



Research article

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Concepts of Work: from Traditional Social-Labor Ideas to Modern Effects of Digital Transformation

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Atypical work,
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Abstract

Objective: technology and digitalization play a converse role in these two fields of study of criminal sciences. On the one hand, they are used by agencies of criminal justice system in order to control, manage and prevent crime and criminals. On the other hand, criminals enjoy technology in carrying out their plans to commit crime. Thus, from the criminal sciences' perspective, technology may be used or misused, and this is an interesting topic, and at the same time, an important research area for criminologists.

Methods: the present article seeks to provide a descriptive-analytical discussion about digitalization of criminology and criminal justice in the light of modern technologies, internet and cyberspace. It introduces new areas and sub-disciplines including administrative criminology based upon actuarial justice and risk management/assessment theory, cyber criminology and cyber victimology, as two sub-disciplines of the new century, and algorithmic or computational criminology, as one of the latest area in criminal sciences, which all are influenced by digitalization and technology.

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Results: authors concluded that due to the digitalization atypical work emerges but legislator defines the scope of work regulated by law and that makes atypical work relationship becomes a typical work relationship. At the same time some areas fall into the gray zone. To fix that legislator should provide an interpretation that will not become empty in a year or two due to technological changes.

Scientific novelty: the applicability of technology and digitalization in criminology and criminal justice has widely increased and developed, specifically since the beginning of the third millennium.

Practical significance: digitalization and Technology has become increasingly important to criminology and criminal justice at both the theory and practice within the sphere of social and criminal sciences. The nature and types of crime and criminals, and also the methods and mechanisms of control and preventing them in the light of requirements of criminal policy and criminal justice are highly dependent upon technology and digitalization.

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Introduction

Defining the concept of work is not easy, as its boundaries are not clear. In all cases, it is not possible to separate whether the given activity is actually carried out as work or not. However, before we go into the discussion of this issue, it is important to emphasize that we are dealing with the social science approach to work. For our part, we don't understand physics, and we wouldn't get into it as lawyers. Contrary to popular belief, lawyers do not understand everything, nor do they need to.

Previous research offers insight into some aspects of work forms (Venkatesh, 1992). Work is a future-oriented, purposeful activity. Its basic characteristics are efficiency and specialization, which influence human values. Social identity and income are another

important aspect of work. Individual work motivation is closely related to the demand of the activity and the possibility of self-regulation. Activities outside of work ensure the direct satisfaction of human needs and interests (Quey, 1968).

The economic approach to the concept of work is one of the most common approaches. According to this definition, it is «an activity for which an individual receives financial compensation in order to make a living» (Pahl, 1988). According to them, one of the most important characteristics of work is that it is a legal transaction with a return. This means that only those activities can be interpreted as work for which some (usually monetary) consideration is paid. If we were to conduct a representative survey among the population, we would still get similar answers. This interpretation is also followed by some of the legislation with an economic approach. Here, we would like to highlight the federal unemployment benefit legislation of the United States, the Federal Unemployment Tax Act 3304, including the explanation attached to point 7. The United States Department of Labour seeks to define work in the guidelines used to implement the law (Definition of «Work» for Purposes of Section 3304(a)(7) of the Federal Unemployment Tax Act.). The context of this is that the pursuit of gainful activity for which no benefit is paid is also not considered work. It defines the concept of work in light of this, too. The directive issued in 1994 interprets the concept of work as the provision of services for which remuneration is paid (Definition of «Work» for Purposes of Section 3304(a)(7) of the Federal Unemployment Tax Act). The concept is strongly based on the economic approach. But the directive issued as an explanation already highlights that this interpretation of the concept was rooted in the 1970s and the legislator was not even familiar with the forms that have been typical since the early to mid-1990s. He points out that the original interpretation could not deal with the issue of self-employed people and on-call status, we are the only ones to add this, including employees employed on zero-hours contracts. But can we legitimately ask the question, can only an activity performed in return for consideration be work? In their joint study, Szép and Sík cite several sources that discuss the measurement distortions, which, for example, do not consider household work as work (Szép & Sík, 2001). This domestic work is regulated by law from a tax law point of view, but not from a labour law. It is also important to talk about the fact that several concepts are connected here. The group of self-employed people should be highlighted (Szekeres, 2021), which is a special form of work between a business and an employment relationship. The situation of the self-employed are different because, although their work is dependent work, they are still active independently.

