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Scope of Labour Law, Negative Freedom of Association and Minimum Wage Setting - Comparing Japan and EU

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Abstract

This essay compares the labour law regulations in Japan and EU/Sweden. The focus of the paper is the definition of workers, negative freedom of association, and minimum wage settings. This paper firstly illustrates who is classified as a 'worker' and discusses the issues of unclear categorisation of platform workers and the potential impact of gigification in the labour markets. The EU proposal regarding platform workers will also be touched upon. The proposed Directive challenges employment status, algorithm management and rebuttable legal presumption, which are not recognized in the new Japanese law for platform workers that was just enacted in May 2023. Along with the comparison of the union membership coverage, structure, and general perceptions of unionisation in the two, this paper explores the interpretations of negative freedom of the right not to join a union. Although enjoying the negative right is still possible in Japan and the EU, the scope of the application is quite limited. In relation to minimum wage setting, the two try to fight the issue of 'working poor' and 'work-in poverty' through the Minimum Wage Act (Japan) and the proposed Directive on minimum wages (the EU). While Japan sets statutory minimum wages determined by the 'Council' method, Sweden does not set ones in legislation and minimum wages are decided by collective agreements. The concluding analysis will evaluate and explore the possibilities of the legislation in Japan and the Directives in the EU.

Key words: Definition of worker, gig economy, gig workers, platform work, trade union, freedom of association, minimum wage

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Abbreviations

CJEU	Court of Justice of the European Union
ECtHR	European Court of Human Rights
EPA	Economic Partnership Agreement
ETUC	European Trade Union Confederation
EU	European Union
ILO	International Labour Organization
LAS	The Employment Protection Act
LCL	Labour Contract Law
LSL	Labour Standards Law
MBL	The Co-Determination Act
MHLW	Ministry of Health, Labour and Welfare
TUL	Trade Union Law
TEU	Treaty on European Union
UDHR	The Universal Declaration of Human Rights
UK	United Kingdom

Chapter 1. Introduction

1.1 Background

Labour law aims to provide legitimacy and reinforce the 'web of rule' in every workplace.[1] Doing so creates a system of countervailing power that facilitates the functioning of the labour market and enhances its outcomes.[2] Additionally, it aims to integrate employees into enterprise level structures, intending to manage their grievances and implement workplace practices that enhance productivity and profitability.[3][4][5] In the early phases of the industrial revolution, labour law was to provide protection to workers who were at the most significant risk,[6] to make sure that they worked in safe and wholesome conditions,[7] and eventually to require that they get paid enough, which is "the normal needs of the average employee regarded as a human being living in a civilised community."[8]

Japan and Sweden both protect their workers' rights by labour law. While the Japanese Constitution stipulates fundamental labour standards,[9] three primary laws protect workers, that are the Labour Standards Law (*Rōdō Kijyunhou*, thereinafter 'LSL'), the Labour Union Law (*Rōdō Kumiaihou*, thereinafter 'TUL'), and Labour Relations Adjustment Law (*Rōdō Kankei Chouseihou*).[10] The LSL controls: 1) working conditions and 2) workplace safety and

[1] Dunlop, J. (1958). "Industrial Relations System." *Southern Illinois University Press*. pp. 7-18, as cited in Arthurs, H. (2011). "Labour Law After Labour." *Comparative Research in Law & Political Economy. Research Paper No. 15/2011*. p. 14.
[2] Galbraith, J. (1952). "American Capitalism: The Concept of Countervailing Power." Houghton Mifflin, pp. 137-138, as cited in Arthurs (n 1) p. 14.
[3] Mills, C. (1948). "The New Men of Power: America's Labor Leaders." Harcourt Brace. p. 9, as cited in from Arthurs (n 1) p. 14.
[4] Freeman, R. and Medoff, J. (1979). "The Two Faces of Unionism." The Public Interest. p. 57, 69, 79-80, as cited in Arthurs (n 1) p. 14.
[5] Arthurs (n 1) p. 14.
[6] Thompson, E.P. (1977). "The Making of the English Working Class." Pelican Books. ch 10. as cited in Arthurs (n 1) p. 14.
[7] Arthurs, H. (1985). "Without the Law: Administrative Justice and Legal Pluralism in Nineteenth-Century England." University of Toronto Press. ch 4. as cited in Arthurs (n 1) p. 14.
[8] Ex Parte H v McKay (1907). 2 CAR 1 per Higgins CJ (Commonwealth Court of Conciliation and Arbitration). as cited in Arthurs (n 1) p. 14.
[9] The International Organization (thereinafter ILO). (n.d.) "National Labour Law Profile: Japan." Retrieved from https://www.ilo.org/ifpdial/information-resources/national-labour-law-profiles/WCMS_158904/lang--en/index.htm (accessed on May 18, 2023)
[10] The ILO (n 9).

hygiene, while the TUL protects workers' right to organise and bargain collectively.[11] In Sweden, the labour market is primarily regulated through collective agreements, which are legally binding for employees who belong to the employee organization and for the union members that negotiate and conclude the agreement (Section 26 of the Co-Determination Act "*Medbestämmandelagen"* 1976:580, hereinafter 'MBL').[12] The MBL controls employee consultation and participation,[13] which is the primary law for the Swedish system of collective regulations.[14] The Employment Protection Act (*Lag om Anställningsskydd*, hereinafter 'LAS', 1982:80) lays down the framework for the rule the protection of workers regarding unreasonable dismissals.[15] The Work Environment Act is also an important legal instrument to regulate the work environment.[16]

The Japan-Sweden relationship started more than 150 years ago, and around 1500 Swedish companies currently trade with Japan.[1718] Sweden has maintained a trade surplus over Japan since 1993, except for 2008. In 2015, the primary products exported from Japan to Sweden were transportation equipment, electric equipment, and machinery, whereas the main goods imported from Sweden were medicines, machinery, timber, and cork.[19] As for the EU-Japan relationship, the Economic Partnership Agreement (EPA) came into force on the 1st of February 2019, which "is a result of Japan's new role to forge trade alliances."[20] It is widely recognized as the European Union's most comprehensive free trade agreement, offering enhanced entry opportunities to the Japanese market.[21]

[11] The ILO (n 9).
[12] Westregård, A. (2019). "Key concepts and changing labour relations in Sweden, Part 1 Country report." Nordic future of work project 2017-2020: Working paper 8. Pillar VI. p. 6
[13] The ILO (n.d.) "Sweden: Industrial relations profile." Retrieved from https://www.ilo.org/dyn/travail/docs/2596/ (accessed on May 20) p.3.
[14] The ILO (n 13) p. 3
[15] Ibid.
[16] Ibid.
[17] Business Sweden. (n.d.) "Japan." Retrieved from https://www.business-sweden.com/markets/asia-pacific/japan/ (accessed on May 5, 2023)
[18] Business Sweden (n 17).
[19] Ministry of Foreign Affairs of Japan. (2016). "Japan-Sweden Relations." Retrieved from https://www.mofa.go.jp/region/europe/sweden/data.html (accessed on May 20, 2023)
[20] Business Sweden (n 17).
[21] Ibid.

1.2 Purpose and research questions

This paper aims to identify and analyse the similarities and differences regarding labour market regulations in Japan and EU/Sweden. I have chosen four topics which are very illustrative for the labour law systems of the two. In order to analyse the topic, I set the following research questions:

- What are the similarities and differences in organizational structure and collective coverage?
- What is the scope of the definition of worker, and who is covered by law?
- Is not joining a trade union just cause for dismissal?
- How is minimum wage regulated?

Although I set these legal questions, I would like to analyse beyond interpreting the law in EU/Sweden and Japan. The perception of unionisation, the definition of workers, the right to associate, and minimum wage vary country to country, and each jurisdiction provides different answers.

1.3 Methodology and materials

This paper applies the descriptive approach and the doctrinal legal approach by using the monograph about Sweden in IEL Labour Law that demonstrates the Swedish legal system,[22] the Japanese labour law, and the EU Directives that highlights the positioning of the EU towards the topics. The comparative method will also be used to examine the similarities and differences of the four topics between Japan and the EU/Sweden.

I am interested in this comparison because Japan and Sweden have distinct differences in structure and value in unionisation, as well as in minimum wage regulation. I believe there will be fruitful insights by comparing them because Japanese law borrowed heavily from France, German, and American law, and comparative studies profoundly impacted Japanese scholarship.[23] As for materials, the primary sources are international treaties and conventions,

[22] Blanpain R. (1977). "The International Encyclopaedia for Labour Law and Industrial Relations" in Hendrickx, F (ed.). Deventer, the Netherlands: Kluwer, 1977.
[23] Araki, T. (n.d.). "Labor Law Scholarship in Japan." *Comparative Labor Law & Policy Journal Volume 23, Number 3, Spring 2002*. p. 735

EU legislation, as well as Japanese and Swedish national legislation with important case law. Academic books, journals, legal internet sources and reports support the primary sources.

1.4 Structure and limitations

This paper is structured as follows: After the introduction section (Chapter 1), I will first give an overview of the trade union density and structure in Japan and Sweden (Chapter 2), following the description of the definition of workers (Chapter 3). I will then move on to the discussion on negative freedom of association and employment (Chapter 4). Next, this paper demonstrates how minimum wage is regulated (Chapter 5). Lastly, I will investigate the key findings from comparing the four points (Chapter 6).

In relation to limitations, as this paper deals with labour law, other areas of law, even if that are directly or indirectly connected to labour law, such as social security law or competition law, will be excluded from the scope of the paper. Likewise, this paper does not intend to cover other areas of labour law other than the definition of workers, freedom of association and minimum wage regulation.

Chapter 2. Trade union density and structure

In this chapter, a comprehensive overview will be provided regarding the percentage of union membership, the trade union structures, and the perceptions towards trade unions in Japan and Sweden.

2.1 Japan – Enterprise level unions

Most Japanese unions have primarily been enterprise-based since the late 19th century.[24] Even though some trade unions kept their occupation-based forms, it was natural for Japanese workers to organise at each firm regardless of their occupations.[25] Unlike the European way, which is industry based unionism, where they tend to establish the minimum terms and conditions for a specific industry,[26] those enterprise-based collective agreements are inclined to have the actual terms and conditions of the employment in the enterprise or its divisions.[27]

Enterprise-based unionism makes it easy for management at firms to solve specific internal issues by consulting unions willing to work with their management team to resolve the problems.[28] However, the Japanese public care little about trade unions, [29] and "they seem to have a serious image problem."[30] Why do they have a negative image of unions?

The first reason would be derived from traditional lifetime employment. As Reinhold stated, "the decline of Japanese unionism is perhaps best explained by certain fundamental structures of Japanese society."[31] Until recently, part-time employees were usually not eligible to join a

[24] Fahlbeck, R. (1998). "Unionism in Japan – Declining or not?" Labour Law and Industrial Relations at the Turns of the Century, Liber Amicorum in Honour of Roger Blanpain. p. 725.; Ouchi, S. "Collective Labour Agreements and Individual Contracts of Employment in Japanese Labour Law" Kluwer Law International. (2003). p. 159.
[25] Fujimura, H. (1997). "New unionism: beyond enterprise unionism?" in M. Sako and H. Sato (eds.). Japanese Labour and Management in Transition: Diversity, Flexibility and Participation. p. 296.
[26] Ouchi (n 24) p. 159.
[27] Ibid.
[28] Fujimura (n 25).
[29] Fahlbeck (n 24) p. 710
[30] Ibid., p. 710
[31] Ibid., p. 715

trade union,[32] whereas most full-time, regular employees were eligible.[33] Social benefits and employment are also often limited for those part-time workers.[34]

Most of the former consisted of men, while the latter were women, which likely leading to gender discrimination in unionisation. There is also a significant wage gap that women only earn approximately 50-60% of men's salaries.[35] Japanese unions are not on the way to eliminating the disparity, and "they do not even show much interest in unionising women."[36] It statistically shows that Japanese women are significantly under-represented in trade unions. [37] Consequently, the fundamental assumption is that women are less interested in trade unions than to men.[38]

As Tsuru and Rebitzer indicate, employers' opposition to unionisation is not a severe problem in Japan. However, many small and medium-sized firms have employee representative bodies with similar functions to those unions, which is why employers are reluctant to let those transform into registered trade unions. [39] These representative bodies are called 'employee association,' basically the same as trade unions regarding the protection secured by Art. 28 of the Constitution of Japan (the right to act collectively, thereinafter 'the Constitution'), since it protects 'workers' rather than 'unions'."[40]

It appears that the issues Japanese unions face are mainly internal.[41] Theoretically, trade unions can be made irrespective of management.[42] However, in practice, managements impact union formation.[43] For instance, when workers want to establish a union, their union organisers need to convince their managers by explaining the importance of having unions and why having a union at the firm is beneficial, such as mentioning the potential to find new

[32] Shirai, T. "A theory of enterprise unionism" (1983). in Shirai, T. (ed.) *Contemporary Industrial Relations in Japan, Wisconsin: University of Wisconsin Press.*
[33] Koike, K. "Understanding Industrial Relations in Modern Japan" (1988). Palgrave MacMillan London.
[34] Ilsøe, A. and Larsen, T. (2021). "Non-standard work in the Nordics: Troubled waters under the still surface." TemaNord 2021:503.
[35] Fahlbeck (n 24). p. 718
[36] Ibid.
[37] Ibid.
[38] Ibid.
[39] Tsuru, T. and Rebitzer, J.B. (1995). "The limits of enterprise unionism: prospects for continuing union decline in Japan" *British Journal of Industrial Relations, 33(3),* pp. 459-92.
[40] Fahlbeck (n 24). p. 729
[41] Ibid., p. 710
[42] Fujimura (n 25). p. 304
[43] Ibid.

business partners.[44] Workers must ensure that their managers are convinced, as many do not wish to do so if their employers are against it.[45] Moreover, since harmonisation is such a crucial character in Japan,[46] "Japanese society tends to isolate opposition and neutralise fighters,"[47] which means that it is common for people to avoid standing out if most workers oppose organising a union.

In Japan, union density hit the highest in 1975 despite being around 35% since the labour force at that time had increased.[48] Since then, total union membership has been significantly stable, with its peak levels in the early 1990s.[49] In 1996, the rate reached approximately 23% of the workforce.[50] It decreased slowly to around 19% in 2005,[51] sinking in 2013 to 17.7%.[52] In 2019, trade union density was 16.8%.[53] Although the vast majority of workers are in small and medium-sized companies, the average of union density at firms that have their employees less than 100 is only 1.6%.[54] Meanwhile, big companies and public sectors tend to have trade unions, and the density is often very high, 70%.[55] While the average figure shows that the density in the public sector is more than 60%, the private sector has a lower rate.[56]

Fahlbeck states that "[…] no one suggests that union decline in Japan is due to any deficiency concerning the actual opportunity to exercise this freedom (of association)." [57] This notion came from Western societies; all those freedoms are "all the brainchildren of the Western world and have deep roots in Western thinking. Nevertheless, they are completely alien to […] Asian traditions."[58] From a Scandinavian viewpoint, Japanese unions seem well

[44] Fujimura (n 25). p. 304
[45] Ibid.
[46] Hanami, T. Komiya, F. and Yamakawa, R. (2015). "Japan." In *International Encyclopaedia of Laws: Labour Law and Industrial Relations*, edited by Roger Blanpain. Alphen aan den Rijn, NL: Kluwer Law International. p. 29
[47] Fahlbeck (n 24). p. 721.
[48] Ibid. p. 708
[49] Ibid.
[50] Ibid.
[51] Nakamura, K. "Decline or Revival?: Japanese Labor Unions." (n.d.). Retrieved from https://www.jil.go.jp/english/JLR/documents/2007/JLR13_nakamura.pdf (accessed on May 5, 2023).
[52] Hanami, T. et al. (n 46) p. 169.
[53] OECD and AIAS. (2021). "Institutional Characteristics of Trade Unions, Wage Setting, State Interventions and Social Pacts" OECD Publishing, Paris. Retrieved from https://www.oecd.org/employment/collective-bargaining-database-japan.pdf p. 2.
[54] Fahlbeck (n 24). p. 708.
[55] Ibid.
[56] Ibid.
[57] Ibid., p. 724.
[58] Ibid.

protected.[59] However, "they are denied the most potent of all union weapons" and "Swedish unions are allowed this weapon and make ample use of it."[60] How does then unions in Sweden use their 'weapon' for their rights?

