

International Conference „Novelties in Labour Law”  
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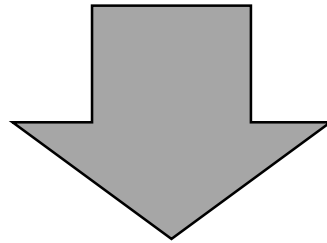
# Rethinking Labour Law in the Context of



Doc. dr. sc. Ivana Vukorepa  
Faculty of Law, University of Zagreb

# Outline:

- **What** did tech. revolutions bring to workers?
- **What** urged changes in work arrangements?
- **Why** these changes bother us?
- **How** should/ could we proceed in the future?



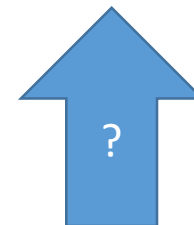
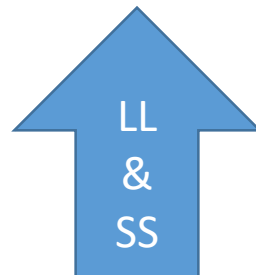
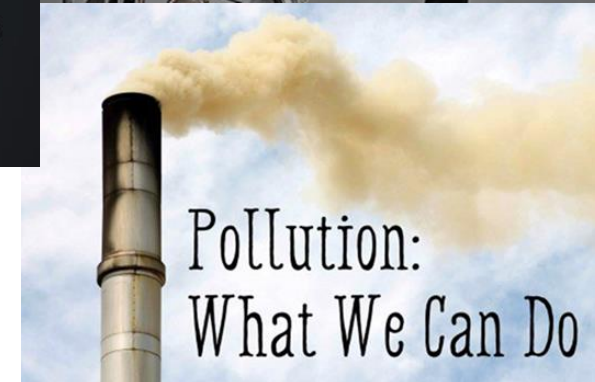
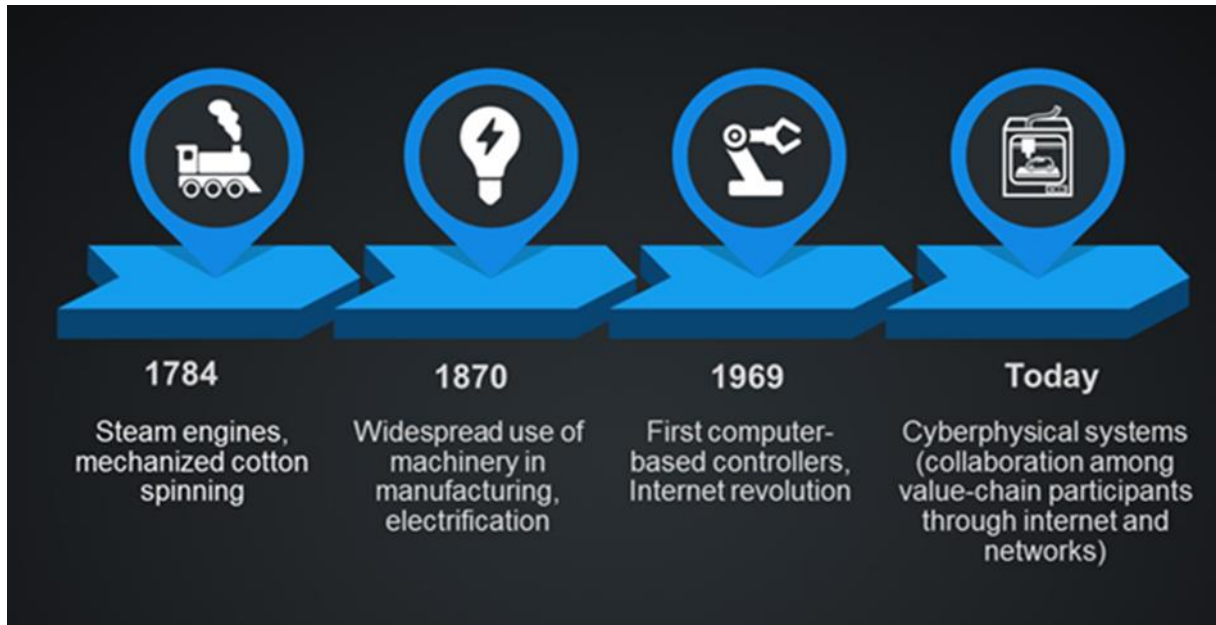
„secure and adaptable employment” –