Examining the work of R. E. Pahl: it begins with an uncertain interpretation of the concept of work (Pahl, 1988). Maybe we want to express too many things with a single word, in addition to volunteer work, washing the dishes, and the brain surgeon's camel needs, we name countless types of activities with the same word (Laky, 1998). When defining the concept of work, questions are coming to the fore more recently such as whether we can really only consider as work what is paid in money. Where do we put the housework? The social usefulness of domestic work is becoming more and more important. The legal recognition of this is not

very high. In the domestic legislative environment, it can be found in tax legislation as a form outside of labour law regulations. Also, Act III of 1993 on social administration and benefits, the section of the act dealing with the Children's Home Care Allowance can be classified here¹. But this is not the jurisprudence that affects the entire labour market.

That is why, within the framework of this study, we examine what kind of working concept may be relevant in the context of digitization processes. Within the framework of the study, the Bullshit jobs created by David Graeber we cannot deal with the concept of job (Graeber, 2019), as we specify the possibility of legal regulation in the conclusions.

1. Expansion of the concept of work

When examining the concept of work, it is essential to examine employment relationships aimed at work. In classic employment relationships, the employer has extensive structuring rights. In essence, this formative law provides the essence of employment relationships, the legal relationship is filled with content by the employer's instructions. However, the changes caused by digitization also affected these paradigms. The classic qualification marks do not necessarily retain their relevance, therefore the right of instruction is transformed in the course of certain legal relationships: working based on classic employer instructions is not based on static foundations, thus the order of the qualification marks of the employment relationship also seems to fluctuate (Sherer, 2016).

However, it is clear that not only the work performed in the framework of the employment relationship, based on the traditional employer's instructions, can be included in the scope of the definition of work. In the case of individual forms of work, a central question arises as to whether they should be classified under or outside the scope of labour law. István Horváth and Zoltán Petrovics drew attention to the dichotomy that the key to systematization is simple classification, but at the same time it can be seen that the traditional structure of labour law cannot be applied to all forms of work (Horváth et al., 2021). In certain cases, work may also denote an activity that is not carried out within the framework of a classic employment relationship. The concept of work does not only apply to work performed in a subordinate position, it can be applied to all forms of work, transcending the examination of dependence and independence.

Vincenti noted the legal relations of work as the legal relations of private law, within the framework of which and according to their rules, human work (as a kind of economic value) is put into circulation (Vincenti, 1942). Based on this, the scope of self-employment explained in more detail in the next chapter, as well as the independent, dependent forms of work, can also be classified within the scope of legal relations of employment. However, the concept of work does not only cover employment relationships and self-employment (performed on the basis of business and commission contracts). Nowadays, several forms

¹ Act III of 1993 on Social Governance and Social Benefits. https://ec.europa.eu/migrant-integration/library-document/act-iii-1993-social-governance-and-social-benefits_en

of cooperative work are widespread, less popular, but the issue of stipend employment is significant, but at the same time it is necessary to be considered that the work may also cover a task that does not necessarily involve compensation as a consideration for the completed task. Adapting to the community economy and technological changes, several new forms of employment are appearing in addition to and instead of traditional forms of employment².

The concept of work is difficult to define, its boundaries are not clear (Brief, 1990). As we touched on above from an economic point of view, work covers any activity for which there is compensation, however, this type of approach significantly narrows the definition of work, considering that it is not considered forms of work that the individual performs without compensation or even on a voluntary basis – This kind of work is mainly receive attention, when their completion is not completed, since not only income, participation in the labour market, but also household or voluntary work play a significant role in the development of living conditions. The able-bodied population is often simultaneously burdened with childcare and elderly care obligations, which can reshape decision-making regarding employment (Mann & Chang, 2015). Mothers' return to work after birth is analyzed based on data from the Irish study, Growing Up in Ireland, which found that fewer EU-affiliated mothers return to paid work at the end of maternity leave and are more likely to be engaged in domestic work and childcare (Röder et al., 2018). Although invisible household work is not only done by women, using a multivariate analysis and two measures of current health status, found that there is a relatively small correlation between household work and health, while paid work shows a much stronger correlation with malaise for both men and women, and some indicators of certain aspects of work suggest that the effects are not gender specific (Hunt & Annandale, 2008).