2.2 Sweden – Industrial level unions

In Nordic countries, their unionism is centralized.[61] The Swedish legal framework of labour law essentially deals with two areas individual labour law, which deals with the relationship between employers and employees, and collective labour law, which covers the relationship between trade unions and individual workers.[62] Since labour market organizations have become very powerful in Sweden, collective bargaining decides the regulation of working conditions.[63]

Swedish unions are established on the industrial level, and sectoral bargaining and collective agreements are crucial.[64] Unlike in Japan, employers have never tried to be against their unions.[65] In fact, "most employers value the trade union as a strong and component counterpart in the workplace."[66] The level of unionisation among women surpasses that of men, and it is gender-blind nowadays.[67]

Approximately 110 trade unions and employer organizations in the labour market.[68] There are mainly three organizations: the Swedish Trade Union Confederation (LO), the Swedish Confederation for Professional Employees (TCO), and the Swedish Confederation of Professional Associations (Saco).[69] TCO and Saco made two negotiating coalitions, for the

[59] Ibid., p. 710.
[60] Fahlbeck (n 24) p. 710.
[61] Ibid., p. 723.
[62] Adlercreutz, A.† and Nyström, B. (2021). "Sweden." In *International Encyclopaedia of Laws: Labour Law and Industrial Relations*, edited by Roger Blanpain. Alphen aan den Rijn, NL: Kluwer Law International. p. 32.
[63] Ibid., p. 32.
[64] Ibid., p. 199.
[65] Nyström, B. (1998). "Community Labour Law - Challenge to the 'Swedish Model'?" in Engels et al (ed.) Labour Law and Industrial Relations at the Turn of the Century: Hague 1998.
[66] Ibid.
[67] Fahlbeck (n 24). p. 718.
[68] L&E GLOBAL. (2022). "10. Trade Unions and Employers Associations" Retrieved from https://leglobal.law/countries/sweden/employment-law/employment-law-overview-sweden/10-trade-unions-and-employers-associations/ (accessed on May 15, 2023)
[69] Nordic Co-operation. (n.d.). "Trade unions in Sweden." Retrieved from https://www.norden.org/en/info-norden/trade-unions-sweden (accessed on April 20, 2023).

public sector, OFR, and PTK for the private sector.[70] Until recently, more than 80% of manual workers were affiliated with LO. However, 40% of blue-collar workers employed in the private sector are not members of unions. Unionisation rates are comparatively lower among immigrant groups than those born in Sweden.[71]

A new concern in the Swedish labour market is the increase of posted workers from other countries.[72] It is common for non-Swedish companies to do their business temporarily in Sweden and are often reluctant to sign collective agreements with Swedish wages and other benefits. Without a collective agreement wage-setting clause, no fair wage regulations are available since Sweden does not have a statutory minimum wage.[73]

Historically in Sweden, the unionisation rate has been high, especially among white-collar workers and the public sector.[74] Even though the degree of unionisation is still high, especially in the public sector, there was a "trend of declining membership […] since the beginning of the 1990s, and it has become more pronounced in recent years."[75] The primary reason for the decrease stems from the government's modification to the fees for the unemployment funds in 2007.[76] The fact that young workers tend to neglect to join a union is another reason for the decline.[77]

Extensive unionisation "is the foundation of the co-determination between employees,"[78] and collective agreements promote stability and long-lasting relations in the labour market.[79] The unionisation rate hit its peak in 1993 at 85%.[80] In 2000, the rate was 81%.[81] It slowly declined

[70] The Swedish Trade Union Confederation. (n.d.) "The Swedish Model - the Importance of Collective Agreements in Sweden". p. 3.
[71] Adlercreutz, A. † and Nyström, B. (2021). "LABOUR LAW IN SWEDEN" Kluwer Law International. p. 181.
[72] The Swedish Trade Union Confederation. (n 70) p. 6.
[73] Ibid.
[74] The ILO (n 13) p. 3.; Adlercreutz, A. and Nyström (n 71). p. 181
[75] The ILO (n 13) p. 3.
[76] Ibid.
[77] Ibid.
[78] L&E GLOBAL. (n 69).
[79] The Swedish Trade Union Confederation (n 70) p.3.
[80] The European Trade Union Institute (ETUI). (n.d). "Sweden" Retrieved from https://www.worker-participation.eu/national-industrial-relations/countries/sweden (accessed on May 6, 2023).
[81] Kjellberg, A. and Nergaard, K. (2022). "Union Density in Norway and Sweden: Stability versus Decline." Retrieved from https://lucris.lub.lu.se/ws/portalfiles/portal/114477394/Union_Density_Sweden_Norway_Kjellberg_Nergaard.pdf (accessed April 25, 2023).

to 73% and 70% in 2007 and 2013, respectively.[82] In 2019, it remained steady at 69%.[83] Regardless of the rate change, collective agreements broadly covered approximately 90% of workers in Sweden throughout the two decades.[84] The high unionisation rate grants substantial autonomy for the social partners to reach collective agreements.[85]

The difference in two countries' unionisation rates is enormous, and one of the reasons was seen from the perception towards forming a union. People in Japan seem to have a negative image of trade unions, whereas, in Sweden, both the employer and employee sides are open to negotiating and concluding a collective agreement.

[82] Adlercreutz and Nyström (n 71). p. 181.
[83] Ibid.
[84] Adlercreutz and Nyström (n 71) p. 181.
[85] The Swedish Trade Union Confederation (n 70) p. 2.

Chapter 3 – The definition of workers

The protection of workers is the core purpose of labour law. When considering its applicability to persons, the scope of who can be a 'worker' is often an issue. This chapter illustrates an overview of the notion of a 'worker' in Japan and Sweden, focusing on gig workers.

3.1 Japan – Two interpretations

Since there are two interpretations of the definition of workers co-existed, some people might consider that the definition in the Japanese labour laws could be clearer. It can create an unclear classification of who is covered by the labour law. Platform workers are one of the categories that are affected by this uncertainty, and they often face inequalities in treatment, such as poor working conditions and insufficient social protection.[86] Those platform workers are often seen as self-employed, which is not in the Japanese scope of labour law. While platform workers have flexibility in choosing when to work and how long they want to work, it is questionable whether the current system is appropriate for them to be fairly treated. It is then crucial to understand the issues behind it and how the existing system is being applied to them.

In the LSL, 'workers' are defined as those employed at and receive wages from enterprises or places of business.[87] Several statutes use this definition of workers in Japan, such as the Minimum Wages Law, the Equal Employment Opportunity Law, the Workmen's Accident Compensation Insurance Law, and the Industrial Safety and Health Law.[88] The Labour Contract Law (thereinafter 'LCL', enacted in 2007) also uses the exact definition of workers as the LSL that 'workers' are deemed to be someone who provides labour in a position of subordination.[89] It sets the basic rules for employment contracts to prevent individual employment disputes, and workers shall mean persons "who works by being employed by an

[86] Minagawa, H. Rōdōsha gainenn - Rōdōsha sei no mondairei sono handan no poinnto (The concept of workers - The issues of the definition of "workers" and its decisive points) p. 14.
[87] The LSL, Art. 9
[88] Hanami, A, Komiya, F & Yamakawa, R. "Japan" (2015). pp.1-253 in Frank Hendrickx (ed.), IEL Labour Law, Kluwer Law International BV, Netherlands. p. 36.
[89] Hanami et al. (n 89) pp. 35-6.

employer and to whom wages are paid."[90] Independent labour is not in this scope.[91] Thus, self-employed workers are outside the scope.[92]

Whether a person is seen as a worker in the LSL depends on whether the worker is considerably subordinate to an employer and "not on the token form of the contract."[93] To assess if a person is under the position of subordination, the Courts consider whether an individual can refuse work and whether they are under the supervision and direction of the other party regarding when, where and how they perform their work.[94]

The criteria regarding whether a person is a 'worker' has been decided by a Japanese expert body (1985) below:

(1) He/she cannot refuse a request to perform work
(2) He/she works under a direction and supervision in relation to the tasks at their workplace as well as the manner of their performance
(3) His/her work location and hours are determined and controlled
(4) He/she is not allowed to have others substitute for them in performing work at his or her workplace
(5) The presence of subordination can be found in the following: remuneration is determined primarily by the amount of time spent on working; missing workloads lead to a deduction of income; overtime work is compensated at a higher rate than regular work
(6) When the assessment of the existence of subordination is difficult, the facts in the following can be used: whether the person possesses machinery and tools for his/her work; whether his or her wages are significantly higher than regular workers in a similar position; whether his or her work is exclusively tied to a specific company, whether his or her payment is guaranteed.[95]

[90] The LCL, Art 2 (1)
[91] Hanami et al. (n 89) p. 35.
[92] Ibid.
[93] Ibid.
[94] Ibid.
[95] Rōdōkijunhō-Kenkyukai (the Research and Advisory Committee of the Labour Standards Law), "A Report on Employment Contracts (Ministry of Labour)" (1985), as cited in Hanami, A, Komiya, F & Yamakawa, R. (n 89) p. 36.

On the other hand, the definition of worker under the Trade Union Law (thereinafter 'TUL') is not the same as the interpretation by the LSL and LCL. The TUL tries to promote collective bargaining to strengthen the employees' side for better working conditions,[96] and defines workers as those who live on their wages, salaries, or other similar remuneration.[97] 'Workers' here are not necessarily employed, and their payments do not have to be wages.[98] For example, unemployed workers who receive unemployment benefits and self-employed workers who get paid for handling goods under the other party's daily instruction would be 'workers' according to the TUL, even though the LSL does not consider them as workers.[99]

Why do the differences exist? The reasons can be seen in the aims of each law. The LSL aims to secure workers have the minimum working conditions, and it needs to clarify who should be covered by the law. However, since the TUL does not include the requirement of "being employed by the other person," unemployed workers are also under the scope of 'worker' so long as they live with the moneys they're making for their work.[100] For instance, if a carpenter does his work, he will be covered by labour law if a construction company employs him, while he will not be covered by labour law if he is solely working based on a contract with a client.[101] The different interpretations of the definition of workers have been understood they are not necessarily the same.[102]

[96] The LUL, Art. 1.
[97] The Japan Institute for Labour Policy and Training. "Rōdōsha no teigi (the definition of workers)" (n.d.). Retrieved from https://www.jil.go.jp/hanrei/conts/01/01.html (accessed on May 6).; The Labour Union Law, Art. 3.; Shinya Tago, S. et al. "Employment and Employee Benefits in Japan: Overview" (n.d.). Retrieved from https://uk.practicallaw.thomsonreuters.com/9-637-4003?transitionType=Default&contextData=(sc.Default)&firstPage=true (accessed on May 10, 2023).
[98] Hanami et al. (n 89) p. 36.
[99] Ibid.
[100] The Ministry of Health, Labour and Welfare (thereinafter the MHLW). "Rōdōkijunn jōhō: Rōdōkijyunn ni kannsuru houseido (The legal system regarding labour standards)" (n.d.) Retrieved from https://www.mhlw.go.jp/bunya/roudoukijun/kijyungaiyou01.html (accessed on the 27th of April, 2023).; MHLW. "Rōdōsya ni tsuite (About workers)" (n.d.). Retrieved from https://www.mhlw.go.jp/file/05-Shingikai-11909500-Koyoukankyoukintoukyoku-Soumuka/0000181992.pdf (accessed on the 27th of April, 2023).; Rōshikannkeihou-Kenkyukai (the Research and Advisory Committee of the Industrial Relations Law). "Rōshi-kankeihou kennkyukai houkokusho (Regarding the criteria for the TUL)" (2011). Retrieved from https://www.mhlw.go.jp/stf/houdou/2r9852000001juuf-att/2r9852000001jx2l.pdf p.5.
[101] Hanami et al. (n 89) p. 35.
[102] Rōshikannkeihou-Kenkyukai (the Research and Advisory Committee of the Industrial Relations Law) (n 101). p.5.

3.1.1 Gig work and its developments

Worldwide technological development drives gig jobs, and Japan is not an exception that the development and the flexibility of work have resulted in the trend of gig work.[103] Although the emergence of online platforms has facilitated the labour market, which embraces flexible working styles, the unclear positioning of gig workers has led to inequalities in their labour relations from both practical and academic points of view.[104] "Work System Reform"[105] (established in 2017) concerned the issue, and it appears to be the starting point where Japan started taking a closer look at the topic.[106]

While the gig economy concept used to be solely for short-term paid work for live performers through individual gigs,[107] the idea has been broadened to encompass "a larger digital collective where intermediary platforms connect workers and end-users on a task basis."[108] Even though various scholars have different interpretations of gig workers, they can be categorised by: 1) on-demand work via apps and 2) crowd work.[109] The first one is a type of location-based service where online processes are used for customer-worker matching, service selection, and payment, while the actual service is completed in an offline setting.[110] On the

[103] Uchiyama, Y et al. (2023). "Labour Union's Challenges for Improving for Gig Work Conditions on Food Delivery in japan: A Lesson for Malaysia" (2022). WILAYAH: The International Journal of East Asian Studies, 11(1), p. 83.; Mishiba, T. Kurashige, K. and Nakazawa, S. "Legal Protection of Health and Safety for Gig Workers: The Present Status and Future Protects in Japan" *Journal of work health and safety regulation, 2023, Volume 1, Issue 1*. p. 62.
[104] Uchiyama (n 103) p. 83 and p. 87.
[105] Prime Minister's Office of Japan. (2016). "Hatarakikata-kaikaku no Jitsuegen (Implementation of Work System Reform)" Retrieved from https://www.kantei.go.jp/jp/headline/ichiokusoukatsuyaku/hatarakikata.html (accessed on May 3, 2023).
[106] Hara, M. (2022). "Hataraki-kata no tayōka ~ Furīransu, gigu wākā tou ni kansuru houritsu monndai wo chūshinn ni (Diversification of work styles
~ Focusing on legal issues related to freelancers, gig workers)". Retrieved from https://www.mhlw.go.jp/churoi/roushi/dl/R041111-2.pdf (accessed on May 3, 2023).
[107] Bryant, A. "Liquid uncertainty, chaos and complexity: The gig economy and the open source movement" (2020). *Thesis Eleven 156, no. 1*. Retrieved from https://journals.sagepub.com/doi/epub/10.1177/0725513619898286 (accessed on May 3, 2023).; Donovan, S., Bradley, D and Shimabukuro, J. (2016). "What does the gig economy mean for workers?," as cited in Uchiyama (n 103) p. 84.
[108] Donovan, S., Bradley, D and Shimabukuro, J (n 108). as cited in Uchiyama (n 103). p.84.
[109] Stefano, V. (2015). "The Rise of the 'Just-in-Time Workforce': On-Demand Work, Crowd Work and Labour Protection in the 'Gig-Economy'" *SSRN Electronic Journal*. Retrieved from https://doi.org/10.2139/ssrn.2682602 (accessed on May 1, 2023). p. 12.; Schmidt, F. (2017). "Digital Labour Markets in the Platform Economy: Mapping the Political Challenges of Crowd Workand Gig Work" Retrieved from https://library.fes.de/pdf-files/wiso/13164.pdf (accessed on May 21, 2023), as cited in Uchiyama (n 103) p. 84.
[110] Schmidt (n 110), as cited Uchiyama (n 103) p. 84.

other hand, the latter one are jobs that can be entirely done online, including freelance tasks.[111]

In Japan, gig workers are broadly considered to be freelancers.[112] Their legal status remains uncertain, and their legal position is not established for them to have a safe working environment.[113] Gig workers are not explicitly recognised in Japanese labour-related instruments, such as the LSL and the Subcontracting Law.[114] Thus, the platform firms have the discretion to define the actual employment criterion.[115] There are mainly two situations concerned: persons who are supposed to fall under the definition of 'workers' by law are wrongly classified/excluded from being a worker due to them signing contracts, such as outsourcing or service agreements.[116] If the person who performs work intends to abuse the employment, 'disguised employment' is also possible to avoid being under the application of labour law.[117]

Subsequently, there might be situations where the parties (especially the freelance side) do not realise that they are workers; thus, they do not seek their own protection as a worker in the first place. At the same time, due to the lack of knowledge of the law, it is also possible that the companies misunderstand that those persons who provide work for them are not 'workers' without realising it.[118] Therefore, having labour law education for all stakeholders and public awareness would be meaningful.[119]

Due to the change in economic conditions and the ageing population, part-time employment and the gig economy increased.[120][121] The trend influenced the shift from the seniority-based

[111] Heeks, R. (2017). "Decent work and the digital gig economy: a developing country perspective on employment impacts and standards in online outsourcing, crowdwork, Etc" *Development Informatics Working Paper, no.* 71, as cited in Uchiyama (n 103) p. 84
[112] Uchiyama (n 103) pp. 87-88.
[113] Uchiyama (n 103) p. 88.
[114] Ibid.
[115] Ibid.
[116] Hara (n 107) p. 7.
[117] Ibid.
[118] Ibid.
[119] Ibid.
[120] Uchiyama (n 103) p. 84.
[121] Shibata, S. (2020). "Gig Work and the Discourse of Autonomy: Fictitious Freedom in Japan's Digital Economy" *New Political Economy 25, no. 4.* Retrieved from https://doi.org/10.1080/13563467.2019.1613351 (accessed on May 21, 2023).; Umer, H. "Illusory freedom of physical platform workers: Insights from Uber Eats in Japan" (2021). *Economic and Labour Relations Review 32, no. 3*. Retrieved from

system to a performance-based system.[122] According to a survey in 2021 by Lancers, the freelancing population in Japan exceeded 16.7 million, which is around 24% of the working population.[123] The data also stresses that gig work in Japan is slowly being accepted due to its flexibility.[124] The gig economy's growth can also be found in policies from the Japanese government.[125] The Development of Relevant Laws to Promote the Reform of Work Styles (Law No.71 of 2018) fosters flexible and diverse work styles and ensures all workers receive fair treatment.[126] This legislation aims to address the three main issues that the Japanese traditional labour system has:

(1) the treatment gap between regular and non-regular employees
(2) limited career paths due to the traditional lifetime employment custom
(3) a corporate culture that forces workers to work overtime.[127]

The Ministry of Health, Labour and Welfare (thereinafter 'MHLW') also supports gig workers as a contribution to increasing the employment of elder workers, extending healthy life expectancy, and increasing the number of workers.[128] Moreover, at the end of June 2020, the MHLW sought public opinions on the Expansion of the Scope of Special Enrolment in the Industrial Accident Insurance System.[129] In September 2020, its scope widened to delivery workers who use bicycles, and IT freelance workers.[130]

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https://journals.sagepub.com/doi/full/10.1177/1035304621992466 (accessed on May 21, 2023), as cited in Uchiyama (n 103) p. 84.
[122] Uchiyama (n 103) p. 85.
[123] Lancers. (2021). "Freelance Jittai Chousa 2021 (Freelance Survey 2021)" (2021). Retrieved from https://speakerdeck.com/lancers_pr/huriransushi-tai-diao-cha-2021 p. 6. (accessed on April 27), as cited in Uchiyama (n 103)
[124] Lancers (n 123), as cited in Uchiyama (n 103) p. 84.
[125] Uchiyama (n 103) p. 84.
[126] The MHLW. (2018). "Outline of the "Act on the Arrangement of Related Acts to Promote Work Style Reform" (Act No. 71 of 2018)" Retrieved from https://www.mhlw.go.jp/english/policy/employ-labour/labour-standards/dl/201904kizyun.pdf (accessed on April 20, 2023).
[127] Uchiyama (n 103) p. 84.
[128] The Cabinet Secretariat, the Fair Trade Commission, the Small and Medium Enterprise Agency and the MHLW. (2021). "Furīransu to shite anshinn shite hatarakeru kannkyō wo seibi suru tameno gaidorainn (guideline for creating an safe environment for freelance workers)" https://www.meti.go.jp/press/2020/03/20210326005/20210326005-1.pdf (accessed on April 20, 2023).
[129] The MHLW. "Rōsai hoken seido ni okeru tokubetu kanyu no taishō hanni no kakudai ni kakaru teian iken no boshu ni tsuite (Call for Proposals and Comments on the Expansion of the Scope of Special Enrollment in the Industrial Accident Insurance System)" (2020). Retrieved from https://www.mhlw.go.jp/stf/newpage_12091.html (accessed on April 20, 2023).
[130] The MHLW. "Reiwa sannnenn kugatsu tsuitachi kara rousaihokenn no Tokubetsu kanyu no kakudiahanni ga hirogarimashita (From September 1, 2021, the scope of "special enrollment" for industrial accident insurance has expanded)" Retrieved from https://www.mhlw.go.jp/stf/seisakunitsuite/bunya/koyou_roudou/roudoukijun/rousai/kanyu_r3.4.1_00001.html (accessed on April 20, 2023).

While the MHLW advises workers to take up second and third jobs,[131] workers are forced to have second jobs to have a decent life due to the disappearance of full-time job security and the ageing society.[132] Around 40% of persons in their 40s and 30% of persons in their 50s said that there is no savings have been set aside for their retirement.[133] In addition, due to the reduction in corporate retirement benefit plans, about 20% of companies have no such schemes, and approximately 60% can offer only a lump-sum payment.[134] From all of the situations concerned, it is inevitable that Millennials who were born in Japan (between 1980 and 1994) and Z generation (born 1995-2012) since then will most likely have more difficulties than workers who were born before that.[135]

The food delivery industry is known to be one of the leading gig works, and it rapidly expanded in Japan due to covid – especially Uber Eats, which was established in Japan in 2016.[136] Its existence became more significant during the corona time in central Tokyo.[137] Although the platform is growing, there are several regulatory problems that gig workers cannot avoid facing.[138] There are a number of concerns about gig workers: lacking legislation and standards,[139] whether they are full-time employees or independent contractors,[140] minimum wages,[141] and social security and safety nets.[142]

[131] Uchiyama (n 103) p. 84.
[132] Ibid., p. 85
[133] Lancers (n 123)
[134] Ibid.
[135] Uchiyama (n 103) p. 85.
[136] Hasegawa, Y., Ido, K., Kawai, S. and Kuroda, S. "Who took gig jobs during the COVID-19 recession? Evidence from Uber Eats in Japan" (2022). *Transportation Research Interdisciplinary Perceptives 13.* p. 1.
[137] Ibid.
[138] Uchiyama (n 103) p. 87.
[139] Stewart A, Stanford J. (2017). "Regulating work in the gig economy: What are the options?" The Economic and Labour Relations Review 28: pp. 420-437.; Todolí-Signes, A. (2017). "The 'gig economy': employee, self-employed or the need for a special employment regulation?," *Transfer-European Review of Labour and Research 23, no. 2.* Retrieved from https://journals.sagepub.com/doi/abs/10.1177/1024258917701381, as cited in Uchiyama (n 103) p. 87.
[140] Koutsimpogiorgos, N. et al., (2020). "Conceptualizing the Gig Economy and Its Regulatory Problems," Policy & Internet 12, no. 4. Retrieved from https://onlinelibrary.wiley.com/doi/full/10.1002/poi3.237 (accessed on April 20, 2023), as cited in Uchiyama (n 103) p. 87.
[141] Minter, K. (2017). "Negotiating labour standards in the gig economy: Airtasker and Unions New South Wales" *Economic and Labour Relations Review 28, no. 3*., as cited in Uchiyama (n 103) p. 87.
[142] Hawley, A. (2018). "Regulating labour platforms, the data deficit," *Article, European Journal of Government and Economics 7, no. 1*., as cited in Uchiyama (n 103) p. 87.

Delivery workers working for Uber Eats made their union in 2019 and have been negotiating for better treatment.[143] The union at first has requested collective bargaining regarding to ensuring compensation payments to those who got injured during their work. [144] However, the operator side has rejected all the requests.[145] The employer side stated that since persons who deliver food at Uber Eats were independent contractors, they should not be deemed as workers under the Labour Union Law.[146]

On the other hand, the Tokyo metropolitan government's labour commission held that those workers are Uber Eats' vital workforce, although they have no employment contact with the operator.[147] Moreover, individuals who work as delivery staff for Uber Eats are not just 'clients' but essential workers connecting end-users and restaurants.[148] In addition, the company unilaterally sets the terms of the contract and wages for the work and those delivery workers "can be placed in situations where refusing work is difficult."[149] Its commission continued that the workers are directed and controlled by Uber Eats; thus, it is appropriate to regard them as workers under the Labour Union Law.[150] Recognising delivery workers as 'workers' under the law is a significant step for freelance workers in Japan.[151]

In 2021, the government made a guideline for freelance workers to create an environment where freelancers can work safely and comfortably.[152] It gives their interpretations of platform workers with case law, and their positioning is that they want to keep the scope of 'workers' under labour law as it is now and that they require both employers and employees to deal with their situations accordingly.[153] There are also discussions where 1) some state

[143] Uchiyama (n 103) p. 88; The Japan Times. (2022). "Tokyo recognizes Uber Eats workers' collective bargaining right." Retrieved from https://www.japantimes.co.jp/news/2022/11/26/business/uber-eats-union-tokyo-ruling/ (accessed April 27, 2023).
[144] Kyodo News. (2022). Tokyo says Uber Eats labor union has collective bargaining rights. Retrieved from https://english.kyodonews.net/news/2022/11/0af8510ca624-tokyo-says-uber-eats-labor-union-has-collective-bargaining-rights.html (accessed April 27, 2023)., Uchiyama (n 103) p. 83.
[145] Kyodo News (n 144).
[146] Ibid.
[147] Ibid.
[148] Ibid.
[149] Ibid.
[150] Ibid.
[151] Uchiyama (n 103) p. 83.
[152] Hara (n 107) p. 12., Author's translation
[153] Ibid.

that the law should expand the scope, and 2) create an intermediate concept, such as the concept of employee-like person "*Arbeitnehmerähnliche*" in Germany.[154]

On the 12nd of May in 2023, a new law regarding freelance workers was enacted (Act on freelance workers and optimisation of inter-business transactions [*Furiransu Jigyoshakann Torihikitekiseikatouhou*]).[155] This law aims to protect workers, such as consultants, engineers, and delivery workers, who work without belonging to an organisation. Under the new law, when outsourcing work to a freelancer, the employer side must state the contents of the benefits and the amount of remuneration in advance in written form or by e-mail, and the date of salary payment must be set within 60 days from the date the employer receives the salary for the workers. Violations will be fined up to 500,000 yen (around 3,400 euros). Consideration was also included in response to requests so freelancers could balance childcare and nursing care. The Cabinet Order shall determine the date of enforcement within one year and six months after the 12nd of May 2023.[156]

Under Japanese labour-related laws, the definition of 'worker' varies, and persons who work on a freelance based can be problematic when classifying them. However, some developments can be seen in some government-led policies for freelance workers.

3.2 Sweden – No statutory definition

While there are ambiguous categorizations of gig workers in Japan, the classification issue of a worker and an independent contractor is the most commonly disputed in Sweden.[157] We will see a slight difference in the Swedish definition of a worker from the Japanese one. After that, some legal developments for gig workers in Europe will be mentioned. Algorithmic management is a crucial concept to grasp the current problem in this area, and the Proposed Directive for gig workers tries to address it efficiently.

[154] Hara (n 107) p. 12.; ICLG.com. (2023). "Employment & Labour Laws and Regulations Germany 2023." Retrieved from https://iclg.com/practice-areas/employment-and-labour-laws-and-regulations/germany (accessed on May 14, 2023)
[155] The MHLW. (2023). "Tokuteijyutakujigyousya ni kakaru tekiseikatou ni kannsuru houritsu – furīrannsu, jigyousyakann torihikitekiseika touhou no gaiyou (Overview of the law concerning the deal optimisation for specified trustees - Act on freelance workers and optimisation of inter-business transactions)." Retrieved from https://www.mhlw.go.jp/content/001096814.pdf (accessed May 18, 2023). Translated by the author.
[156] Ibid.
[157] Adlercreutz and Nyström (n 63) p. 34.

In Sweden, there is no legal definition of workers in its legislation.[158] Instead, the Courts have developed the content and the meaning of what is 'worker' through case law, and the legislator has developed it through its preparatory work.[159] The Courts or other authorities has the discretion to decide when the relation is applicable.[160] Thus, determining whether there is a relationship between employee and employer is, in principle, playing a significant role in the application of labour law.[161] Similar to Germany, Sweden also has a category of 'employee-like' person (*jämställda uppdragstagare/beroende uppdragstagare*).[162]

As labour law rules, since they are most favourable to workers, persons who perform work for others often deemed to be employees.[163] Therefore, although there are still complex difficult cases dealing with the borderline of an employee-employer relationship, it is not a complicated matter to determine whether an employer-employee connection is present.[164] Moreover, the Swedish labour law is generally characterized by its extensive and uniform personal scope and a high degree of equal treatment of various categories of workers, such as public and private sector, or blue- and white-collar workers.[165]

Throughout the history of labour law, various approaches have been used to address and resolve the issue of determining an employee-employer relationship.[166] The determination usually depends on where the centre of the gravity is situated.[167] This approach has broadened the definition of an employee and has been endorsed by the legislature "to be in accordance with the aim of the legislation in question." [168]

The Courts had two separate interpretations of the definition of worker in civil and social law.[169] While the social law concept of worker was broader, the civil law perspective was

[158] Rönnmar, M. (n.d.). "The Personal Scope of Labour Law and the Notion of Employee in Sweden." Retrieved from https://www.jil.go.jp/english/events/documents/clls04_ronnmar2.pdf (accessed on May 19, 2023). p.159.
[159] See Adlercreutz 1964, Schmidt et al. 1994, pp. 59 ff., Källström 1999 and SOU 1975:1, pp. 721 ff., as cited in Rönnmar (n 158) p. 159.
[160] Adlercreutz and Nyström (n 63) p. 34
[161] Ibid., p. 33
[162] https://lup.lub.lu.se/luur/download?func=downloadFile&recordOId=3359613&fileOId=3514635
[163] Adlercreutz and Nyström (n 63) p. 32.
[164] Ibid., p. 34
[165] Rönnmar (n 158) p. 159.
[166] Adlercreutz and Nyström (n 63) p. 34.
[167] Ibid.
[168] Ibid.
[169] Rönnmar (n 158) p. 161.

narrow and contract-oriented.[170] Throughout the 20th century, there was a trend towards a uniform and comprehensive understanding of what constitutes a 'worker.'[171] During that time, the scope of the notion of worker has continuously widened to provide additional groups of employees with the 'safety net' supported by labour law and its legislation.[172] In 1949, the Supreme Court reshaped the civil side of the notion in a landmark case, giving greater weight to the worker's economic and social circumstances.[173] Since then, the legislator has aimed for a consistent and cohesive understanding of employees across all legal areas of law. [174]

In Sweden, workers can be someone "who, on the basis of a contract, personally performs work for someone else, under his or her direction, in return for remuneration"[175] even if the person may use some assistants.[176] It is not necessary to have an explicit element of subordination or control.[177] The Courts conducted "an overall assessment of the situation, taking all the relevant factors of the individual case into consideration"[178] to determine whether an individual is an employee.[179] When making the overall assessment, the Courts considered the following factors:

1) personal obligation to perform work according to the contract
2) the actual personal performance of work
3) absence of predetermined work tasks
4) a continuous relationship between employees and employers
5) exclusivity of work for the employer
6) control and supervision by the employer
7) use of employer-provided machinery, tools and raw materials
8) reimbursement of expenses
9) a guaranteed salary

[170] Ibid.
[171] Rönnmar (n 158) p. 159.
[172] See Ds 2002:56, p. 82 and Engblom 2003, pp. 141 ff., as cited in Rönnmar (n 158) p. 159.
[173] Rönnmar (n 158) p. 161.
[174] Ibid.
[175] Ibid., 159.
[176] Adlercreutz and Nyström (n 63) p. 34.
[177] Ibid.
[178] Rönnmar (n 158) pp.159-160.
[179] Ibid., p. 160.

10) the economic and social situation of the employee is equivalent to that of an ordinary employee.[180]

Even though all the above-mentioned factors indicate that the specific person is an employee, "no single factor is considered necessary or sufficient for the existence of an employment contract."[181] In other words, finding the centre of gravity in the employee-employer relationship does not depend on any specific criterion, and there is no decisive special criteria.[182]

3.2.1 Gig work and its important case law

Generally, in European countries, gig workers are little by little winning their position "through a wealth of academic proposals and active practical negotiations."[183] Some platform companies are rapidly expanding in Nordic countries too, by utilising solo self-employed labour with their payment and conditions being determined through apps.[184][185] Swedish, Norwegian, Danish, and Finnish employers' organizations showed concern that seeing platform workers as self-employed would distort competition, such as social dumping and expand the black market.[186] Classifying those platform workers as self-employed has a risk that they may be overlooked by regulatory frameworks, resulting in much weaker individual and collective rights and protections than regular employees.[187]

Uber is a crucial example concerning the positioning issue of platform workers. The Nordic trade unions have been highly sceptical about Uber's business, which started in Denmark, Sweden, Norway, and Finland in late 2014.[188] Although the taxi industry in the Nordic countries "traditionally has been characterised by self-employment,"[189] Uber significantly

[180] Cf. SOU 1975:1, pp. 721 ff., SOU 1993:32, pp. 216 ff., SOU 1994:141, pp. 74 ff. and Källström 1999, p. 167., as cited in Rönnmar (n 158)
[181] Cf. Engblom 2003, p. 149. Cf. also Labour Court judgements AD 1978 No. 7, AD 1982 No. 134, AD 1990 No. 116, AD 1998 No. 138 and AD 2002 No. 40., as cited in Rönnmar (n 158)
[182] Adlercreutz and Nyström (n 63) p. 34.
[183] Uchiyama (n 103) p. 88.
[184] Jesnes, K. & Oppegaard, S.M.N. (eds.). (2020). "Platform work in the Nordic models: Issues, cases and responses." Nordli. Nordic Council of Ministers. TemaNord 2020:513. p. 7.
[185] Jesnes & Oppegaard (n 185) p. 14.
[186] Ibid., p. 18
[187] Ibid., p. 7.
[188] Oppegaard, S. et al. (2019). "Uber in the Nordic countries: Challenges and adjustments." Nordic future of work Brief 1. p. 1.
[189] Ibid., p. 2

controlled them through its platform, and it has brought the issue of the legal relationship between Uber and its drivers.[190] Uber side argues that its business model has a vital feature to let the drivers have their freedom, whereas it exercises considerable control over the drivers through the platform.[191] Under this technological work arrangement, drivers are encouraged to work more hours than initially planned, primarily through the rating system and dynamic pricing, which creates a potential hazard of excessive and detrimental driving hours.[192] There are also potential issues of polarisation and dualisation of the workforce,[193] as well as the issue with migrant workers, the reason being they desperately wish to work in Nordic countries.[194] They are forced to do whatever the conditions of the work, which result in them being forced to accept low-paid jobs.[195]

