of the reasons for measuring hypothetical working periods from working time is that the worker is at the employer's disposal. Besides, one of the employee's duties is to follow the instructions, even if she/he is not actually working. The managerial authority of the employer, no matter how much freedom the worker has, first shows itself in the determination of the work to be done, then in the process of doing the work, and in the supervision of the employee. When we look at *Uber*, the driver determines where and when works in the standby time. In other words, she/he is not required to be present at the place determined by *Uber*.

Furthermore, in this period, she/he has the freedom to work for another transport platform. Again, when we take a look at the algorithm of *Uber*, we can see that *Uber* carefully plans each step from acceptance of a ride to its end. However, it is tough to say that the intensity remains the same when logging into the app and then accepting the task. At this point, although the worker's refusal to accept the task has a result, such as the

suspension or deactivation of her/his account, which points to the element of subordination, it does not affect the evaluation of the standby periods as working time. It is similar to when a disciplinary measure is taken against an employee who drives her/his car due to consistently being tardy for work. As a result, even if subordination exists between the employee and the employer, the time to commute with her/his vehicle is not counted as working time. Finally, measuring the standby periods as working time can also pave the way for abuses. For example, a driver can wait for hours without accepting any task in a place where the population is lesser, where *Uber* usage is almost zero.

B. Calculating the Working Time of Armut Workers

Operating in Türkiye, *Armut* is a mixed platform developed by Armut Technology Inc., where customers can request tasks in different service sectors, and workers can perform related tasks.[89] Within *Armut*, tasks performed within the scope of crowdwork can be demanded, as well as tasks performed within the scope of on-demand location-based work. For this reason, I took the website programming job as an example of crowdwork.

Looking at the website programming task within the scope of *Armut*, the customer presents it to the crowd after determining what kind of website she/he wants. If a worker from any part of the World in the crowd thinks that the relevant task is suitable for her/him, she/he makes an offer to the customer by stating the fee; If the offer is also appropriate for the customer, the parties agree on that the work will be completed within the specified time. As can be seen, the *Armut* worker is in compliance with the definition of remote-worker regulated in Turkish labor law. For this reason, mentioning remote work would be necessary.

When the TLC is examined, remote work is regulated in Article 14. Pursuant to Article 14/4, remote work is an employment relationship in written form, based on the principle that the employee performs work within the scope of the work organization established by the employer, at home, or outside the employer's workplace with technological

[89] *See*. https://armut.com (Accessed: 07.07.2023).

communication tools. In this circumstance, remote work is considered an upper concept that includes "work at home" and "telework".[90]

In the employment contract to be made according to the remote work, provisions regarding the definition of the job, the way it is done, the duration and place of the job, the issues regarding the payment of wages, the equipment provided by the employer and the obligations relating to employee's protection, the employer's communication with the employee and the general and special working conditions are included.

Another legal document constituted regarding remote work is the Regulation About Remote Work. In the relevant document, remote work is regulated as in the TLC, and it is stated that the duration of the work should be included in the contract between the parties. In addition, Article 9 of the Regulation states, "*the time break and duration of remote work are specified in the employment contract. The parties can change working hours, provided that the limitations stipulated in the legislation are adhered to. Overtime work is done per the provisions of the legislation, upon the written request of the employer, with the employee's acceptance*".

In addition to the regulations of the TLC on remote work, the third division of the Turkish Code of Obligations concerning employment contracts is reserved for work at home contracts. In Article 461, work at home contract is defined as "*a contract in which the employee undertakes to perform the task given by the employer in her/his own home or at another place to be*

