

Economically-dependent Workers as Part of a Decent Economy

Schubert

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Economically-dependent Workers

Employment in a Decent Economy –
International, European and
Comparative Law Perspective

A Handbook

edited by

Claudia Schubert

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Preface

Traditionally, labour law focuses on employment contracts. The legal analysis of the working world is based on the distinction between employees and self-employed persons. However, in addition to this traditional dichotomy a significant number of European countries provide specific legal protection for so-called economically-dependent workers; hereby acknowledging that there are workers who are personally independent but nonetheless require social protection. This development has begun long before the digitalisation started blurring the boundaries of typical employment relationships. Still, recent developments have resulted in demands for the extension of labour laws to platform workers putting the topic on the agenda; whilst in the past, economically-dependent workers have played only a minor role in labour law developments. Wrongly, because their protection plays a vital role in creating a differentiated economy with adequate working conditions and a decent standard of social security for its various players.

A group of fifteen researchers from eleven countries worked together in a research project in 2020 and 2021. In two conferences, we evaluated the existing legislation and judicial practises in the selected states and identified similarities, differences and obscurities of protection schemes for those workers. Additionally, we focused on the international and European legal response to their specific social needs. Many thanks to the contributors and their commitment to the project, even under the circumstances of the Covid19 pandemic. The cooperation throughout the conferences and the preparation of the book have proven to be very effective and fruitful.

Moreover, I would like to express my great appreciation to *Zoltán Szabó* for his diligent, valuable and constructive proofreading. He improved the language of the book remarkably. I also would like to extend my thanks to my staff members *Johannes Ipsen*, *Valerie Kühn*, *Marlene Krusemark*, *Patrick Rieger*, and *Laura Schmitt* who carefully prepared quotes and contributions.

Special thanks are due to the Institut für Arbeitsrecht Berlin e.V. I am grateful for their support and this volume would not have seen the light of the day without it. Many thanks also to Hart publishers and the editing team of *Thomas Klich*.

Claudia Schubert

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Adrián Todolí-Signes is a Full Professor of Labour Law and Social Security and Chair of the Sharing and Digital Economy Regulation at the University of Valencia. He has extensive experience in the regulation of digital economy from a legal and economic perspective. He was appointed as a national expert for the conference on work conditions in youth employment of the European Commission (DG Employment). Professor Todolí-Signes was a Visiting Researcher at the University of California in Berkeley (USA), at the Faculty of Law of the University of Cambridge (UK), and at the Max Planck Institute of Social Law and Social Politics of Munich (Germany). Nowadays he focuses his research on algorithmic management of workers with several publications in the matter.

Anne Trebilcock serves as a neutral in dispute resolution in international organisations. She is the Vice-President of the Asian Development Bank Administrative Tribunal and of the GAVI Alliance Appeals Tribunal. She is the former Director of Legal Services and Legal Adviser of the International Labour Organization, where she also worked on labour law reform and international labour standards. Dr. Trebilcock has lectured at the University of Göttingen (Germany) and several other universities in Europe and North America. She has authored publications on various aspects of transnational labour law. Early in her career, she worked at the Max Planck Institute for Comparative Public Law and International Law in Heidelberg (Germany). She is a member of the State Bar of Michigan and serves on the editorial board of *International Labour Rights Case Law*.

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List of Abbreviations and Acronyms