It is certain that 'algorithmic management,' which uses technology to manage terms of working conditions and pay,[196] is inherent to digital labour platforms' business model.[197] The concept "captures the new reality where algorithms tract the performance of employees or contractors, optimizing decisions concerning their tasks and future employment."[198] It can increase productivity and efficiency on the company's management level.[199] Yet, it raises the question of whether it leads to abusive management due to the lack of transparency.[200] In other words, using algorisms as management tools can have detrimental consequences for work conditions, wages, and the labour process for platform workers.[201] Although there have not been many cases regarding whether platform workers are deemed employees, there are a few cases in Europe.[202] For example, in the UK, the Court has ruled in favour of Uber drivers'

[190] Oppegaard, S. et al. (n 189) p. 2.
[191] Ibid., p. 2
[192] Ibid.
[193] Jesnes & Oppegaard (n 185) p. 17.
[194] Ibid., p. 20.
[195] Oppegaard, S. et al. (n 189). p. 20.
[196] The ILO. (2022). "The Algorithmic Management of work and its implications in different contexts." Retrieved from https://www.ilo.org/wcmsp5/groups/public/---ed_emp/documents/publication/wcms_849220.pdf (accessed on April 28, 2023). p. 8.
[197] Proposal for a Directive of the European Parliament and of the Council on Improving Working Conditions in Platform Work, COM/2021/762 final. p. 2.
[198] Schildt, H. (2017). "Big data and organizational design - the brave new world of algorithmic management and computer augmented transparency" Innovation. pp. 19, 23-30. Retrieved from https://www.tandfonline.com/doi/epdf/10.1080/14479338.2016.1252043?needAccess=true&role=button (accessed on May 22, 2023). p. 25.
[199] Jesnes & Oppegaard (n 185) p. 17.
[200] Ibid., pp. 17-8.
[201] Prassl, J. (2018a). "Collective voice in the platform economy. Challenges, opportunities, solutions." Report to the ETUC. Brussels: ETUC.
[202] Jesnes & Oppegaard (n 185) p. 18.

certain rights, such as minimum wage.[203] The European Commission also recognizes the employment status of gig workers. [204]

Yodel[205] is the CJEU's important recent decision concerning platform work.[206] This case concerned whether the Directive 2003/88/EC (the Working Time Directive, thereinafter 'Directive 2003/88'), applied to a parcel delivery courier for Yodel under a service agreement.[207] The Court stated that a contractor should not see the person as a worker if he had the discretion to use subcontractors, acceptance of tasks, give services to third parties, the ability to fix their working hours, being able to show that the independence is not fictitious and no relationship of subordination between their putative employer and them.[208]

The CJEU stated that "it is for the referring court, taking account of all the relevant factors relating to that person and to the economic activity he carries on, to classify that person's professional status under Directive 2003/88."[209] The interpretation of the decision was to exclude individuals performing platform work from being recognized as workers if there is a substitution clause in their service contracts.[210] It is also worth noting that the CJEU was careful to reach a final decision on the courier's status, stressing that the person concerned should not be considered a worker only if his independence is not fictitious and he was not subordinate to Yodel.[211] Even though the CJEU guidance is scarce, the national court should still consider all the relevant factors and ensure that "there is no bogus self-employment."[212] The reason is that, although the person has the ability of platform workers to use

[203] Coyle, D., Adams-Prassl, J., and Adams-Prassl, A. (2021). "Uber & Beyond: Policy Implications for the UK. Retrieved from https://deliverypdf.ssrn.com/delivery.php?ID=063089102008121096083105023083018105032011084085035089120072067100017106125099003066005016043056061048060064074099065077114012019053039035048090093100116103123062069075123113099027092125012076074100096119125121087088127102092070090012099009088096&EXT=pdf&INDEX=TRUE (accessed on May 22, 2023).; Rankin, J. (2021). "Gig economy workers to get employee rights under EU proposals," The Guardian. Retrieved from https://www.theguardian.com/business/2021/dec/09/gig-economy-workers-to-get-employee-rights-under-eu-proposals (accessed on April 28, 2023), as cited in Uchiyama (n 103) p. 88.
[204] Ibid.
[205] C-692/19, *Yodel Delivery Network* [2020] ECLI:EU:C:2020:288
[206] Rosin, A. (2022). "Towards a European Employment Status: The EU Proposal for a Directive on Improving Working Conditions in Platform Work." *Industrial Law Journal, Vol. 51, No.2, June 2022*. p. 484.
[207] Ibid.
[208] European Employment Lawyers Association. "Court Catch." Retrieved from https://eela.eelc-updates.com/court_watches/eelc-2020-0041 (accessed on May 5, 2023).
[209] *Yodel* (n 205) para. 45.
[210] N. Countouris, 'Regulating Digital Work: From Laisser-Faire to Fairness' (Social Europe, 8 December 2021). Retrieved from https://socialeurope.eu/regulating-digital-work-from-laisser-faire-to- fairness (accessed April 3, 2022).
[211] *Yodel* (n 205) para. 45.
[212] Rosin (n 206) p. 485.

subcontractors, accept or reject tasks, and arrange their own work schedules, he/she may face limitations practically to various technical obstacles and/or undisclosed punishments.[213]

3.2.2 Proposal for a Directive for platform workers

In 2021, the EU Commission proposed a Directive "to improve the working conditions and social rights" [214] for persons who work through platforms with the view to enhance the conditions for the sustainable growth of digital platforms.[215] There are mainly three specific objectives for the proposed Directive: (1) Employment status; (2) Algorithmic management; (3) Enforcement, transparency, and traceability.[216]

Both its material scope and the personal scope are broad. As for the material scope, the proposed Directive targets to tackle a wide range of issues connected to platform work practically and theoretically.[217] As for the personal scope, employees and those involved in platform work fall under the scope.[218] Moreover, the scope of the proposal is: "persons performing work in the Union, irrespective of their employment status, albeit to a varying extent depending on the provisions concerned."[219]

Generally, the proposed Directive covers "who have, or who based on assessment of facts may be deemed to have, an employment contract or employment relationship as defined by the law, collective agreements or practice in force in the Member States, with consideration to the case-law of the CJEU."[220] This includes those situations where the employment status of the person providing platform work is unclear, such as false self-employment, to allow correct classification of that status.[221]

[213] Rosin (n 206) p. 485.
[214] Proposal (n 197) p. 3.
[215] Ibid., p. 3.
[216] European Commission. (2021). "Commission proposals to improve the working conditions of people working through digital labour platforms." Retrieved from https://ec.europa.eu/commission/presscorner/detail/en/ip_21_6605 (accessed on May 22, 2023).; Rosin (n 206) p. 478.; Proposal (n 197) Art. 1 (1)
[217] Rosin (n 206) p. 478
[218] Proposal (n 197) Art 1(2)
[219] Ibid., Art. 1.
[220] Ibid.
[221] Ibid.

Digital platforms are expected to benefit both false and genuine self-employed workers.[222] As a result of the correct classification, workers will have better working conditions, such as health, safety, and employment protection, statutory or collectively bargained minimum wages, and access to training opportunities while obtaining social protection according to national rules.[223]

The Preamble of the proposed Directive mentions several decisions of the CJEU.[224] The rulings in *Yodel* and *Asociación Profesional*[225] will probably be the interpretation of the Proposal.[226] The criteria for the legal presumption seem to be partly based on these decisions, [227] which can resolve to determine the classification.[228] If Member State (thereinafter MS)'s Courts apply the same criteria, it may lower the risk of contradiction between national and EU law.[229]

This new proposal tries to prevent and fight potential abuses, which may encompass the limitations to the use, the duration of on-demand contacts or a rebuttable presumption of the employment relationship (Art. 11).[230] This is a robust instrument to discourage employers from engaging in unrestricted casual labour, and it has already been enacted in some Member States.[231] There are two primary approaches to cultivating the mechanism: 1) a comprehensive presumption that all relationships are subordinate and that relieving workers from providing evidence to support their claim, 2) a shift or reduction in the burden of proof for workers based on specific factual indicators in a particular case, in alignment with International Labour Organisation (thereinafter the ILO)'s Recommendation 198, which suggests the consideration of the possibility of giving a legal presumption of an employment relationship when one or more relevant indicators are present.[232]

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[222] Proposal (n 197) p. 3.
[223] Ibid.
[224] Ibid., preamble, recital 20.
[225] Case C-434/15, *Asociación Profesional Élite Taxi vs. Uber Systems Spain SL* [2017] EU:C:2017:981.
[226] Rosin (n 206) p. 485.
[227] Ibid.
[228] M. Kullmann, '"Platformisation" of Work: An EU Perspective on Introducing a Legal Presumption' (2021) European Labour Law Journal <https://journals.sagepub.com/ doi/10.1177/20319525211063112> (accessed 3 April 2022).
[229] Rosin (n 206) p. 485.
[230] Aloisi, A. (2022)."Platform work in Europe: Lessons learned, legal developments and challenges ahead." *European Labour Law Journal 2022, Vol. 13 (1).* p. 17
[231] Ibid.
[232] Ibid.; The ILO. R198 - Employment Relationship Recommendation (No. 198). (2006). Retrieved from https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0::NO::P55_TYPE,P55_LANG,P55_DOCUMENT,P55_NODE:REC,en,R198,/Document#:~:text=1.,2. (accessed on May 22, 2023).

Ideally, a rebuttable legal presumption of an employment relationship would confer the status of an employee from the beginning of the relationship, enable persons to join trade unions and participate act collectively, and facilitate the enforcement authorities to oversee the labour law compliance regarding platform work.[233] The proposal would take a new and bold approach by providing the Member States (thereinafter 'MSs') with explicit guidelines on assessing the employment status of platform work.[234] One concern remains that, if the proposal will be implemented, the MSs' competence will be restricted.[235] Therefore, it is crucial to take into account the Directive's potential effect even during the proposal phase.[236]

In this chapter, we looked at the Japanese and Swedish definitions of workers to see who can be covered by the labour laws and the existing issues behind them. In the following chapter, I will investigate whether persons who are 'workers' can be fired by not joining a trade union.

[233] Rosin (n 206) p. 487.
[234] Proposal (n 197); Rosin (n 206) p. 492.
[235] Rosin (n 206) p. 480
[236] Ibid.

Chapter 4. Negative freedom of association and employment protection

Labour law generally sought to achieve the three roles: 1) permits, protects or promotes worker's action,[237] 2) regulates or resolves (if possible) union-management conflicts,[238] and 3) ideally operates through 'abstention', allowing employer and worker representatives to implement a regime of 'collective laissez faire.'[239] From the end of the 19th century till the 20th, labour law shifted to focus on collective issues.[240] As one of the fundamental freedoms in Japan and the EU, 'workers' have the right to join a union freely. However, when they wish not to join any union at their workplaces, it is debatable whether they are legally allowed to do that without getting any negative impacts on their jobs. In this chapter, I will investigate whether the negative freedom of association is legally secured in Japan and in the EU.

4.1 Japan – Connection to the Japanese Constitution

The Japanese Constitution secures the freedom of association and organise.[241] Thus, 'workers' are entitled to choose whichever union they want to join.[242] Although the Japanese Constitution safeguards the right to organise, it does not explicitly guarantee the right not to organise, and no legal provisions prohibit it.

'Union shop' agreements, workers are obliged to become a member within a specified period (usually around a month after he/she takes up the job) by the union regulation.[243] In other words, under the union shop system, it does not matter whether workers should be a member

[237] Trade Disputes Act 1906 (UK) XLIV 246 f 6 Edward VII c 47 (permitted); Norris Laguardia Act 29 USCA } 101 et seq (1932) (protected); National Labor Relations Act 29 USC }} 151–69, }151 (1935) (promoted), as cited in Arthurs (n 1) p. 14.
[238] Industrial Disputes Investigation Act, SC 1907, ch 20., as cited in Arthurs (n 1) p. 14.
[239] O Kahn-Freund, Labour and the Law (Hamlyn Lectures, Stevens for the Hamlyn Trust, London 1972), as cited in Arthurs (n 1) p. 14.
[240] Arthurs (n 1) p. 14.
[241] Fahlbeck (n 24) p. 724.
[242] The ILO. (n.d.). "Japan – 2019. 6.4 Union Security." Retrieved from https://www.ilo.org/dyn/irlex/en/f?p=14100:1100:0::NO:1100:P1100_ISO_CODE3,P1100_SUBCODE_CODE,P1100_YEAR:JPN,,2019:NO (accessed on May 5, 2023).
[243] Onimaru, T. (2015). "Kigyobetsu kumiai to yunionn shoppu (Enterprise union and union shop)." *Nihon Rōdō Kenkyū Zasshi, 2015 nenn 4 gatsugō, No. 657 (The Japan Institute of Labour).* p. 33.

of a specific union when they join the company.[244] These agreements can be problematic when considering the scope of the freedom.

Generally, it is interpreted that union shop agreements are not prohibited.[245] It is up to workers to decide if they would like to join a union or not. Large firms tend to have union shop agreements with their enterprise trade unions.[246] According to the government statistics by the MHLW, practically, approximately 66% of unions in Japan have union shop agreements.[247] Union shop agreements will be null and void if a trade union does not meet the requirement.[248] However, if such agreements exclude members of other unions, it would violate plural unionism, which any trade unions are free to organise.

Art. 7 (1) of the TUL prohibits employers from dismissing or treating, in a disadvantageous manner, a worker by him/her joining a trade union, having tried to join or organise a union, or having performed justifiable acts of a union, or making a condition of employment so that workers will not be able to join or will withdraw from a union.[249] On the other hand, it does not preclude a worker from entering into a collective agreement, as a condition of employment, that the workers will join a specific union at a particular factory or a workplace where the union represents a majority of the workers.[250] It expires if it becomes less than a majority of workers supported by the union after an agreement.[251]

As opposed to closed-shop agreement (explained later), union shop agreement does not require to join a union when entering a company.[252] However, closed-shop and union shop are the same in a way that employers are required to dismiss the worker if he or she does not join a union within a specific period after the person takes up the employment or leaving a union during his/her employment.[253]

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[244] Onimaru (n 243) p. 33.
[245] The ILO (n 242)
[246] Onimaru (n 243) p. 32.
[247] The MHLW. (n.d.). "Kigyo no AI tou no dounyuu jyoukyou to rousi komyunikeshon no genjyo ni Tuite (The status of companies' introduction of AI, etc. and the status of labour-management communication)" Retrieved from https://www.mhlw.go.jp/content/12602000/000581113.pdf p. 15. (accessed on Apr 28, 2023).
[248] Onimaru (n 243) p. 33.
[249] Japanese Law Translation. (n.d.) "Labor Union Act." Retrieved from https://www.japaneselawtranslation.go.jp/en/laws/view/3805/en (accessed on Apr 28, 2023).
[250] The TUL Art. 7 (1).
[251] Ibid.
[252] Onimaru (n 243) p. 33.
[253] Ibid.

One of the advantages when it comes to union shop system is that employees who join the company automatically join the union without the employer's side promoting to join it.[254] In addition, it enables workers to have a strong bargaining power for negotiations with employers.[255] However, since workers are obliged to join a union regardless, they might be scared to have their own voice for better conditions at work, and it would thus function as a threat for the employees.[256]

There are unions which leave room for employers not to dismiss employees who are no longer union members ['*Fukanzen union*' (imperfect unions), '*Shirinuke union*' (forgetful unions)], and those which do not set a rule regarding dismissal ['*Sengen union*' (declaration unions)]. [257] However, if a worker leaves a union under a union shop agreement, its dismissal by the management is only valid if the worker is not a member of any union. (Judgment in *Mitsui-Soko Harbor Transportation* [December 14, 1989 Supreme Court Judgment], *Nippon Kokan Tsurumi Seisakujo* [December 21, 1989 Supreme Court Judgment]). [258]

Therefore, if an employer gets notice for dismissals of workers who leave a specific union, he/she (employer) has to check if the workers concerned have recently joined new unions before actual dismissals.[259] If the dismissal becomes null and void, the employer has no obligation to fire the worker, so it becomes an abuse of rights (*Japanese Salt Manufacturing*, April 25, 1975 Supreme Court),[260] which means that the workers are still entitled to receive wages according to Art 536 (2) of Civil code (*Seishinkai Yamamoto Hospital*, March 29, 1984).[261] In other words, where union shop agreements are held, the employer has the risk of the annulment of his/her dismissals based on the status of the workers.[262]

[254] Onimaru (n 243) p. 33.
[255] Ibid.
[256] Ibid.
[257] Ibid.
[258] Employment and labour policy division of Hiroshima Prefecture. (n.d.). "Yunionn shoppu ni motoduku kaiko no yūkou sei (Validity of dismissal under union shop agreements)." Retrieved from https://www.pref.hiroshima.lg.jp/uploaded/attachment/300745.pdf (accessed on Apr 28, 2023).
[259] Matsui, M. (2022). "Koramu 'union shoppu kyōtei wo meguru houteki ryūitenn (Column 'Practical Legal Considerations Concerning Union Shop Agreements.') Retrieved from https://www.hiroso-law.jp/topics/81/ (accessed on Apr 28, 2023).
[260] Matsui (n 259)
[261] Ibid.
[262] Ibid.