In recent decades, especially in the last two decades, a transformation of the definition of work can be observed (Tyutyuryukov & Guseva, 2021; Bamel et al., 2022; Oberländer & Bipp, 2022; Richter, 2020). Work can appear as a source of livelihood, as the fulfillment of the realization of career goals, or in more fortunate cases, it is realized as an individual's passion. Starting from the individual's passion, we can also touch on the concept of emotional work: Emotional work can be defined as the emotional regulation that is necessary for employees to display organizationally desired emotions. It has received increased attention because it is relevant in the service industry, where social interaction with customers, clients or patients is a significant part of the job (Zapf & Holz, 2006).

Nowadays, filling it with individual content plays an increasingly important role during work (Rácz, 2021). In recent decades, discontinuity and individualization have become the main characteristics of working relationships, and this has been reinforced by the appearance of atypical forms of work, where the emphasis is on the self-realization and development of the workers (Török, 2014). In this aspect of work, it carries even more meaning, considering that digital development has by no means closed this process, further expansion of the concept of work and differentiation of labour relations can be predicted in the future.

² OECD Employment Outlook. (2019). <https://www.oecd.org/employment-outlook/2019/>

From the list above, it can be seen that the definition of work can encompass many forms of work, not just the definition of tasks performed in a classic employment relationship. The boundaries of the inherently broad conceptual definition of work are blurring, and the definition is expected to expand further in the future, covering forms of work that go beyond the currently regulated legal relationships for employment. However, it is certain that, when examining certain questions of interpretation of the work, the protection guarantees of those performing the work cannot be neglected.

It can be seen that the fate of labour relations and other legal relations aimed at employment is that they must adapt to the social changes taking place as a result of digital development.

2. Digital effects and labor law addiction

Further shaping the contents of the introduction, we would like to point out in this point that the concept of work has become questionable even in the case of those activities where the person performing the activity receives consideration and performs the activity for the sake of his livelihood, at least from a legal point of view. This scope includes the legal classification of the legal relationship of those performing the work, namely the classification of self-employed and dependent workers. The dual model of employment relations means the dichotomy of the employee and the self-employed (Jakab, 2018). The issue has previously provoked sharp debates in the field, but recently the debate has been renewed again, as new employment methods and types have appeared as a result of digital effects (Prugberger, 2018). A significant part of these are platform work forms, which are treated as a collective category within the framework of the study. The peculiarity of platform work lies primarily in the fact that it is mostly based on an extremely flexible, atypical legal relationship. The legal relationship primarily covers a mixed legal relationship in civil law, in which some elements of the employment contract, the mediation contract, the business contract, and the assignment contract are mixed. Another characteristic of the established legal relationship is that the contracting party essentially only provides the operator with a market to perform work for which he receives a certain remuneration. An example of platform work is the activity of bicycle couriers. In their case, registration takes place through an application, during which a contract with various parameters is concluded. Based on this, the courier performing the activity gets access to a constantly updated database, which continuously provides information on the individual courier service activities that can be performed. The courier performing the activity is usually not subject to an obligation to be available (Rácz, 2021), in most cases a minimum task to be performed or the number of hours is not determined, the courier decides when and how many tasks he performs. The party contracting with the courier primarily tries to ensure the continuous performance of tasks through remuneration. The courier carries out the activity with his own means as a private individual or as an individual entrepreneur, but in all cases the task is performed for someone else and in most cases individually. It can be seen that a hybrid

solution was created through the created mixed contract, which greatly affects not only the concept of work, but also the interpretation of dependent work.

As Tamás Prugberger emphasizes, the most essential content element of both service and employment contracts is that the servant must be available to the person requesting the service, just as the employee must be available to the employer, during the period established in the contract, and during this period, regularly he must perform service and work activities that he undertook in the service and employment contract (Prugberger, 2020). The obligation to be available does indeed create a position of dominance between the parties, however, in our opinion, dependence cannot be traced back to this element only. All of this is confirmed by certain theories serving the dogmatic foundation of labour law and their changes.

The basis of the employment relationship is independent, dependent work. At first, dependence was defined as concrete economic dependence, which was replaced by the theory of personal dependence. The latter was based on the fact that employees add their personality to the activity performed, during which a special dependent relationship is created between the parties.