ABGB	Allgemeines Bürgerliches Gesetzbuch (Austrian Civil Code)
Abs.	Absatz/Absätze (Paragraph/s)
ACM	Autoriteit Consument en Markt (Dutch Competition Authority)
AERD	Assessment of Employment Relationships (Deregulation)
AGEA (formerly FNSAGA)	Fédération nationale des syndicats à agents généraux d'assurance (French federation representing the general insurance agents)
AGG	Allgemeines Gleichbehandlungsgesetz (German General Equal Treatment Act)
AKG	Arbeiterkammergesetz (Chamber of Labour Act)
ANPAL	Agenzia Nazionale Politiche Attive Lavoro National (Agency for Active Employment Policies)
AP	Arbeitsrechtliche Praxis (German collection of decisions)
ArbGG	Arbeitsgerichtsgesetz (German Labour Court Law)
ArbSchG	Arbeitsschutzgesetz (German Health and Safety at Work Act)
Ares	Advanced Records System of the European Commission
ARD	Aktuelles Recht zum Dienstverhältnis (Journal on labour law)
ASoK	Arbeits- und Sozialrechts Kartei (Journal on labour law)
ASRÄG 1997	Arbeits- und Sozialrechts-Änderungsgesetz 1997 (Labour and Social Law Amendment Act 1997)
ASVG	Allgemeines Sozialversicherungsgesetz (General Social Security Statute)
ATI	Allocation des travailleurs indépendants (Self-employed workers' benefit)
ATP	Arbejdsmarkedets Tillægspension (Pension Service)
AÜG	Arbeitskräfteüberlassungsgesetz (Personnel Leasing Act)
AuR	Arbeit und Recht (Law journal)
AWGB	Algemene wet gelijke behandeling (Equal Treatment Act)
B-KUVG	Beamten-Kranken- und Unfallversicherungsgesetz (Public Servants Health and Occupational Accident Insurance)
B-VG	Bundes-Verfassungsgesetz (Federal Constitutional Law of Austria)
BAG	Bundesarbeitsgericht (German Federal Labour Court)
BB	Betriebs-Berater (Law journal)
BEEG	Bundeselterngeld- und Elternzeitgesetz (German Parental Allowance and Parental Leave Act)
BetrAVG	Betriebsrentengesetz (German Occupational Pensions Act)
BGB	Bürgerliches Gesetzbuch (German Civil Code)
BGBI	Bundesgesetzblatt (Austrian Federal Law Gazette)
BGBL	Bundesgesetzblatt (German Federal Law Gazette)
BGH	Bundesgerichtshof (Federal High Court of Justice)
BMAS	Bundesministerium für Arbeit und Soziales (Federal Ministry of Labour and Social Affairs)
BSG	Bundessozialgericht (German Federal Social Court)
BSVG	Bauern-Sozialversicherungsgesetz (Act on Social Security for Farmers)
BT-Drs.	Bundestags-Drucksache (Bundestag printed document)
BTR	British Tax Review
BUrlG	Bundesurlaubsgesetz (German Federal Leave Act)
BV	Besloten Vennootschap (Private limited company)
BVerfG	Bundesverfassungsgericht (Federal Constitutional Court)

List of Abbreviations and Acronyms

CAC	Central Arbitration Committee
CAS	Committee on the Application of Standards
CBS	Centraal Bureau voor de Statistiek (Dutch Central Agency for Statistics)
CEACR	Committee of Experts on the Application of Conventions and Recommendations
CEEP	European Centre of Employers and Enterprises providing Public Services and Services of General Interest
CES	Consejo Económico y Social (Spanish Economic and Social Council)
CEST	Check employment status for tax
CFA	Committee on Freedom of Association
CFREU	Charter of the Fundamental Rights of the European Union
CJEU	Court of Justice of the European Union
CLA	Collective labour agreements
CLLPJ	Comparative Labor Law and Policy Journal
CNAVPL	Caisse nationale d'assurance vieillesse des professions libérales (French national fund for the self-employed)
CNBF	Caisse nationale des barreaux français (National fund for the French bar)
CoE	Council of Europe
COM	Documents of the Commission of the European Communities
CPA	Compte personnel d'activité (Personal Activity Account)
CRDS	Contribution pour le remboursement de la dette sociale (Social Debt Repayment Contribution)
CSG	Contribution sociale généralisée (General Social Contribution)
Dares	Direction de l'animation de la recherche, des études et des statistiques (Directorate for Research, Studies and Statistics)
DBA	Wet Deregulering Beoordeling Arbeidsrelaties (Dutch Deregulation Assessment Working Relations Act)
DCC	Dutch Civil Code
DEASP	Department of Employment Affairs and Social Protection
DNHG	Dienstnehmerhaftpflichtgesetz (Austrian federal law on the responsibility of workers for torts)
DRdA	Das Recht der Arbeit (Journal on labour law)
E.g.	Example given/exempli gratia
EAT	Employment Appeal Tribunal
ECHR	European Convention on Human Rights
ECSR	European Committee of Social Rights
EctHR	European Court of Human Rights
Ed./s.	Editor/s
Ed.	Edition
EEC	European Economic Community
EIRO	European Industrial Relations Observatory
ERA	Employment Rights Act 1996
ESA	Employment and Support Allowance
ESC	European Social Charter
Etc.	Et cetera (And so on)
ETUC	European Trade Union Confederation
EU	European Union
EUR	Euro
EuZA	Europäische Zeitschrift für Arbeitsrecht (Law journal)
EvBl	Evidenzblatt der Rechtsmittelentscheidungen (Austrian Journal of Jurisprudence)
EzA	Entscheidungen zum Arbeitsrecht (German collection of decisions)
FFA (formerly FFSA)	Fédération française de l'assurance (French federation of insurance)
Fn./s.	Footnote/s