Japan has been trying to keep union density level by holding union shop agreements.[263] According to a survey from the government, the estimated unionisation rate in Japan is decreased to 17.5%.[264] The reasons are a decrease in full-time workers who can join unions due to an increase in part-time workers and temporary workers.[265] The Supreme Court concluded: "a union shop agreement should be interpreted to require the employer to dismiss workers who refuse to join any union as a corollary to the fact that there is no guaranteed right not to organise, but that this rule does not apply to workers who choose to join another union." [266]

4.1.1 Union shop agreements

The application of compulsion membership is quite limited in other countries, such as the US and the UK.[267] In Japan, since union shop agreements force workers to join unions, it is debatable whether it might be invalid in the first place as it has the effect of suppressing the will of the workers who wish not to join a union.[268] It would also be incomparable with the freedom of organise (Art. 28 of the Constitution) as well as the freedom of association (Art. 21 of the Constitution) because 'freedom' can also mean that workers have the right not to organise or associate freely depending on how they want.[269]

There are three academic theories regarding the right to organise in Japan:

(1) Positive right to organise theory: Whether workers can leave trade unions is based on their right to organise unions.[270]

[263] Onimaru (n 243) p. 33.
[264] The MHLW. (2014). "Heisei 26 nenn rōdō kumiai kisochōsa (2014 Labor Union Basic Survey)." Retrieved from https://www.mhlw.go.jp/toukei/itiran/roudou/roushi/kiso/14/dl/01.pdf (accessed on May 20, 2023).
[265] Onimaru (n 243) p. 33.
[266] Supreme Court Case, *CBC Orchestra Union*, 6 May 1976. Retrieved from https://www.ilo.org/dyn/irlex/en/f?p=14100:1100:0::NO:1100:P1100_ISO_CODE3,P1100_SUBCODE_CODE,P1100_YEAR:JPN,,2019:NO (accessed on May 20, 2023). as cited in the ILO (n 242).
[267] Nogawa, S. (2014). "Lagal Meaning of Union-Shop Agreement." Retrieved from https://meiji.repo.nii.ac.jp/?action=pages_view_main&active_action=repository_view_main_item_detail&item_id=11471&item_no=1&page_id=13&block_id=21 https://www.mhlw.go.jp/toukei/itiran/roudou/roushi/kiso/14/dl/01.pdf (accessed on May 20, 2023). p. 296.
[268] Ibid., p. 299.
[269] Ibid., p. 299.
[270] Ishii, T. (1971). "Rōdō hō. (Labour Law)" Kobundou. p. 303.

(2) Negative right to organise theory： Freedom of secession from unions derives from their negative interpretation of freedom of association guaranteed by Art. 28 of the Constitution (the right to organise, bargain, and act collectively).[271]

(3) Freedom of association theory： Freedom of withdrawal from trade unions is recognized from the nature of trade unions being voluntarily associated.[272]

Each theory has one thing in common: those attempts to establish the right for employees to leave unions based on the Japanese Constitution.[273] However, upon closer view, they can be classified into two categories: those that understand freedom within the framework of labour unions [(1) and (2)], and those that interpret it within the framework of general voluntary organizations [(3)].[274] The difference between the two is also evident from the fact that the former relies on Art. 28 of the Constitution.[275] In contrast, the latter relies on Art. 21 of the Constitution (the freedom of assembly and association).[276] Another scholarly opinion is that the legitimacy of trade unions should naturally come from worker's will, not from the compulsory membership system, thus denying the union shop system.[277]

Historically, trade unions became bigger in Japan after World War II, and the unionisation rate hit the highest of 55.9% in 1949.[278] Union shop agreements were used to promote unionisation, and 70% of trade unions at the time had the agreements.[279] Because of this situation and the right to organise under the Constitution,[280] the legality of union-shop had not been discussed in depth. [281] Hiraga stated, "we cannot consider it as an illegal system which

[271] Nishitani, S. (2008.) "Rōdō hō (Labour Law)" Nihon Hyōronnsya. p.464-
[272] Sugano, K.(2007). "Rōdō hō (Labour Law)" Kobundou 7th edition. p. 458.
[273] Okayama Kouhou Hannrei Kennkyukai (The Association of Law of Okayama University). (2009). "Rōdō kumiai karano dattai no
jiyū to kessha karano jiyū - Tōshiba rōdōkumiai komukaisibu Tōshiba jikenn (Freedom to withdraw from trade unions and freedom of association - Toshiba Labor Union Komukai Branch/Toshiba Case). Okayama Law Journal, Vol. 59, 2. p.277.
[274] Ibid.
[275] Ibid.
[276] Ibid.
[277] Oouchi,S. (2000). "Yunion shoppu ga rōdōdanntai rironn ni oyoboshita eikyou (The Effects of Union Shop Agreements on Labor Organization Law Theory)." Kobe Law Journal 49 (3), 461-548, 2000-1.
[278] Employment and labour policy division of Hiroshima Prefecture (n 258) p. 300.
[279] Institute of Social Science, the University of Tokyo. (1952). "Shiryō senngo rōdōkyouyaku no bunnseki – Shoppu sei joukou oyobi saiyou kaiko ni taisuru kumiai-sannka jōkou (Analysis of Labor Agreements after the War - Shop System Clauses and Union Affiliation Clauses for Employment and Dismissal). Labour law journal, Vol. 2, p. 2- As cited in Nogawa (n 267).
[280] Suehiro, I. (1946). "Rōdō kumiai kaisetsu (The explanation of trade union)" Nihonn Hyōronnsha. p. 46-, as cited in Nogawa (n 267).
[281] Nogawa (n 267). p. 300.

violates individuals' freedom so long as it is for strengthening unionisation in Japan."[282] Since the interpretation of union shop was more towards the promotion to organise for better working conditions, it was deemed to be legal.[283] However, since then, there has been some opposition regarding its legality, for instance, the opinion that union-shop would not be comparable with the right to choose an occupation in Art. 22 (1) of the Constitution. [284]

On the other hand, case law consistently recognized its legality and the Supreme Court by stating, "the employer is obliged to dismiss the employee unless otherwise provided if the agreement is union shop that expelled the union member."[285] While there was not much discussion regarding union-shop then, a shift was seen around 1980, which strongly disagreed with the previous view. Nishitani stressed that the freedom of organise in Art. 28 of the Constitution secures workers choose whichever union they would like to join with their own will and that union shop violates its negative freedom by threatening workers to be dismissed.[286] He tried to rebuild the interpretation of union shop by balancing the positive and negative freedom to protect individual freedom.[287]

After that, based on the negative view, the development of case law tended to accept union-shop restrictively. Union shop is still legal with limited application. At the same time, there is the exception of the application for minority unions, and it is understood that the dismissal doctrine is applicable for firing workers due to union-shop agreements.[288] However, towards the 21st century, the legality of union shop remains controversial.[289]Although there have been discussions on it, there is still no consensus in relation to union shop in Japan.[290]

[282] Hiraga, K. (1950). "Rōdō kumiai hōron (Trade Union Law)." Minori shobo. p. 175. As cited in Nogawa (n 267)
[283] Nogawa (n 267) p. 300.
[284] Ooishi, Y. (1948). "Nihon kenpō to rōdō ken (The Japanese Constitution and labour rights)." Law Culture Vol. 3 10-12. p. 42. As cited in Nogawa (n 267).
[285] Supreme Court Case, Oohama tankou jiken (Ooama coal mine incident) April 23, 1949, p. 425, as cited in Nogawa (n 267) p. 301.
[286] Nishitani, S. (1992). "Rōdō hou ni okeru kojin to shudan (Individuals and Collectives in Labour Law regarding labour law). Yuhikaku. P. 156. as cited in Nogawa (n 267) p. 302
[287] Nogawa (n 267) p. 302.
[288] Ibid., p. 303
[289] Ibid.
[290] Ibid., p. 304

4.2 Sweden / Europe – Human rights protection

While union shop agreements are interpreted restrictively in Japan, there is a discussion regarding closed-shop agreements in relation to human rights in the EU.

There are two types of closed shop exist: Pre-entry closed shop agreements consist of an obligation to become a member of a union before entering employment.[291] Post-entry closed-shop is where workers are obliged to join a specific union shortly after getting hired.[292] Closed shop agreement "provides an excellent illustration of the interplay between the individual and the collective aspects of the right to associate."[293] The question is whether compulsive union membership is a condition for getting or remaining employed with human rights law.[294]

In short, the compatibility of closed shop agreements with human rights law is more complicated than other labour-related issues.[295] Art. 11 of the European Convention on Human Rights (thereinafter 'ECtHR') put a positive right of freedom of association, whereas none of the other human rights instruments recognises a negative right.[296] There is no international protection on the right not to associate either.[297] However, the ECtHR recognised a right not to organise.[298] Recent decisions in the UK and Scandinavian countries were related to closed-shop agreements, and its majority was a common and lawful practice.[299]

[291] Deakin, S. and Morris, G. Labour Law, 5th edn (Oxford, Hart Publishing, 2009) 736, no 8.27. as cited in Mantouvalou, V. (2007). "Is There a Human Right Not to be a Trade Union Member? Labour Rights under the European Convention on Human Rights." LSE Law, Society and Economy Working Papers 08/2007. p, 292.
[292] Ibid.
[293] Mantouvalou (n 291) p. 3.
[294] Ibid.
[295] Ibid., p. 13.
[296] Hiel, I. "The Right to Form and Join Trade Unions Protected by Article 11 ECHR." The European Convention of Human Rights and the Employment Relation, edited by Filip Dorssemont et al., Hart Publishing, 2013, p. 289.
[297] Ibid.
[298] Ibid.
[299] Ibid., p. 290.

4.2.1 Closed-shop agreements

In *Young, James and Webster*,[300] although it was the first time for the ECtHR to give a judgement on closed-shop agreement, an individual had previously referred to the European Convention to challenge an allegedly unlawful trade union practice.[301] *X v Belgium*,[302] a Belgian worker handed in his complaint regarding his dismissal due to his non-membership of one of the two representative employee organisations.[303] The Commission demonstrated that they recognize the negative side of the freedom of association by stating, "it is true that the notion of the freedom of association in itself implies also the freedom not to associate or to affiliate trade unions."[304] The ECtHR decision regarding this case was irrelevant with the case law of any other monitoring bodies.[305]

Although Art. 11 of the Convention does not include a general principle protecting negative freedom, the Court stated that this does not necessarily mean that the negative aspect of freedom of association is entirely excluded from the Article.[306] Both the ECtHR and the Commission[307] recognised negative freedom of association, although the preparatory works had explicitly mention that it was not desirable to introduce negative freedom of association into the Convention, as closed shop may bring some difficulties in certain countries.[308]

In *Young, James and Webster*, three dismissed workers who declined to join a trade union, they had entered into a closed shop agreement with their employer after their engagement.[309] The ECtHR and the Commission held that the Art. 11 of the Convention implies 'some measures of' negative freedom of association.[310] However, negative freedom of association was not in the ILO Conventions 87 and 98, the Universal Declaration of Human Rights (thereinafter 'UDHR'), the ECHR, or the original European Social Charter of 1961.[311]

[300] Application no. 7601/76; 7806/77, *Young, James and Webster v UK* [1981] ECLI:CE:ECHR:1981:0813JUD000760176.
[301] Hiel (n 296) p.290.
[302] Application No. 4072/69. *X v Belgium* [1970].
[303] Hiel (n 296) p. 290.
[304] The author's translation of "qu'il est vrai que la notion même de la liberté d'association implique également la liberté de ne pas s'associer ou de ne pas s'affilier à des syndicats," as cited in Hiel (n 296) p.290.
[305] Hiel (n 296) p. 290.
[306] Ibid.
[307] *Young, James and Webster v UK* (n 300).
[308] Report of 19 June 1950 of the Conference of Senior Officials, Collected Edition of the 'Travaux Préparatoires', 1977, vol IV, p 262, as cited in Hiel (n 296).
[309] Hiel (n 296) p. 290.
[310] Ibid.
[311] Ibid.

Although Art. 20.2 of the UDHR states: "no one may be compelled to belong to an organisation," the expression in Art. 23.4 is limited to "the right to form and join trade unions for the protection of his interests." [312]

Sørensen and Rasmussen v Denmark is a significantly important judgement for several reasons.[313] Despite the fact that it is not the most recent case regarding closed shop agreements, the case demonstrates "the integrated approach as an interpretive method, opening up new questions and avenues for research."[314]

In this case, the Danish legislation about closed-shop was contrary to Art. 5 of the European Social Charter on the right to organise.[315] The two applicants, Mr. Sørensen and Mr. Rasumussen, filed a complaint before the ECtHR that the Danish legislation breached the negative side of the right to associate under Art. 11 of the ECHR. They also argued that their political belief was incompatible with SID (trade union) 's view.[316]

Mr. Sørensen was born in 1975, and he applied for a holiday relief job before entering a university. The company had a closed-shop agreement with a union called SID.[317] Since he was a holiday-relief worker, he was informed that he would not have full membership.[318] Thus, he did not want to join the union. That led to his immediate dismissal without any notice or compensation.[319]

Mr. Rasumussen was born in 1959 who was a gardener when the case was brought. Although he was a member of SID for some years, he stopped being a member of the union since he was against the union's political affiliations. Instead, he joined the Christian trade union. After a few years of unemployment period, he got a nurse job. [320] However, being a member at SID was a condition for his new job. Therefore, he ended up re-joining SID so take the new job.[321]

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[312] Ibid.
[313] Mantouvalou (n 291) p. 10.
[314] Ibid.
[315] Case 52620/99 and 52562/99, *Sørensen and Rasmussen v Denmark* [2006] para. 72.
[316] Mantouvalou (n 291) p. 10.
[317] European Court of Human Rights. (2006). *Sørensen and Rasmussen v Denmark.* Retrieved from https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22002-3524%22]} (accessed on May 11, 2023).
[318] Mantouvalou (n 291) p. 10.
[319] Ibid., p. 3., *Sørensen and Rasmussen v Denmark* (n 315).
[320] European Court of Human Rights. (n 317) (accessed on May 11, 2023).
[321] Ibid.

The Court recognized that the Art. 11 of the Convention encompasses the negative aspect of the right not to be forced to join an associate besides its positive right to organise.[322] Even though the compulsion to join a union is not always a breach of Art. 11 of ECHR, it would be a breach if that strikes at the very substance of the provisions.[323] Past case law before this case dealt with post-entry closed shop agreements, whereas this case concerned a pre-entry closed shop agreement.[324]

Subsequently, in this case, if the applicants did not accept to join the union, they would not have been able to get the positions.[325] The Court also stated that "individuals applying for employment often find themselves in a vulnerable situation and are only too eager to comply with the terms of employment offered."[326] On the other hand, the Danish government argued that the applicants could have found jobs not tied with closed-shop agreements, and the Court agreed with it. However, it held that "it would still have to look at the impact of the arrangement on each individual applicant." [327]

Starting from the first applicant Mr. Sørensen, the Court mentioned that he was relatively young, and his choice was significantly limited as he would only take the job for ten weeks before starting his university. [328] As for Mr. Rasumussen, he was unemployed for some time before the nursery job. If he chooses to terminate his membership at SID, he would be fired and have no opportunity for reinstatement and compensation.

Moreover, closed-shop agreements in the horticulture sector had a dominant position.[329] Same for Mr. Sørensen; he had too limited choices.[330] In relation to this, the government argued that they could choose to join SID's "non-political membership." The ECtHR held that, in reality, the possibility of that was barely non-existent.[331] Thus, the requirement to join SID was deemed as the very substance of Art. 11.[332] Considering all the circumstances, the Court held

[322] Ibid.
[323] Mantouvalou (n 291) p. 10.
[324] Ibid.
[325] Ibid.
[326] *Sørensen and Rasmussen v Denmark* (n 315). para. 59.
[327] Mantouvalou (n 291) p. 10.
[328] Ibid.
[329] Ibid.; *Sørensen and Rasmussen v Denmark* (n 315). p. 11.
[330] Ibid.
[331] Ibid.
[332] Ibid.

that Denmark failed to secure the applicants' negative right not to be forced to become a trade union member.[333] In other words, Art. 11 of the Convention, as the majority concluded, had been violated regarding both applicants.[334]

There are recent developments to restrict closed shop agreements since they are no longer considered as essentials for safeguarding workers' rights.[335] The Courts also stated that there is an increased consensus that closed-shop agreements are unnecessary to protect workers effectively. Five judges opposed the ruling, mentioning "the tensions and the complexity of the issue." [336] The opinion of Judges Rozakis, Bratza and Vajic was worth noting. Based on the opinion, a distinction was drawn between the two applicants.[337] Mr. Rasumussen would have "[t]he thread of dismissal and the potential loss of livelihood which would result, amounted […] to a serious form of compulsion which struck at the very substance of the right guaranteed by Article 11." [338]

On the contrary, Mr. Sørensen would be less complicated to find a similar job with an employer that does not have a closed-shop agreement. Because of this reason, the degree of compulsion he faced was not significant enough to constitute a violation of the right to associate.[339] As a practical implication, if the motive behind denying to become a member of a specific trade union is linked to political reasons, it is more likely that a closed shop agreement will violate Art. 11.[340]

It is certain that the scope is limited for union security clauses compatible with the ECHR.[341] It is also hard to "envisage a situation where a closed-shop agreement will not violate human rights law." [342] Mantouvalou argues that there are three different solutions concerning closed shop that was developed by case law: 1) Integrated approach (*Young, James and Webster*), 2) Degree of compulsion (*Sørensen and Rasmussen*), 3) Evaluation of the character, the object

[333] European Court of Human Rights. (n 315).
[334] Mantouvalou (n 291) p. 11.
[335] Mantouvalou (n 291)
[336] Ibid.
[337] Ibid.
[338] Novitz in Human Rights at Work: Perspectives on Law and Regulation (Oxford: Hart 2010). (Dissenting Opinion), as cited in Mantouvalou (n 291) p. 11.
[339] Mantouvalou (n 291) p. 11.
[340] Jensen, M. Constitutional Law/Droit Constitutionnel - Denmark/Danemark," (2006). 18(2) European Review of Public Law / Revue Européenne de Droit Public 791., as cited in Hiel (n 296) p.291.
[341] Mantouvalou (n 291) p. 13.
[342] Ibid.

and purpose of the Convention (*Gustafsson v Sweden*).[343] Recently, the Court has used the integrated approach to its interpretation.[344] While the International organizations have consistently argued that closed shop arrangements should be subject to regulation by national authorities, the ECSR has adopted a robust stance, stating that such arrangements infringe upon the right to freedom of association under the ESC.[345] Whether which of the two expert bodies the ECtHR should follow remains unclear. [346]

As we have seen through important case law in Europe, we can see the general acceptance of the obligation of governments to protect human rights in both public and private domains.[347] In comparison to the situation in the EU, there is not much discussion regarding human rights in connection to union shop agreements in Japan. In the next chapter, I will investigate minimum wage.