*Principle 5 EPSR*

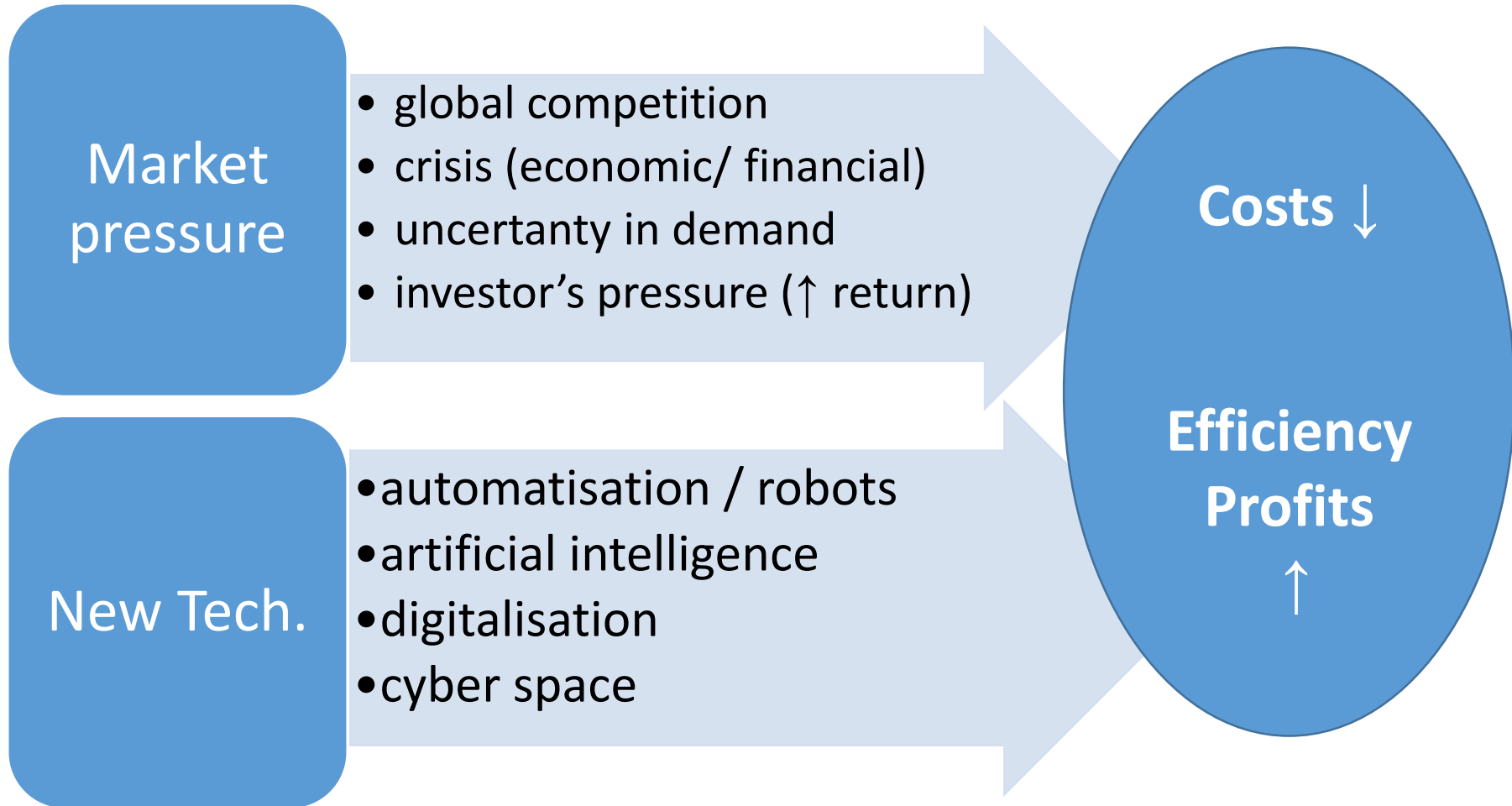
„social protection regardless of employment type” –