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[90] The legal literature is ample about this topic. For remote work *see*. **CİVAN**, Orhan Ersun: "İş Hukukunda Uzaktan Çalışma", Legal İş ve Sosyal Güvenlik Hukuku Dergisi, 26, 2010, p. 529 *ff*.; **TUNCAY**, A. Can: "Pandemi Gölgesinde Evde Çalışma", Legal İş ve Sosyal Güvenlik Hukuku Dergisi, 18(69), 2021, p. 43. For work at home *see*. **BAKIRCI**, Kadriye, "Dünyada Evde Çalışmada Hukuksal Koruma Sistemleri ve Mevzuatı", İktisat Dergisi, 430, 2002, p. 63 *ff*.; **STONE**, Katherine: "Legal Protection for Atypical Employees. Employment Law for Workers without Workplace and Employees without Employer", Berkeley Journal of Employment and Labour Law, 27(2), 2006, p. 270 *ff*.; **ABBAS**, Büşra: "Atipik Bir Çalışma Biçimi Olarak Evde Çalışma", Legal İş ve Sosyal Güvenlik Hukuku Dergisi, 13(52), 2016, p. 2009 *ff*.; **DULAY**, Dilek, Türk İş Hukukunda Evde Çalışma, Ankara 2016, p. 23 *ff*.; **GÜNAY**, Arkın, Türk Hukukunda ve Karşılaştırmalı Hukukta Evde Çalışma, İstanbul 2018, p. 91 *ff*.; **DEDEOĞLU**, Saniye, Home Bounded-Global Outreach: Home-based Workers in Turkey, Genova 2020, p. 6. For telework *see*. **ERGÜNEŞ EMRAĞ**, Seda: "4857 Sayılı İş Kanununun Değişik 14. Maddesi Işığında Tele Çalışma", Legal İş ve Sosyal Güvenlik Hukuku Dergisi, 13(51), 2016, p. 1416 *ff*.; **MESSENGER**, C. John, Introduction: Telework in the 21st Century-An Evolutionary Perspective, Geneva 2019, p. 3 *ff*.

determined by herself/himself or with his family members in return for a remuneration". Within the scope of this contract, the employee, according to Article 463, is obliged to start work on time, finish the work at the agreed time, and deliver the result of the work to the employer.

Herein, the point that needs to be addressed first is to determine whether the worker who performs a website programming job within the scope of the *Armut* is a home-worker or a teleworker. In my opinion, the worker who performs a website programming job as a crowdworker is more like a home-worker than teleworker. In crowdwork, as in homework, the crowdworker is obliged to reveal the quality of the task requested by the customer or the online platform and to deliver the task result. In other words, unlike teleworking, the crowdworker does not owe the work's performance but the work's result. The crowdworker performs the task within the time specified by the customer or online platform, and she/he can earn wages according to the result of the task. Wage is per piece, in other words, per task, as in homework.[91] Likewise, working at home does not necessarily occur when the crowdworker works in her/his home. As can be understood from the definitions in the doctrine, homework can also be done in a place determined by the employee. Therefore, these people can be regarded as homeworkers when the crowdworker performs the task in their own home or a place they choose.

It is seen that various methods are used to determine the working time in terms of remote workers, especially those who work at home. The first of these is monitoring every moment of the working time, thanks to a software program to be developed.[92] Thus, it will be possible to determine precisely how long the worker has performed. It can be easily determined when the worker starts work, when she/he takes a rest, or when she/he stops working.

The trust-based working time (German: *Vertrauenarbeitzeit*) model, expressed by *Dulay*, is another method.[93] According to this method, employers and employees determine how long they will work during the establishment of the contract. However, the employee decides how long

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91 **ABBAS**, p. 2014; **CİVAN**, p. 537; **ERGÜNEŞ EMRAĞ**, p. 1425.

92 **TUNCAY**, p. 49.

93 For the trust-based working time *see*. **GÜNEŞ**, Volkan, "Güvene Dayalı Çalışma Süresi", Ankara Hacı Bayram Veli Üniversitesi Hukuk Fakültesi Dergisi, 23(4), 2019, p. 256 *ff*.; **DULAY**, p. 168 *ff*.

she/he works during the day, where she/he works, and when she/he rests.[94] The employee has the freedom to divide and distribute the working time, and she/he fulfills her/his job without the employer's control. [95] The employer waives the determination of the beginning and end of daily working hours. She/he sees its interests sufficiently protected because it can assess the employee's performance based on the work result. In my opinion, the most appropriate model in terms of crowdwork seems to be trust-based working time. When the programming task is examined within the scope of *Armut*, the customer generally determines the delivery date of the task. She/he does not interfere with how many hours the worker will work daily or weekly. Therefore, it shows that the working time model in *Armut* overlaps with the trust-based working time model.

Conclusion

In platform work, which is accepted as a new way of working, the platform workers perform the task requested by the customer or the online platform for a certain remuneration. Although their legal status is controversial, they spend a certain amount of time performing their tasks. Suppose these workers are accepted as employees in Turkish labor law. In that case, the regulations regarding working hours will find an application area. However, the heterogeneous nature of the online platforms necessitates calculating the working time separately for each online platform. For example, on the *Uber* platform, working periods may be for two separate time slots. Here, there is the moment when the driver accepts the task after it is activated in the system and the moment when the driving ends when she/he accepts the task. Therefore, even if the standby time is not counted from the working time, the driving time is accepted as the working time.

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94 **DULAY**, p. 169.

95 **GÜNEŞ**, p. 257.

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