[343] Ibid.
[344] Ibid.
[345] Mantouvalou (n 291) p. 15.
[346] Ibid.
[347] United Nations Human Rights Office of the High Commissioner. (2016). "Human Rights Handbook for Parliamentarians N° 26. pp. 174-76, pp. 187-91. Retrieved from http://archive.ipu.org/PDF/publications/hrights-en.pdf (accessed on May 22, 2023).

Chapter 5. Minimum wage

Some countries set minimum wages by collective bargaining, while statutory minimum wages are already set by law in other countries. Irrespective of how minimum wages are determined, "working poor" / "in-work poverty" is seriously concerned in Japan and the EU. Thus, this chapter intends to draw some attention to which of the wage settings lead to better results for employees. [348]

5.1 Japan – 'Council' method

The minimum wages are statutory and those are decided depending on each prefecture.[349] The Minimum Wages Act regulates minimum wages in Japan (enacted in 1959), while the Labour Standards Act of 1947 let the administrative authorities, where necessary, have minimum wages for workers.[350] The Act aims to improve working conditions by eliminating wages below a certain standard, enhancing the quality of the labour force, and ensuring fair competition among enterprises.[351] This law applies to all workers except few cases.[352]

In 2007, when the issue of working poor became severe, the Minimum Wages Act was revised.[353] The purpose was to fill the gap between the level of social welfare benefits and the income earned by full-time employees on minimum wage, which is more significant in urban prefectures and the northern region.[354]

Similarly to the LSL, the Minimum Wages Act has three mechanisms to ensure compliance: 1) compulsory application for the contract between the parties, 2) punishments for breaches, and 3) administrative supervision.[355] Labour contracts become null and void if a wage stated

[348] Furåker, B. (2020). "The issue of statutory minimum wages: Views among Nordic trade unions." Economic and Industrial Democracy, 2020, Vol. 41 (2) p. 421.
[349] Kawaguchi, D. and Mori, Y. (2021). "Estimating the effects of the minimum wage using the introduction of indexation." Journal of Economic Behavior & Organization. Vol. 184, April 2021. pp. 388-408.
[350] Nakakubo, H. (2009). "A New Departure in the Japanese Minimum Wage Legislation." Japan Labor review, ISSN 1348-9364, Vol. 6, 2, 2009. pp. 22-3.
[351] Tamada, K. (2009). "Saitei chinnginn ha donoyouni kimatteirunoka (The deteminants of the minimum wages in Japan)." *The Japan Institute of Labour. No. 593, December 2009*. p. 17.
[352] Ibid.
[353] Nakakubo (n 350).
[354] Kawaguchi & Mori (n 349). p.2.
[355] Nakakubo (n 350). p. 27.

in the contract does not meet the minimum wage rate (although if a worker wishes so), and the worker will be entitled to receive a wage equivalent to the minimum wage.[356]

There are two types of minimum wages in Japan. The first one is regional minimum wages, and the second one is industrial minimum wages.[357] The two minimum wages are revised almost every year according to trends in wages and prices.[358] As the industrial minimum wage is disappearing because workers who fall under the scope are limited compared to the regional one,[359] I will focus on illustrating the regional minimum wage.

The Minimum Wage Councils are called "Central Minimum Wages Council," an advisory body from the MHLW at the national level.[360] Its regional council is called "Regional Minimum Wages Councils" that are organised in every prefecture in Japan.[361] The councils are a tripartite body.[362]

The process of deciding on minimum wage is structured in detail. At first, the Central Minimum Wage Council, composed of public interest representatives ("*Kōeki Daihyosha*" who are, for example, retired bureaucrats and academics), employer representatives (representatives of economic organizations), and worker representatives (representatives of trade unions), propose a 'target' minimum wage increase (guideline) regarding prefectural minimum wage increase for four regional blocks.[363] There are 47 prefectures in Japan, and those are divided into four different ranks based on their relative economic position – from A (highest) to D (lowest).[364] The classification of the rank is renewed every five years.[365]

[356] Nakakubo (n 350). p. 27.
[357] The MHLW. (n.d.). "Saitei chingin seido no gaiyou (Overview of the minimum wage system)." Retrieved from https://www.mhlw.go.jp/www2/topics/seido/kijunkyoku/minimum/minimum-09.htm#:~:text=最低賃金には、地域,の２種類があります%E3%80%82 (accessed on May 22, 2023).
[358] Yu, Y. (2020). "Current status of minimum wage research." Economic Journal of Kyushu University. p. 83
[359] Kawaguchi, D. and Mori, Y. (2009). "Saitei chingin Rōdōsha no zokusei to saitei chingin hikiage no koyouheno eikyō (Attributes of minimum wage workers and the influence/impacts of minimum wage increase. *The Japan Institute of Labour*. *No. 593, December 2009.* p. 43.
[360] The Japan Institute for Labour Policy and Training. (2013). "Minimum Wage System." Labour Situation in Japan and Its Analysis: General Overview 2013/2014. p. 169.
[361] Nakakubo (n 350). p. 24.
[362] Ibid.
[363] Kawaguchi & Mori (n 359) p. 43.; Aoyagi, C. Ganelli, G. and Tawk, N. (2016). "Minimum Wage as a Wage Policy Tool in Japan." International Monetary Fund Working Paper. p. 6.
[364] Aoyagi et al. (n 363) p. 6.
[365] Tamada (n 351). p. 19.

The ‘target’ minimum wage system has been used in Japan since 1978 for equalizing regional minimum wages.[366] After receiving the ‘target’ minimum wage increase from the Central Minimum Wages Council, the Regional Minimum Wages Councils discuss and decide their minimum wage standard.[367] In reality, the ‘target’ minimum wage from the Central Minimum Wages Council has a decisive influence on the meetings of the Regional Minimum Wages Councils in each prefecture.[368] Tamada mentions that there is nevertheless almost no research on the determining factors regarding the ‘target’ minimum wage increase.[369]

Since it is usually hard for the parties to agree, the opinion of the public interest members is significantly important in the Central Minimum Wages Council.[370] Consequently, the final decision tends to reflect the opinions of the public interest members.[371] It seems like the opinions of the public interest members are strongly depend on the “Wage Determination Status Survey” by the MHLW.[372] After the panel’s recommendations and considerations of local conditions, local councils set each prefecture’s minimum wage level.[373] Even though the recommendation is not legally binding, it provides a lower bound in practice.[374]

One of the essential cases regarding minimum wage *is Kansai Medical University*,[375] which concerns a medical intern at a private university who has died due to ‘*Karoshi* (overwork death).’[376] This case drew attention to the definition of workers under the LSL, and the Court held that such interns were deemed to be ‘workers’ supported by the Minimum Wages Act and ordered the hospital, as his employer, to pay the shortfall.[377]

Regional minimum wages have both criminal and civil effects.[378] As to the criminal effect, if company sides give workers lower than the regional minimum wage, they will be fined up to

[366] Kawaguchi & Mori (n 359) p. 43.
[367] Ibid.
[368] Ibid., pp. 43-4.
[369] Tamada (n 351) p. 17.
[370] Kawaguchi & Mori (n 359) p. 44.
[371] Ibid.
[372] Ibid.
[373] Aoyagi et al. (n 363) p. 6.
[374] Ibid.
[375] Saikōsaibbansho [Supreme Court] June 3, 2005. Kansai Medical University, Rōdō Hanreishu [Rohan] Vol. 831, p. 36.
[376] Okazaki, M. (n.d.). “Case *Kansai Medical University*.” Retrieved from http://sakaisogolaw.net/jiken/278.html (accessed on May 22, 2023).
[377] Ibid.
[378] Yu (n 358) p. 83.

500,000 yen (around 3400 euros).[379] As for the civil effect, a labour contract stipulating a wage less than the minimum wage shall be null and void.[380]

5.1.1 Revised Minimum Wages Act

Before the revision of the Minimum Wages Act in 2007, the regional minimum wage was just one type of minimum wage in Japan, which was set based on "industries, occupations or regions" (Art. 1 of the old Act).[381] However, the revised Act gives a whole section (Chapter 2, Section 2) for regional minimum wages.[382] Art. 9 of the Act states that it "must be established in every region of Japan" to secure the amount of minimum wages for low-paid workers.[383] By doing so, the government made sure to provide an essential safety net for all workers.[384] As stated in Art. 9 (2), regional minimum wages are determined by 1) the living expenses of workers; 2) workers' wages; 3) the ability to pay wages for companies in the region "to maintain the minimum standards of wholesome and cultured living."[385]

Another change for the revised Act is in Art. 9 (3), which added a factor of the consideration "to ensure that workers can maintain the minimum standard of wholesome and cultured living" and this phrase derives from Art. 25 of the Constitution.[386] This revision reflects the criticism that "existing minimum wage rates were so low that they were below the public assistance level even when working full-time."[387] Although public assistance and minimum wage have different objectives in nature, they should both be structured to avoid creating a moral hazard that discourages individuals from working.[388] Violating regional minimum wages (Art. 40) can result in criminal penalties, also in the old version of the Act. The 2007 revision raised the maximum penalty for breaching regional minimum wages from 10,000 yen to 500,000 yen. [389]

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[379] Ibid.
[380] Ibid.
[381] Nakakubo (n 350) p. 30.
[382] Ibid.
[383] Japanese Law Translation. (2012). "Minimum Wage Act." Retrieved from https://www.japaneselawtranslation.go.jp/en/laws/view/3937/en (accessed on May 22, 2023).
[384] Nakakubo (n 350) p. 30.
[385] The MHLW (n 357).; Japanese Law Translation. (n.d.). Retrieved from https://www.japaneselawtranslation.go.jp/en/laws/view/174 (accessed on May 22, 2023).
[386] Japanese Law Translation (n 383).; Nakakubo (n 350) p. 30.
[387] Nakakubo (n 350) p. 30.
[388] Ibid.
[389] Nakakubo (n 350) p. 30.

There was an intense discussion in 2020 between the employee side and employer side regarding minimum wages.[390] However, it did not conclude successfully since they had a big conflict.[391] The employee side claimed that minimum wages should be increased to raise consumer purchase intentions negatively affected by the corona outbreak. In addition, they stated that people living in rural areas in Japan moved to Tokyo because of the wage difference. Thus, the gap in the regional minimum wages should be improved. On the contrary, the employee side argued it would be best to keep the minimum wages since small and medium-sized companies already have difficulties in hiring new workers from the COVID-19 pandemic and increasing the wages worsen the situation.[392]

Yu states that this situation will be better if adequate clarification of the minimum wage is created and its impact on household and regional economies.[393] Academics have actively been discussing the effects and roles of the minimum wage increase, especially the impact of the minimum wage on employment.[394] Even though there is research on this topic, there has yet to be a consensus established regarding the various effects of the minimum wage. [395]

5.2 Sweden – Collective agreement model

While trade unions in European countries believe that it is necessary to have statutory minimum wages to protect workers' rights, Sweden has no statutory minimum wages in legislation and the collective bargaining model is still preferred.[396] However, it does not mean that minimum wages do not exist in Sweden.[397]

As mentioned earlier, in the Swedish labour market model, the regulation of wages and other employment terms is primarily the responsibility of the labour market parties.[398] Sweden has a well-developed collective system with strong social partners who negotiate minimum wages

[390] Yu (n 358) p. 77.
[391] Ibid.
[392] The MHLW. (2020). "2020 nenn 7 gatsu 22 niti. Dai 57 kai chou saiteichinginshingikai gijiroku (Minimum Wage Council meeting on the 22nd of July 2020)" (accessed on May 22, 2023).
[393] Yu (n 358) p. 77.
[394] Ibid.
[395] Ibid.
[396] Furåker (n 348) p. 419.
[397] Ibid., p. 421,; Ilsøe, A. and Söderqvist, C. (2022). "Will there be a Nordic model in the platform economy? Evasive and integrative platform strategies in Denmark and Sweden." Wiley Online Library. Retrieved from https://onlinelibrary.wiley.com/doi/10.1111/rego.12465 (accessed on May 10, 2023). p. 2.
[398] Medlingsinstitutet. (n.d.) "The Swedish model and the Swedish National Mediation Office." p. 1.

at the sectoral level.[399] While trade unions conclude those agreements with the attempts to obtain higher wages than the industry standard, the employer side considers them to be just as an instrument for the increased wage difference without overstepping the industry norm.[400] In a similar way to Japan, Sweden also sets a provision against human exploitation at work (Chapter 4 section 1b of Swedish Criminal code).[401]

Among Scandinavian countries, trade unions in Sweden are most sceptical towards legislation regarding statutory minimum wage.[402] Why does Sweden believe the Swedish way of setting minimum wage is better than having their own statutory minimum wage?

As Furåker states, the resistance of Nordic countries towards statutory minimum wages seems to be connected to the power of their trade unions and their effective cooperation with employers in negotiating.[403] It wants to keep the autonomy of the functioning bargaining model since legislation is considered as a constraint on the partner's freedom to conclude independent agreements.[404] There is also the fear that European campaigns and initiatives regarding statutory minimum wages may result in further regulations in the EU, which could cause adverse impacts.[405] Furåker continued that it is certain that collective bargaining is deemed to be the most fruitful way of obtaining adequate wages and a working environment.[406] However, trade unions are not always fully powerful in improving the conditions.[407] He also supposes that it would be essential to introduce statutory minimum wages where necessary, which is widely understood in Europe.[408]

[399] The ILO (n 13) p. 8.
[400] Kjellberg, A. (2019). "Sweden: collective bargaining under the industry norm." Retrieved from https://lucris.lub.lu.se/ws/portalfiles/portal/129732152/Collective_Bargaining_Industry_Norm_A_Kjellberg_November_2022.pdf (accessed on May 10, 2023). p. 602.
[401] Government Offices of Sweden. (2022). The Swedish Criminal Code. Retrieved from https://www.government.se/government-policy/judicial-system/the-swedish-criminal-code/ (accessed on May 15, 2023).
[402] Furåker (n 348) p. 419.
[403] Ibid., p. 424.
[404] Ibid., p. 421.; Eldring, L. and Alsos, K. (2015), "Statutory minimum wage regulation in Europe. A necessary evil?" In: Randolph, G. & Panknin, K (eds.), Global Wage Debates. Politics or Economics? New Dehli/Washington DC: JustJobs Network Inc, pp.171-184.
[405] Ibid.
[406] Furåker (n 348) pp. 420-21.
[407] Ibid.
[408] Ibid.