List of Abbreviations and Acronyms

FNV	Federatie Nederlandse Vakbeweging (Federation of Dutch trade unions)
FSVG	Sozialversicherungsgesetz der freiberuflich selbstständig Erwerbstätigen (Social Security Statute of the Free Professions)
GDP	Gross domestic product
GG	Grundgesetz (German Constitution)
GS	Facket för skogs-, trä- och grafisk bransch (Swedish union of forestry, wood and graphical workers)
HAG	Hausarbeitsgesetz (German Homework Act)
HGB	Handelsgesetzbuch (German Commercial Code)
HMG	Hospital Medical Group
HMRC	Her Majesty's Revenue and Customs
I-SZW	Inspectie SZW – Ministerie van Sociale Zaken en Werkgelegenheid (Inspectorate of the Dutch Ministry of Social Affairs and Employment)
I.e.	Id est (That is)
ICLS	International Conference of Labour Statisticians
ICSaW	International Classification of Status at Work
ICSE	International Classification of Status in Employment
IDS Emp. L. Brief	Incomes Data Services Employment Law Brief
IJLLIR	International Journal of Comparative Labour Law and Industrial Relations
IJLR	International Journal of Labour Research
ILJ	Industrial Law Journal
ILO	International Labour Organization
IndRME	Index der Rechtsmittelentscheidungen, Hohenecker-Index (Law journal)
INPS	Istituto Nazionale della Previdenza Sociale (National Social Security Institute)
Insee	Institution nationale de la statistique et des études économiques (French National Institute of Statistics and Economic Studies)
IRES	Institut de Recherches Economiques et Sociales (Institute of Economic and Social Research)
ISCRO	Indennità Straordinaria di Continuità Reddittuale e Operativa (Extraordinary income and work continuity allowance)
ISTAT	Istituto nazionale di statistica (Italian National Institute of Statistics)
IWGB	Independent Workers Union of Great Britain
JarbSchG	Jugendarbeitsschutzgesetz (German Employment Protection of Young Persons Act)
JBl	Juristische Blätter (Law journal)
KLJ	King's Law Journal
KSVG	Künstlersozialversicherung (German social insurance for artists)
LAG	Landesarbeitsgericht (German Higher Labor Court)
LEL	Lower Earnings Limit
Lit.	Litera
LQR	Law Quarterly Review
Mn.	Margin number
MP	Member of Parliament
MSA	Mutualité sociale agricole (Agricultural social mutual scheme)
MuSchG	Mutterschutzgesetz (German Maternity Protection Act)
NHS	National Health Service
NI	National Insurance
NZA	Neue Zeitschrift für Arbeitsrecht (Law journal)
NZA-RR	Neue Zeitschrift für Arbeitsrecht – Rechtsprechungs-Report (Law journal)
OECD	Organisation for Economic Cooperation and Development
OGH	Oberster Gerichtshof (Austrian Supreme Civil Court)
OJ	Official Journal of the European Communities