*Principle 12 EPSR*

# 4th v. 2nd revolution? / Threat or new opportunity?



# What urged changes in work arrangements ?



# What type of changes did it bring?

## Gig/on-demand/ sharing/ collaborative economies

- **BUSINESS STRUCTURE CHANGES**

- organizational fragmentation
  - franchising, outsourcing, transfer of undertakings etc.
  - „external dumping”
- implementation of new tech. (platforms, robots)
- going flexible
  - e.g. WT or work place +
  - „internal” dumping (changing typical with atypical workers)
    - e.g. in Ireland zero-hour contracts due to EU economic governance measures (source: O’ Sullivan et. al, 2017)

- **LABOUR MARKET FRAGMENTATION**

- standard v. non-standard
- highly skilled /special talents v. very low skilled ( 3D jobs)
- (reduced need for middle skilled)
- high wage earners v. low wage earners

# Why these changes bother us? ...features ....

## „STANDARD”

- Stable
  - Open-ended contract
  - Full-time
- Controllable
  - At employer's premises
  - Direct arrangement
  - Bilateral relationship
- Protected by:
  - LL and collective agreements
  - SS legislation

## „NON-STANDARD” / „ATYPICAL”

- Instable:
  - Shorter/ flexible working hours
  - Fixed duration
  - On-demand
  - Lower remuneration and/ or
  - Income insecurity
- Less subordination (grey zone between employment and self-employment)
- Diversity, hybridization and aggregation of employment
- Career fragmentation
- Non-unionisation
- SS access –limited or no

# Forms of .....

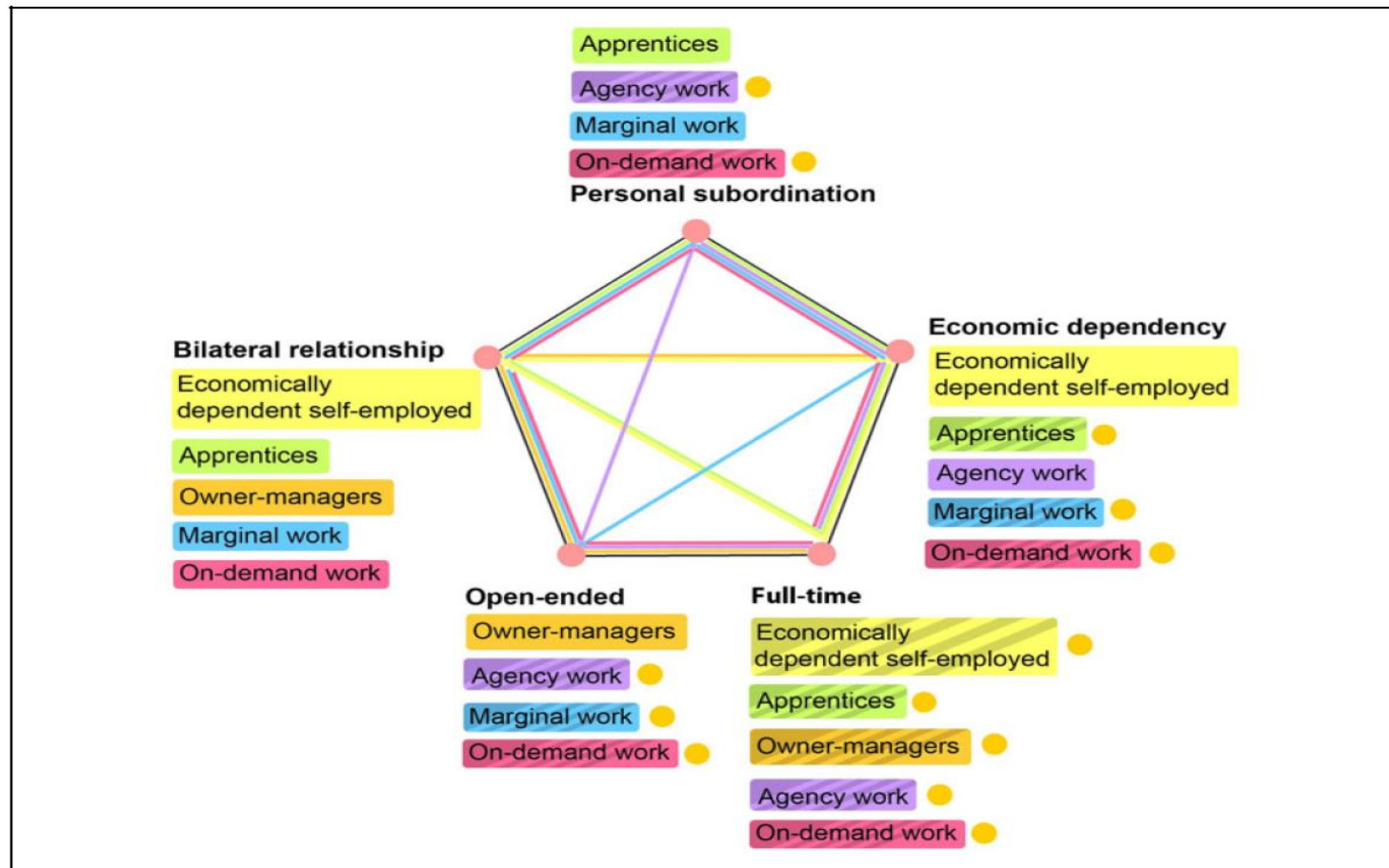
## „STANDARD”