5.2.1 Directive on adequate minimum wage

On the 28th of October 2020, the European Commission demonstrated a proposal for a Directive 2022/2041 on adequate minimum wages (thereinafter 'Directive 2022/2041' / 'AMW Directive'), which has maximized the scope of its regulatory authority under Art. 3 (3) of the Treaty on European Union (thereinafter 'TEU') which aims the EU to promote social progress, justice, and protection, as well as Art. 151 of the Treaty on the Functioning of the European Union (thereinafter 'TFEU'), which is to promote social policy, including better living and working conditions.[409]

The Directive tries to avoid exceeding MS's competences under Art. 153[410] and "most importantly, their capacity and willingness to design wage policies through law and/or collective bargaining."[411] Still, problems remain, such as in connection with "the Directive's internal consistency, enforcement and the expected impact on Member State's legal systems."[412]

The European Pillar of Social Rights (thereinafter 'EPSR' or 'The Pillar') tries to prevent in-work poverty as a fresh goal.[413] The EPSR sets four principles: 1) the 'principle' of wage fairness, connected to the 'right' for all workers to have fair wages giving make them a decent standard of living, 2) ensuring adequate wages, taking into account both the economic and social conditions of each country, while making sure to have access for employment and incentives to seek work, 3) prevention for in-work poverty, and 4) transparent & predictable wage set by the national practices, and above all, respect the social partner's autonomy.[414]

[409] Ratti, L. (2023). "The Sword and the Shield: The Directive on Adequate Minimum Wages in the EU." Industrial Law Journal, 2023, dwad001. Retrieved from https://doi.org/10.1093/indlaw/dwad001 (accessed on May 17, 2023).; Sjödin, E. (2022). "European minimum wage: A Swedish perspective on EU's competence in social policy in the wake of the proposed directive on adequate minimum wage in the EU." *European Labour Law Journal*, vol. 13, issue 2. p. 276
[410] Art. 153 TFEU outlines the specific areas in which the EU and MSs can share responsibilities in relation to social policy. Art. 153(1) grants the authority to intervene in matters of working conditions, whereas Art. 153 (5) explicitly excludes EU TFEU competence to legislate on "pay, the right of association, the right to strike, or the right to impose lock-outs."
[411] Ratti (n 409) p. 2.
[412] Ibid., p. 2
[413] Ibid., p. 4
[414] Ibid.

The concept of wage fairness, decency, and transparency in the Directive is essentially based on supra-national sources, including the Preamble to the ILO Constitution,[415] the ILO minimum wage instruments, and the European Social Charter Art. 4.[416] In Europe, since the late 1990s, workers have not been effectively protected from economic distress,[417] and there is a wage gap between the fewer earning stellar remuneration and the many earning low salaries.[418]

Art. 5 of the Directive stipulates the concept of adequate wages, which is the main aim of the Directive. There are two meanings of 'adequacy' in the Directive: 1) wage distribution and 2) a decent standard of living. The two "underline the importance of combining a relative measurement of decency-of-living indicators."[419] Art. 5(1) sets out robust provisions by stating "procedures for the setting and updating of statutory minimum wages"[420] instead of focusing on wage adequacy as a final result.[421] MSs must "establish the necessary procedures" to set and update their statutory minimum wages.[422] As for Art. 5(2), the national criteria refers to "long-term national productivity levels and developments."[423] Art. 5(3) proposes the opportunity to use an automatic mechanism "for periodic adjustments to the statutory minimum wage."[424] Art. 5 (4) mentions that there are two thresholds for the measurement of the so-called Kaitz index ("60% of the gross median wage and 50% of the gross average wage"[425]), which decides statutory minimum wage adequacy.[426]

Moved on the prescriptive part of the Article, its first obligation is to create "the necessary procedures for the setting and updating of statutory minimum wages", and the criteria should

[415] The ILO. (n.d.). "ILO Constitution." Retrieved from https://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453907:NO (accessed on May 12, 2023).
[416] Ratti (n 409) p. 4
[417] Andreß H. -J. and Lohmann, H. (2008). "Introduction: The Working Poor in Europa," in Andreß H. -J. and H. Lohmann (eds), "The Working Poor in Europe. Employment, Poverty and Globalization. Cheltenham: Edward Elgar, 2008. pp. 1-2.
[418] Collins, H. (2022). "Fat Cats, Production Networks, and the Right to Fair Pay" The Modern Review, Vol. 85, January 2022, No. 1. 85(1) MLR 1-24.
[419] Ratti (n 409) p. 12.
[420] Directive 2022/2041 on adequate minimum wages in the European Union. (2022). *Official Journal of the European Union.* Art 5(1).
[421] Ratti (n 409) p. 9.
[422] Directive (n 420) Art 5 (1).
[423] Directive (n 420) Art 5 (2) d.
[424] Ratti (n 409) p. 10.
[425] Directive (n 420) Art 5 (3).
[426] Ratti (n 409) p. 10.

be defined clearly and contain the provision's objectives,[427] which are to securing "a decent standard of living, reducing in-work poverty, promoting social cohesion and upward social convergence and reducing gender wage disparities."[428]

According to the last part of Art. 5, the discretion for MSs is extensive, meaning they can secure their autonomy. They "shall designate or establish" in relation to the practice of respective MSs "by law, competent institutions, or tripartite bodies."[429] However, they should adhere to the Directive's preamble,[430] and minimum wages should be "fair in relation to the wage distribution of the country" while allowing workers to have a decent standard of living (Recital 28).[431] Secondly, MSs must to update their statutory minimum wages regularly on time to ensure that the wages remain adequate at least every two years (for MSs using automatic wage indexation, every four years).[432] The third obligation is that MSs must set up advisory committees advice to competent authorities regarding statutory wages. This obligation is consistent with the principles set out in ILO Conventions No. 131 (concerning minimum wage) as well as the ILO Recommendations No. 135.[433]

Art. 4 of the AMW Directive ensures the promotion of collective bargaining on wage-setting. The proposed Directive is considered an instrument for supporting collective bargaining in MSs rather than coordinating wage policies in MSs where statutory minimum wages are in force.[434] This is evidenced in the last sentence of the recital 18 of the Preamble that one of the explicit objectives is to promote collective bargaining in wage-setting.[435] Recital 22 also emphasises the well-functioning collective bargaining on wage setting ensure an adequate minimum wage that protects workers by providing a decent living.[436]

If wage dumping goes too far in a country, there will lead to in-work poverty.[437] The new Directive tries to address it. Even though the bottom level should be sufficiently high, the

[427] Ibid., p. 11.
[428] Ratti (n 409) p. 11.
[429] Directive (n 420) Recital 28.
[430] Ratti (n 409) p. 11.
[431] Ibid.; Art 5 (6)
[432] Ratti (n 409) p. 11.
[433] Nevertheless, it is worth noting that Convention No. 131 does not include notions of 'adequate' or 'decent' wages. Therefore, it creates obstacles in formulating a precise definition of the minimum wage and its components. From Ratti (n 409) p. 11.
[434] Ratti (n 409) p. 12.
[435] Ibid.
[436] Directive (n 420) Recital 18 and 22.
[437] Ibid., p. 423.

statutory minimum wages in several MSs are so low rate that they cannot avoid income poverty.[438] There is an argument stating that implementing regulations on the minimum wage does not effectively assist those who are most vulnerable, as the individuals facing the most severe disadvantages often remain unemployed.[439] Even though the Directive seems challenging, there are still some controversial concerns.

For example, the European Trade Union Confederation (thereinafter 'ETUC') stated that "[m]inimum wages alone cannot offer an adequate response to […] in-work poverty. Strengthening collective bargaining systems and their coverage is essential to prevent a downward slide in wages."[440] Subsequently, Nordic countries brought their concerns towards the impact on their industrial relations systems.[441]

Initially, the limited personal scope of the proposal was one concern because it only covers workers in the EU who obtain an employment contract or employment relationship as defined by law, collective agreements or practice in force in each MS, with consideration to the case-law of the Court of Justice (Art. 2).[442] This would most likely lead to the issue of the application of the Directive for platform workers, for instance. It seems like recital 22 tried to address this issue but only partly, by mentioning that "domestic workers, on-demand workers, intermittent workers, voucher-based workers, platform workers, trainees, apprentices and other non-standard workers, as well as bogus self-employed workers and undeclared workers."[443]

Regarding the applicability of the Directive, the most concerned issue is whether it would violate the MSs competence, secured by Art. 153 (5) TFEU. While the ETUC favour of the proposal, it is "undoubtly controversial" and the social partners in Sweden are against it.[444] Similarly, in 2023, Denmark recently brought a case to the Court, claiming that the EU

[438] Schulten T. (2014). "Contours of a European Minimum Wage Policy." Berlin: Friedrich Ebert Stiftung. p. 13.
[439] Skedinger, P. "Reglering av minimilöner på EU-nivå – rätt väg att gå?" (SIEPS 2020). As cited in Sjödin (n 409) p. 290.
[440] The ETUC. (2015). ETUC action programme 2015–2019. Retrieved from https://www.etuc.org/sites/default/files/publication/files/ces-congrecs_2015-rapport-uk-ld_def_0.pdf (accessed on May 20, 2023). p. 15. As cited in from Furåker (n 348) p. 423.
[441] Euractiv, "Adequate Minimum Wages proposal – an attack on collective bargaining" (2021). Retrieved from https://www.euractiv.com/section/economy-jobs/opinion/adequate-minimum-wages-proposal-an-attack-on-collective-bargaining/ (accessed 12 April 2023).; Furåker (n 348)
[442] Ratti (n 409) p. 16.
[443] Directive (n 420) Recital 21.
[444] Sjödin (n 409) p. 275.

overstepped its competence.[445] The Court will most likely resolve this issue, and we will see how the EU will address it accordingly.

Both Japan and Sweden/EU are in the position of improving the situation of 'working poor' or 'work-in poverty' by addressing minimum wage regulations. While statutory minimum wage is still implemented in Japan, the EU proposes a Directive for minimum wages to promote collective bargaining. Although the proposed Directive would significantly development minimum wage regulations in the EU, there are still obstacles, such as its narrow personal scope. A comparative analysis of all the topics in this paper will be held in the next chapter.

[445] Case C-19/23, *Kingdom of Denmark v European Parliament and Council of the European Union*. Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62023CN0019&from=EN (accessed on May 18, 2023).

Chapter 6. Concluding Analysis

In this chapter, I will review the whole paper and analyse the similarities and differences I found from comparing the four topics.

6.1 Trade union density and structure

Between Japan and Sweden, the trade union structure is different; enterprise-level or industry-level unions are common, respectively. In Japan, trade unions were available only for full-time workers, while part-time workers consisted of women, and they did not have the choice to join a union. Thus, it is almost certain that it created gender discrimination in unionisation. In contrast to big enterprises having trade unions, small and medium enterprises tend to have employee representative bodies that basically work as trade unions. Since workers want to avoid conflicts with their managers, they tend not to speak up for their voice and keep a peaceful relationship with them.

In comparison to Japan, Sweden has a very high coverage of unionisation. Although it has slightly declined, around 70% are members of unions, and around 90% of workers are still covered by collective agreements. With the recent developments of platform work, cross-border issues arose that overseas companies want to avoid signing Swedish contracts because the requirements are just too hard to fulfil. Swedish trade unions are struggling with that. General perceptions of unions also differ between the two countries, which will be mentioned in depth later (6.3).

6.2 The definition of workers

Whereas Japan sets the definition of workers by law, Sweden has no statutory definition of workers. The former has mainly two legal definitions, which may sometimes be a complicated issue because it creates a situation where a person is not a ‘worker’ in the LSL, but he/she is within the scope of the TUL. Under the LSL, workers should be under subordination and getting paid their salary, and an overall assessment is to be held. The definition of worker in the TUL is broader in that you must be paid and live by remunerations or similar kinds, regardless of the jobs. In contrast, in Sweden, establishing an employer-employee relationship is known to be relatively easy. A ‘worker’ can be someone who provides his/her work for

someone on a contract basis and receive remuneration in return. Its personal scope is generally broad, and the degree of equal treatment is high.

It is certain to say that the existence of gig workers and its legal position under labour law are getting recognized day by day in the two countries. Japan and Sweden are concerned that it is risky to see them as self-employed. The classifications of whether a person is deemed to be a gig worker or not are determined by overall assessments under both counties. In the EU, few cases regarding platform workers (such as *Yodel*, *Uber*) are recently highlighted, yet there is not enough case law in Japan. Both Japanese and the EU's rules on protecting gig workers have been developed through a guideline and a proposed Directive, respectively.

The common point is that the new law for platform workers in Japan that enacted recently, and the proposal will become legally binding in the future. Under the proposed Directive, the provisions about algorithmic management and rebuttable legal presumption of the employment play an important role, while Japan does not recognize for these topics yet. Algorithmic management should function in a most transparent way so that the employer side does not abuse their workers. By introducing the rebuttable legal presumption, it seems like the Directive wants to fight the current issues that the worker side is imposed a heavier burden than employer's side. The scope of the proposal is broad, despite it still being controversial, it captures not only persons who seem genuinely self-employed, but also false self-employed. Broad interpretation of the new Directive would protect workers from being abused by unclear algorithmic management, and it will most likely safeguard worker's rights. That would mean that the classification of gig workers will be less complicated in the EU. We can hope that this topic will not be in trouble as much.

As opposed to the Directive contents, in Japan, the development seems had not as progressed as in the EU. Although the Japanese government recommends gig work to increase its labour force of the elderly, healthy life expectancy and workers with the guideline, there is the issue of gig workers not seeing themselves as a 'worker' and/or the employer side not knowing the criteria precisely. As a suggested solution, creating an intermediate definition for gig workers like in Germany would be meaningful. Since defining who is a gig 'worker' is not fully recognized under Japanese labour law, setting a new legal definition would pave the way for ensuring their rights. Nevertheless, the stance in Japan is still to keep applying the current legal instruments when considering who is covered as a 'worker.' Compared to Japan, Sweden also has the concept of 'employee-like person' in MBL. Because this concept already

exists, there is less incentive to circumvent its labour regulations for those who face unclear classification problems. Thus, it certainly has an indirect effect on the legal system.

The legislator in the EU seems to be quite active in regulating the boundaries of labour law by working on this Directive. Meanwhile, from seeing that Japan made a new law about freelance workers (enacted in May 2023), Japanese legislator seems also active. Although the new law in Japan and the Directive have not been implemented yet, and both still have some challenges, the protection of platform workers will undoubtly be strengthened by the two legal instruments.

6.3 Negative freedom of association and employment protection

Freedom of association is fundamentally secured both in Japan and Sweden. In this paper, I used the terms of union shop and closed-shop. Closed-shop can be categorized into pre-entry and post-entry agreements, where workers must join a union before or shortly after employment. Union ship agreement is the same meaning as post-entry agreements.

Union shop and closed-shop agreements are legally allowed in Japan and the EU. However, the compatibility with the laws (Japanese law and EU law) is very restricted. In Europe, closed-shop is a controversial topic because most cases, this would infringe human rights of freedom of association. Art. 11 of the ECtHR enshrines the positive right to freedom of association. In contrast, other human rights instruments do not explicitly state the negative freedom (right to choose not to join a union) of association. Later on, ECtHR acknowledged the existence through case law. Meanwhile, in Japan, mainly three academic theories existed regarding negative freedom of association: Positive right to organise theory, negative right to organise theory and freedom of association theory. However, there seems like no discussion that evaluate the freedom from the human rights perspective.

Compared to Europe, union shop in Japan is more common, especially at large companies. They have union shop agreements with their enterprise-level unions. The motivation for union shop agreements is different from the EU that it aims to increase union density by forcing workers to join specific unions. Although the right not to join a union is recognized in Japan, the issue of legality remains unresolved. Under the Japanese Constitution, plural unionism is

enshrined, which means that one should be allowed to choose any union irrespective of which one he/she joins. This freedom is laid down in both the Japanese Constitution and the TUL. It seems likely that the right of association is restricted in a way that the opinion of the employer side matters a lot when creating a trade union. In other words, if the employer side opposes to creating a union, employees do not wish to do it for fear that the employer-employee relationship will most likely get poor.

I suppose that this mindset comes from the traditional Japanese way of collectivism where harmonization in society is crucial. Everyone tends to think that having the same opinions as others is ideal (being humble is one of the virtues in Japan), instead of standing out from people. Many people would prefer a peaceful work environment at work by avoiding confrontation. This may be related to Japanese lifetime employment. Maintaining a wholesome relationship with work people is important because it would be stressful to work in the environment lifetime. However, with the number of part-time or gig workers increasing lately, lifetime employment is less common. The development of flexibility at work and acceptance of diversity as a worldwide phenomenon will probably lead to fruitful results where the balance of the employ-employees relationship becomes more equal. Moreover, if the Japanese labour market will be more gigified, that could lead to more unionisation. As opposed to Japan, in Sweden, gigification would lead to less unionisation by workplaces getting scattered all over the place by increasing platform workers.

Under Japanese labour law, the criterion for dismissal is strict, and employers cannot fire workers without justifiable reasons. According to the TUL, if an employer fires a worker due to the person not joining a specific union, the redundancy will be null and void, and the sanction is on the employer's side if he/she is moving to a different union (dismissal doctrine which strict abusive dismissals with criminal sanctions). This appears to be the provision is favourable towards workers.

On the other hand, under the EU legal system, closed shop agreements are also a complicated issue. I took a closer look at the important cases of *Young, James and Webster*, and *Sørensen and Rasmussen v Denmark*. The first case held that the closed shop was not compatible with the ECHR and recognized the negative freedom. The second case was about pre-entry closed shop agreement. The Court introduced the integrated approach, while it held that the scope is quite limited. It is argued that these three solutions that would resolve the complex issue of closed shop agreements: 1) Integrated approach, 2) Degree of compulsion, and 3) Evaluation

of the character, the object and purpose of the Convention. Recently, closed shop agreements are no longer seen as indispensable for upholding the rights of workers.