Later on, these theories were replaced by the reasoning according to which the demarcation criterion of the employment relationship is to be found in the object of the service. In the case of the employment relationship, the service is not specified, and what's more, it is based on the employer's right to give instructions. Based on this, we can distinguish the employment relationship from other (civil) legal relationships primarily on the basis of the fact that the employer has a wide unilateral right to shape the performance of the employee and the provision of the service (Rácz, 2021). However, the basis of this latter idea is completely overturned by platform work forms, as the participant providing the platform gives up the right of unilateral contract formation to the person performing the work on the platform to a certain extent and in certain cases. The platform does not provide instructions, only an «opportunity» to perform the activity. The participant providing the platform does not give mandatory instructions for the performance of a task, and the subject of the service in the contract is predetermined and well defined in some respects, so based on the latter outlined theory, the party providing the platform is theoretically not in a position of dominance (Lee, 2022). All of this is emphasized by the participant providing the platform, as the role of matchmaker of the platforms is usually recorded, that is, that they merely match demand with supply, but do not want to have a say in the employment construction (Rácz, 2021).

In addition, addiction can be seen in many ways. From a certain point of view, we can also talk about economic dependence, since platform work is typically carried out by social groups that are to some extent on the periphery of the labour market. This type of work is mainly carried out by young people and students who do not yet have a degree, or, for example, mothers raising children as a supplement to their earnings. Platform work creates a work model that is both a curse and a blessing for vulnerable segments of the labour market. Based on research on women's insecurity, the paper anticipates that crowdwork may be particularly attractive to women who need to balance earning and caring responsibilities. Gerber investigates whether women experience more uncertainty

on crowdworking platforms than men and whether their risks differ. The large differences between women and men in Germany highlight the gendered nature of labor market duality and precarization, as well as the traditional division of housework (Gerber, 2022).

The dominance relationship can also be seen in the fact that the party providing the platform retains the right of control, though in a renewed form. The platform collects a lot of data that affects work, measures activity, speed, and customer satisfaction (Orlikowski & Scott, 2021; Terhoeven et al., 2022; Yao et al., 2022). It is true that even in the case of a business contract, the customer is entitled to a certain degree of instruction and control rights, but this is limited. According to our point of view, the emergence of a situation of domination and dependency can primarily (but not exclusively) exist between the participant providing the platform and the person performing the activity due to the extensive control authority.

Based on what has been outlined, it is unfortunately still an open question whether, from a legal point of view, it is necessary to create a concept of work that only covers contingent work. The creation of such a concept would greatly help the work of law enforcement, however, just as individual dependency theories have been affected by changes in social conditions, it is believed that the creation of an eternally valid concept is an impossible task for the legislator. In addition, it is important to emphasize that it is necessary to reflect on the changing conditions, as well as on the digital changes of today, thereby solving the emerging conceptual and demarcation issues.

Conclusions

It can also be seen from the above that the concept of work is both a static and a dynamic definition. This is due to the fact that its meaning and the range of activities covered by it are constantly expanding and changing. It can be seen that the importance of work is decreasing and the work itself is also changing. On the one hand, the importance of production factors other than work – capital and knowledge – has increased compared to the 19th century. On the other hand, the formative and socializing power of common work experiences has weakened: the era of the classic workers' movement is already behind us, and with it the period when the experiences, interests, conflicts and alliances of the world of work strongly influenced politics. One of the reasons for this development is the fundamental change in the form of work, during which the emphasis shifted from manual work to non-physical work, from industrial to service society, under the influence of the communication revolution and globalization (Terhoeven et al., 2022). Based on Murphy and Oesch's thesis, the development of technology is expected to hollow out the employment structure, resulting in a uniform pattern of polarization in affluent countries. They support their arguments by saying that occupational changes are shaped by labour supply – especially education and immigration – and institutions, so polarization is therefore only one scenario of occupational change. Their study of Ireland and Switzerland examines long-term changes in the employment structure (nearly 40 years of events) based on census data and a comprehensive definition of the labour force (Murphy & Oesch, 2018).

Under the banner of digital work, social scientists in many disciplines have provided insights into the new groups of workers emerging from digital capitalism. Terms such as gig workers, mass workers, or productive consumers are categorized. Digitization therefore has an impact on existing groups of workers – for example, by confronting many of them with the possibility of automation, but it also leads to the creation of new «occupational classes» (Dorschel, 2022).