- Open-ended
- Full-time
- (with fixed WT)

## „NON-STANDARD” / „ATYPICAL”

- „Standard” non-standard’s:
  - Part-time
  - Fixed -term
  - Temporary agency work
  - Domestic work
  - Apprentices /student work
- *New* non-standard (flexible)
  - Marginal work (mini jobs)
  - On-demand work
  - Casual work
  - Voucher work
  - Crowd work/platform work
  - Economically dependent self-employed (grey zone)
- Portfolio workers
- Owner managers
- Interim management

# Elements of „standard” present in „non-standard” ....



Source: Schoukens and Barrio. The changing concept of work: When does Typical work become atypical, ELLJ, 8(2017) 306-332, p. 314



# Legal framework concerns for atypical workers

Market access requirements

Liability regime

Protection of users

+

## **Employment law:**

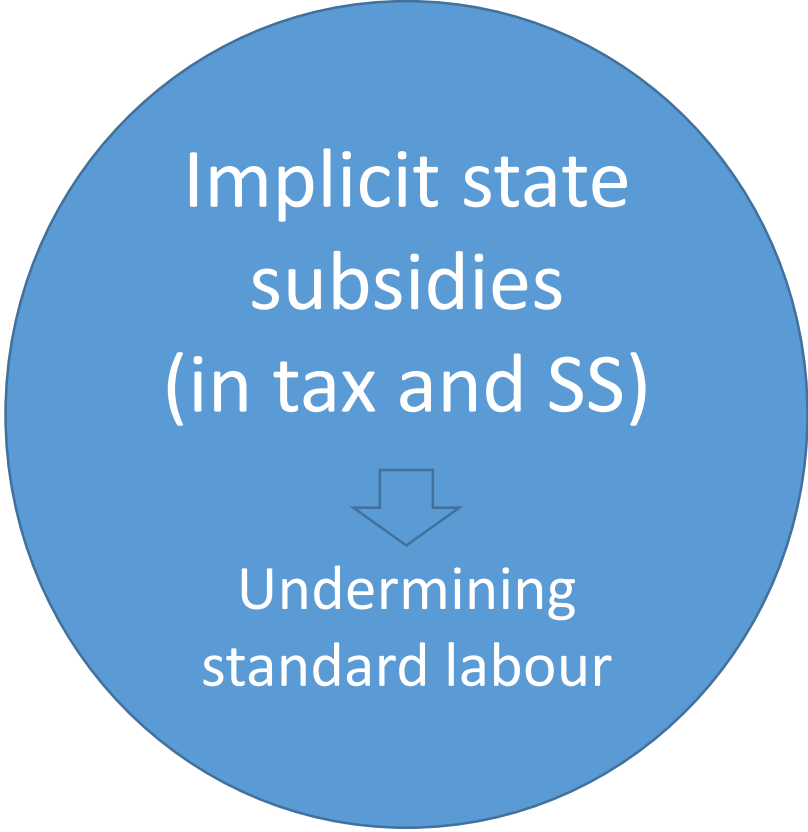
- control (e.g. WT)
- who is employer?
- employment or self-employment?
- when is atypical innovative and should be fostered and when is it abusive?