List of Abbreviations and Acronyms

ÖJZ	Österreichische Juristen-Zeitung (Law journal)
OSH	Occupational safety and health
PAYE	Pay As You Earn
PCIJ	Permanent Court of International Justice
PEPS	Professionnels de l'emploi en portage salarial (Association representing companies providing <i>portage salarial</i>)
PflegeZG	Pflegezeitgesetz (German Nursing Time Act)
PGI	Pension Qualification Income
PLC	Portuguese Labour Code
PostNL	Dutch postal company
PPE	Personal protective equipment
PRSI	Pay-related Social Insurance
RdA	Recht der Arbeit (Law journal)
RSA	Revenu de solidarité active (France's active-solidarity income)
RSI	Régime social des indépendants (Social security scheme for liberal professionals)
RDSS	Revue de Droit Sanitaire et Social (Law journal)
SCP	Sociaal en Cultureel Planbureau (Netherlands Institute for Social Research)
SEO	Sectoral Employment Order
SER	Sociaal-Economische Raad (Dutch Social-Economic Council)
SGb	Die Sozialgerichtsbarkeit (Law journal)
SGB	Sozialgesetzbuch (German Social Security Act)
SGI	Sjukpenninggrundande inkomst (Sickness benefit qualifying income)
SIPTU	Services, Industrial Professional and Technical Union
SMEs	Small and medium-sized enterprises
SMP	Statutory Maternity Pay
SNA	System of National Accounts
SSI	Sécurité sociale indépendants (French social security of self-employed)
SSP	Statutory sick pay
Stcrt.	Staatscourant (Newspaper published by the Dutch state)
STS	Sentencia del Tribunal Supremo (Judgment of the Spanish Supreme Court)
STSJ	Sentencia del Tribunal Superior de Justicia (Judgment of the Spanish Tribunal Superior de Justicia)
SWD	Staff and joint staff working documents of the European Commission
TEC	Treaty Establishing the European Community
TFA	Trygghetsförsäkring vid arbetskada (Social security insurance in the event of occupational injury)
TFEU	Treaty on the Functioning of the European Union
TL	Temas Laborales (Journal on labour law)
TOZO	Tijdelijke overbruggingsregeling zelfstandig ondernemers (Temporary benefits for self-employed professionals)
TRADE	Trabajador autónomo económicamente dependiente (Economically-dependent self-employed person)
TSU	Taxa Social Única (Single Social Tax)
TULRCA	Trade Union and Labour Relations (Consolidation) Act
TVG	Tarifvertragsgesetz (German Collective Agreements Act)
UC	Universal Credit
UEAPME	Union Européenne de l'Artisanat et des Petites et Moyennes Entreprises (European Association of Craft, Small and Medium-sized Enterprises)
UK	United Kingdom
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNICE	Union of Industrial and Employers' Confederations of Europe

List of Abbreviations and Acronyms

VAR	Verklaring Arbeidsrelatie (Declaration of Independent Contractor Status)
VAT	Value Added Tax
VfGH	Verfassungsgerichtshof (Austrian Supreme Constitutional Court)
VwGH	Verwaltungsgerichtshof (Austrian Supreme Administrative Court)
WAADI	Wet allocatie arbeid door intermediairs (Allocation of Employees through intermediaries Act)
WMM	Wet minimumloon en minimumvakantiebijslag (Minimum Wages Act)
WP C.S.D.LE	Working Paper, Centre for the Study of European Labour Law
Z	Ziffer (Subparagraph/s)
ZAS	Zeitschrift für Arbeits- und Sozialrecht (Journal on labour law)
ZESAR	Zeitschrift für europäisches Sozial- und Arbeitsrecht (Law journal)
ZIP	Zeitschrift für Wirtschaftsrecht (Law journal)

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