In the final analysis, any activity whose purpose is the realization or maintenance of some personal or interpersonal, civilizational, cultural, legal, political or even economic value can be considered as work. The obvious purpose of economic work is to create goods and services that carry economic value. These goods and services are meant to ensure comfort, safety, protection, predictability, ultimately a pleasant life, or at least survival. However, during economic work, not only economic, but also beyond economic, primarily personal and interpersonal values can be realized if the work provides an opportunity to exercise human creativity. Multidimensional scales of statements that determine how individuals view an activity in which they are employed were administered to representative samples of the workforce employed in Belgium, Germany, Japan, and the United States during the period 1982–1983 and 1989–1992. The results provide empirical support that one of the hypothesized dimensions of people's work definition ranges from burden/control to social contribution. Individuals who define work in terms of burden/control and/or coercion emphasize the costs to the individual. Individuals who define work largely in terms of responsibility and exchange relations emphasize the mutual exchange relations between the individual and the organization/society. Individuals who define working largely in terms of social security contributions emphasize the social benefits of working (Ruiz-Quintanilla & England, 1996). And it can be seen that this possibility is inherent to some degree in all human activities, although undoubtedly less so in the work done in the economy than, for example, in science or culture (Rimler, 1999).

The question is how far can this concept be extended? Can we include new technological solutions and can we provide at least similar labour law protection as work in the classical sense. How far the concept can be expanded is doubtful. It may be necessary to let go of some previous layers of meaning. The other is how well the legislator is aware of the concept of work. Can the legislator give an interpretation that does not become empty after a year or two due to technological changes? According to the current state, the legislature is far behind. If we only look at the Hungarian regulations, how the regulation of home office and remote work has been mixed up, then we have to say that the legislator does not understand the concept of modern work, or maybe he does not even want to understand it. It does not recognize the results of digitization and does not provide protection to those employed in this area. The concept is still used in the XX. he approaches it from a 20th century attitude. If legislator don't understand relationships such as home office or remote work, it will be even more challenging to work on a platform or to use the collaborative robots that form the basis of Industry 5.0 (Benotmane et al., 2020). But not only the application of the concept of work will be a problem, but also the solution of labour market problems and social legal challenges. Nonetheless our approach is fundamentally hopeful. We hope that this situation will change and that politics will also recognize the need for change.

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Концепция труда: от традиционных социально-трудовых представлений к современным эффектам цифровой трансформации

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Ключевые слова

Занятость,
концепция труда,
нетипичный труд,
социальная политика,
труд,
трудовое право,
трудовые правоотношения,
цифровизация,
цифровые платформы,
цифровые технологии

Аннотация

Цель: переосмысление сложившейся концепции труда, эволюционирующей под влиянием классических научных парадигм и радикальных цифровых и технологических трансформаций социальных отношений в условиях сложившегося концептуального многообразия и неопределенности.

Методы: ретроспективный и сравнительный правовой анализ, лежащий в основе проведенного исследования, позволил рассмотреть сложившиеся подходы к пониманию труда с учетом реалий современной ситуации в разных странах и наблюдаемых в них цифровых эффектов, приводящих к цифровизации и технологизации труда, изменениям отношений в сфере занятости, а соответственно, к изменениям трудового права и трудовым правоотношениям.

Результаты: авторы показали проблемы регулирования трудовых отношений в новых условиях и предложили их решения; выявили причинно-следственную связь между цифровизацией (в частности, развитием цифровой экономики и технологическими новациями) и появлением

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нетипичных форм труда и занятости, которые в результате деятельности законодателя, регулирующего возникающие отношения в новых условиях, переводящую их из разряда нетипичных в типичные трудовые отношения, а для тех ситуаций, которые оказываются в «серой зоне» правового регулирования, – дающую такое толкование юридическим нормам, которое не потеряет свое значение в период обозримых технологических изменений; определили возрастающую значимость труда в процессе цифровизации и существенное влияние трудового права на регулирование в сфере нетипичного труда, несмотря на имеющуюся критику.

Научная новизна: рассмотрены актуальные дискуссионные вопросы, получившие новый импульс в связи с цифровым развитием общественных отношений и проявившихся цифровых эффектов, в результате которых появились новые типы и методы найма, что побуждает к пересмотру дуальной модели отношений найма, изменениям границ ранее выраженной дихотомии между работодателем и предпринимателем.

Практическая значимость: трансформация концепции труда обуславливает пересмотр традиционных правовых и основных научных подходов, ранее сложившихся в исследовании труда и занятости, на основе учета современной трансформации общественных отношений и труда, их цифровизации и технологизации.

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