## **Social security:**

- no coverage or limited
- contribution base
- contribution rate

## **Taxation rules**

- same or lower



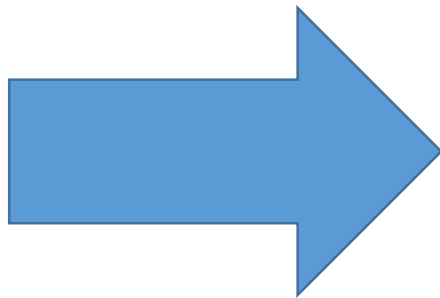
Implicit state  
subsidies  
(in tax and SS)



Undermining  
standard labour

# Croatian example....

- Formally atypical and self-employed are mostly covered, but huge differences in:
  - type of contributions paid
  - contribution base and
  - contribution rate



- cheaper labour
- incentive to employ atypical
- lower level of future benefits (e.g. pensions)
- need for state transfers

# Croatian example...(ESPN report)

Social insurance type	For employees	For self-employed	Self-employed in agriculture and forestry	Occupational training without employment contract	Student work	Other income recipients (contract for service, author's contract)
<b>Pension insurance (from gross earnings or contribution base)</b>						
- 1 <sup>st</sup> Pillar	15%	15%	5%	15%	-	7.5%
- 2 <sup>nd</sup> Pillar	5%	5%	5%	5%	-	2.5%
- For WAHJ	from 4.86% to 17.58%	-	-	-	5% (covering physical injury, disability and death)-	-
<b>Health insurance (on top of gross earnings or contribution base)</b>						
- health insurance	15%	15%	7.5%	15%	-	7.5%
- health and safety contribution	0.5%	0.5%	0,5%	0.5%	0.5%	-
Unemploy. insurance	1.7%	1.7%	1.7%	-	-	-

# Main dilemmas/ challenges (1)

- **Can / should we stop the wheel of technological advancement?**
  - No
- **Can we prevent shifts from standard to alternative WA?**
  - I doubt it.
- **Can we make them less attractive?**
  - Yes
- **How can we do that?**
  - at least by partially preventing rising inequalities?
  - same labour cost in taxation and SS
  - allowing access to social protection for all economically active persons
    - formally and effectively
    - COM(2018) 123 final

Shift from „work type related” to „income related” tax and SS  
Future entitlements & sound budgetary and SS financing

# Main dilemmas/ challenges (2)

- **Can we treat in employment law as standard something that is obviously different?**
  - Depends, partially
  - Example in WT travelling from worker's home to place of work where no habitual place of work
  - C-266/14 Federación de Servicios Privados
- **Will we need more labour market correction measures:**
  - Yes
  - Active (re-activation) labour market measures
    - workability
    - employability

....and one more thing ...



**The 2nd IR „created” LL!**

**Will 4th IR decompose it?**

**Or is there still a chance to make labour law great again?**

**....you will hear more after the lunch break...**

**Thank you for your attention!**