In Japan, it is understood that negative freedom derives mainly from the Japanese Constitution. Although it seems like the right is secured, in reality, it is not as smooth as Europe to exercise the right to associate. From the comparison, I believe that the EU sees the negative freedom of association as a fundamental human right rather than the protection of workers. The discussion is heavily on human rights instruments, and case law makes it legitimate. Even though it is crucial to ensure the freedom of association for workers, if the laws protect the worker side too heavily, it would be unfair to the employer side. Thus, striking an equal balance will be significantly important.

6.4 Minimum wage

Minimum wages are essential to secure workers' sufficient living. The serious issue of "working poor" / "work-in poverty" has arisen both in Japan and Europe. By working on minimum wage regulations, both counties are trying to secure a minimum standard of living ('the minimum standard of wholesome and cultured living' / 'a decent standard of living').

Whereas Sweden has set their minimum wages by collective agreements, Japan has statutory minimum wages. The Revised Minimum Wages Act was made in response to the working poor issue, to ensure minimum wages by introducing financial punishments and administrative supervision. This law aims to improve working conditions, eliminate wages below minimum wages, enhance the quality of the labour force, and ensure fair competition.

There are two types of minimum wages: regional minimum wage and industrial minimum wage. This paper focused on the regional minimum wage, revised annually based on wage and price trends. The decision-making process for minimum wage involves the Central Minimum Wages Council at the national level and the Regional Minimum Wages Councils in each prefecture. The Regional Councils then discuss and determine their minimum wage standards, with the 'target' minimum wages. The 'target' minimum wages decided by the Central Minimum Wage Council has a conclusive impact. The opinions from public interest members are considered very important by the Central Minimum Wage Council in deciding the final decision of the 'target' minimum wages.

Consequently, the opinions of the public interest members are heavily influenced by the 'Wage Determination Status Survey' conducted by the MHLW. Although the recommendations are not legally binding, they set a practical lower bound. A notable case involving the minimum wage is *Kansai Medical University*, where a medical intern died from overwork (known as '*karoshi*'). The hospital violated the Minimum Wage Act by providing an inadequate monthly 'scholarship' that fell below the regional minimum wage. Violating regional minimum wages can lead to both criminal and civil consequences. Companies offering wages below the regional minimum can be fined up to 500,000 yen, and labour contracts stipulating wages below the minimum wage are considered null and void. There is not so much discussion in relation to other legal instruments, such as the ILO Minimum Wage Fixing Convention, although it is ratified in Japan.[446]

Meanwhile, it is common to set minimum wages through collective bargaining in Sweden. Social partners decide the wages by negotiating at a sectorial level. In other words, all workers within one sector of the labour market, they share the same minimum wages and conditions. Whereas in Japan, it is more decentralized, both in collective bargaining but also in minimum wage settings.

Trade unions in Sweden display the greatest scepticism towards legislation on statutory minimum wages compared to other Scandinavian countries. Sweden believes that its method of setting minimum wages is superior to implementing a statutory minimum wage. This belief is linked to the power of trade unions in Nordic countries and their successful collaboration with employers during negotiations. Sweden aims to maintain the autonomy of its bargaining model, viewing legislation as a constraint on independent agreements. While collective bargaining is considered the most effective means of ensuring adequate wages and working conditions, trade unions may not always possess sufficient influence to improve conditions. Additionally, there is a concern that European campaigns for statutory minimum wages could lead to further EU regulations that contain potential adverse effects.

Since the percentage of working poor is generally lower in Sweden than elsewhere in Europe,[447] it may be believed in Sweden that statutory minimum wages is appropriate in some

[446] The ILO. (1972). "Ratifications of C131 – Minimum Wage Fixing Convention, 1970 (No. 131). Retrieved from https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312276 (accessed on May 19, 2023).
[447] Eldring, L. and Alsos, K. (2015). "Statutory Minimum Wage Regulation in Europe: A Necessary Evil?" Oslo: Fafo. pp. 34-6. As cited in Furåker (n 348).

MSs where trade union density is very low.[448] Thus, I agree with Furåker that "[…] it may not be so easy to convince Nordic trade unions that legislation is necessary to avoid in-work poverty."[449] As Swedish minimum wage setting has been working well for them, it is understandable that they want to keep their way.

The Directive 2022/2041 on adequate minimum wages should be functioning as a strong tool for minimum wage settings in the EU. While Art. 5 ensures 'adequate wages' while trying to keep the MS's autonomy, Art. 4 promotes collective bargaining when setting minimum wages. It is highlighted the scope has been questioned as it only protects 'workers' in the EU who hold an employment contract or employment relationship set by law. Although different types of workers that might be in trouble (Recital 22 of the Directive) are mentioned, it would not be enough to protect all the potential workers who need the support from the Directive. Another issue is the transfer of competence to the EU.[450]

It is significantly unclear on the degree of how this Directive affects the various labour markets in the MS.[451] The universal application of the Directive with other legal instruments in the EU will be crucial, such as the protection on platform workers. The interplay between the proposed Directive on platform workers and the minimum wage Directive will most likely be a significant step. What surprised me was that it encourages the MSs to have collective bargaining in wage settings. I suppose that in practice, it is not easy for MSs with statutory minimum wages to collectively decide minimum wages.

It seems that the EU tries to harmonize the MSs in minimum wage settings and safeguard a level playing field while trying to keep their autonomy, whilst Japan has such a nuanced system of minimum wage settings in relation to location and sector. The regional wage system in Japan is suitable since living costs in central Tokyo and rural areas differ. On the other hand, the EU way is more towards a one-size-fits-all style with the Directive, which is one of the critiques that Swedish trade unions have had against. It may be challenging to keep both countries with statutory minimum wages and not to have ones happy with the Directive.

[448] Furåker (n 348) p. 422.
[449] Ibid., p. 423.
[450] Sjödin (n 409) p.285.
[451] Ibid., p. 290.

The scope of labour law, negative freedom of the right not to join a union, and minimum wage settings are all intertwined. The topics I have analysed in this paper are not only about delimiting labour law but also in effect and indirectly commercial law. In the EU, if the misclassification issues of workers get resolved by the proposed Directive for platform workers, it would become clearer who is within the scope of the Directive regarding minimum wage. Likewise, if the new law on platform workers in Japan will have a big presence, more persons can be covered by labour law. Gigification would influence the two countries in both ways: authorising workers to enjoy the negative freedom of the right not to join a union in Japan, while unionisation would decrease in Sweden. Those developments of the labour law regulations demonstrated in the paper are still in progress. The comparison of Japan and EU/Sweden brings a new question: Are the Directives regarding platform workers and adequate minimum wages suffice enough, or should other new regulations be needed to secure workers' rights? Rethinking the current issues and conducting more research will enable to bring stronger protections for workers in Japan and EU/Sweden in the future.

Bibliography

Primary sources

International Treaties and Conventions

Universal Declaration of Human Rights, (adopted on December 10, 1948) UNGA Res 217A (III), UN Doc A/810 (1948).

Constitution of the International Labour Organisation, 1 April 1919. URL: https://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453907:NO

ILO Conventions C087: Freedom of Association and Protection of the Right to Organise Convention. (31st ILC session, San Francisco, 09 Jul 1948)

ILO Conventions C131: Minimum Wage Fixing Convention. (54th ILC session, Geneva, 22 Jun 1970).

ILO Conventions C098: Right to Organise and Collective Bargaining Convention. (32nd ILC session, Geneva, 1 Jul 1949).

EU Legislation

Consolidated version of the Treaty on European Union [2016] OJ C 202.

Consolidated Version of the Treaty on the Functioning of the European Union [2016] OJ C 202.

Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended).

Council of Europe, European Social Charter (Revised), 3 May 1996, ETS 163, URL: https://www.refworld.org/docid/3ae6b3678.html.

Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union [2022] OJ L 275/33.

Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time [2003] OJ L 299/9.

European Commission, Establishing a European Pillar of Social Rights, 26.4.2017, COM (2017) 250 final.

Proposal for a Directive of the European Parliament and of the Council on Improving Working Conditions in Platform Work. COM (2021) 762 final.

Japanese Legislation

Nihonkoku Kenpō [Constitution] (Law No. 3 of 3 November 1946).

Minpō [Civil Code] (Law No. 9 of June 21, 1899, last amended by Law No. 109 of 17 July 2003).

Rōdō-kijunhou [Labour Standards Law] (Law No. 49 of 7 April 1947).

Rōdō-kumiaihou [Labour Union Law] (Law No. 174 of 1 June 1949).
Rōdō-kankei chouseihou [Labour Relations Adjustment Law] (Law No. 25 of 27 September 1946).

Saitei-chinginhou [The Minimum Wages Act] (Law No. 137 of 15 April 1959, last amended by Law No. 129 of 5 December 2007).

Hatarakikata-kaikaku wo suishin suru tameno kankei-hōritsu no seibi ni kansuru hōritsu [Outline of the "Act on the Arrangement of Related Acts to Promote Work Style Reform] (Law No. 71 of 2018).

Furiransu Jigyoshakann Torihikitekiseikatouhou [Act on freelance workers and optimisation of inter-business transactions] (translated, not in force yet).
URL: https://www.cas.go.jp/jp/houan/230224/siryou1.pdf.

Swedish Legislation

Lag om medbestämmande i arbetslivet [Co-Determination Act] 1976:580.

Lag om anställningsskydd [The Employment Protection Act] 1982:80.

Arbetsmiljölagen [The Working Environment Act] 1977:1160.

Brottsbalken [Swedish Criminal Code] 1962:700.

Other international sources

ILO Recommendations R135: Minimum Wage Fixing Recommendation. (54th ILC session, Geneva, 22 Jun 1970).

ILO Recommendations R198: Employment Relationship Recommendation. (95th ILC session, Geneva, 15 Jun 2006).

The ILO. (n.d.). Japan – 2019. 6.4 Union Security. URL: https://www.ilo.org/dyn/irlex/en/f?p=14100:1100:0::NO:1100:P1100_ISO_CODE3,P1100_SUBCODE_CODE,P1100_YEAR:JPN,,2019:NO.

The ILO. (n.d,). National Labour Law Profile: Japan. URL: https://www.ilo.org/ifpdial/information-resources/national-labour-law-profiles/WCMS_158904/lang--en/index.htm.

The ILO. (n.d.). Sweden: Industrial relations profile. URL: https://www.ilo.org/dyn/travail/docs/2596/.

The ILO. 2022. The Algorithmic Management of work and its implications in different contexts. URL: https://www.ilo.org/wcmsp5/groups/public/---ed_emp/documents/publication/wcms_849220.pdf.

United Nations Human Rights Office of the High Commissioner. 2016. Human Rights Handbook for Parliamentarians N° 26. URL: http://archive.ipu.org/PDF/publications/hrights-en.pdf.

Secondary sources

Books

Adlercreutz, Axel. and Nyström, Birgitta. 2021. Sweden, In International Encyclopaedia of Laws: Labour Law and Industrial Relations, edited by Roger Blanpain. Alphen aan deen Rijn, NL: Kluwer Law international.

Adlercreutz, Axel. and Nyström, Birgitta. 2021. LABOUR LAW IN SWEDEN. Kluwer Law International third edition.

Andreß Hans-Jürge. and Lohmann, Henning. 2008. Introduction: The Working Poor in Europa. In The Working Poor in Europe. Employment, Poverty and Globalization. Cheltenham: Edward Elgar, 2008.

Arthurs, Harry. 1985. Without the Law: Administrative Justice and Legal Pluralism in Nineteenth-Century England. University of Toronto Press. Ch 4.

Blanpain, Roger. 1977. The International Encyclopaedia for Labour Law and Industrial Relations in Hendrickx, F (ed.). Deventer, the Netherlands: Kluwer, 1977.

Deakin, Simon. and Morris, Gillian. 2009. Labour Law, 5th Edition. Oxford, Hart Publishing. 736, no 8.27.

Dunlop, John T. 1958. Industrial Relations System. *Southern Illinois University Press*. pp. 7-18.
European Court of Human Rights. (n.d.) Report of 19 June 1950 of the Conference of Senior Officials, Collected Edition of the 'Travaux Préparatoires', 1977, vol IV.

Eldring, Line and Alsos, Kristin. 2015. Statutory minimum wage regulation in Europe. A necessary evil? In: Randolph, G. & Panknin, K (eds.), Global Wage Debates. Politics or Economics? New Dehli/Washington DC: JustJobs Network Inc, pp.171-184.

Fahlbeck, Reinhold. Unionism in Japan - Declining or not?. Labour Law and Industrial Relations at the Turns of the Century: Liber Amicorum in Honour of Prof. Dr. Roger Blanpain. pp. 707-734.

Freeman, Richard B. and James L. Medoff, J. 1979. The Two Faces of Unionism. The Public Interest

Fujimura, Hiroyuki. 1997. New unionism: beyond enterprise unionism? Japanese Labour and Management in Transition: Diversity, Flexibility and Participation. Chapter 13.

Galbraith John K. 1952. American Capitalism: The Concept of Countervailing Power. Houghton Mifflin.

Hanami, Tadashi A. et al. 2015. Japan. In *International Encyclopaedia of Laws: Labour Law and Industrial Relations*, edited by Roger Blanpain. Alphen aan den Rijn, NL: Kluwer Law International. pp.1-253.

Hiel, Isabelle. The Right to Form and Join Trade Unions Protected by Article 11 ECHR. The European Convention of Human Rights and the Employment Relation, edited by Filip Dorssemont et al., Hart Publishing, 2013.

Hiraga, Kenta. 1950. Rōdō kumiai hōron (Trade Union Law). Minori shobo.

Ishii, Teruhisa. 1971. Rōdō hō." Kobundou.

Jensen, Michael H. 2006. Constitutional Law/Droit Constitutionnel - Denmark/Danemark, 18(2) European Review of Public Law / Revue Européenne de Droit Public 791.

Koike, Kazuo. 1988. Understanding Industrial Relations in Modern Japan. Palgrave MacMillan London.

Milles, Wright. 1948. The New Men of Power: America's Labor Leaders. Harcourt Brace.

Minagawa, Hiroyuki. 2022. Rōdōsha gainenn - Rōdōsha sei no mondairei sono handan no poinnto (The concept of workers - The issues of the definition of "workers" and its decisive points).

Nishitani, Satoshi. 2008. Rōdō hō (Labour Law). Nihon Hyōronnsha.

Nishitani, Satoshi. 1992. Rōdō hou ni okeru kojin to shudan (Individuals and Collectives in Labour Law regarding labour law). Yuhikaku.

Nyström, Birgitta. 1998. Community Labour Law - Challenge to the 'Swedish Model'?. In Engels et al (ed.) Labour Law and Industrial Relations at the Turn of the Century: Hague 1998.

O Kahn-Freund, Labour and the Law (Hamlyn Lectures, Stevens for the Hamlyn Trust, London 1972).

Ōuchi, Shinya. 2003. Collective Labour Agreements and Individual Contracts of Employment. Japanese Labour Law. Kluwer Law International. pp. 157-166.

Shirai, Taishiro. 1983. A theory of enterprise unionism. *Contemporary Industrial Relations in Japan, Wisconsin: University of Wisconsin Press.*

Suehiro, Izutarō. 1946. Rōdō kumiai kaisetsu (The explanation of trade union). Nihon Hyōronnsha.

Sugano, Kazuo. 2007. Rōdō hō (Labour Law). Kobundou 7th edition.

Thompson, Edward P. 1977. The Making of the English Working Class. Pelican Books. Ch 10.

Japanese secondary sources

Prime Minister's Office of Japan. 2016. Hatarakikata-kaikaku no Jitsuegen (Implementation of Work System Reform)" URL: https://www.kantei.go.jp/jp/headline/ichiokusoukatsuyaku/hatarakikata.html.

Rōdōkijunhō-Kenkyukai (the Research and Advisory Committee of the Labour Standards Law). 1985. A Report on Employment Contracts (Ministry of Labour).

Rōshikannkeihou-Kenkyukai (the Research and Advisory Committee of the Industrial Relations Law). (2011). "Rōshi-kankeihou kennkyukai houkokusho (Regarding the criteria for the TUL)" URL: https://www.mhlw.go.jp/stf/houdou/2r9852000001juuf-att/2r9852000001jx2l.pdf.

The Cabinet Secretariat, the Fair Trade Commission, the Small and Medium Enterprise Agency and the MHLW. 2021. "Furīransu to shite anshinn shite hatarakeru kannkyō wo seibi suru tameno gaidorainn (guideline for creating an safe environment for freelance workers)." URL: https://www.meti.go.jp/press/2020/03/20210326005/20210326005-1.pdf.

The Ministry of Health, Labour and Welfare (thereinafter the MHLW). (n.d.). "Rōdōkijunn jōhō: Rōdōkijyunn ni kannsuru houseido (The legal system regarding labour standards)" URL: https://www.mhlw.go.jp/bunya/roudoukijun/kijyungaiyou01.html.

The MHLW. 2014. “Heisei 26 nenn rōdō kumiai kisochōsa (2014 Labor Union Basic Survey).” URL: https://www.mhlw.go.jp/toukei/itiran/roudou/roushi/kiso/14/dl/01.pdf.

The MHLW. 2020. “2020 nenn 7 gatsu 22 niti. Dai 57 kai chou saiteichinginshingikai gijiroku (Minimum Wage Council meeting on the 22nd of July 2020).”

The MHLW. (n.d.). “Kigyo no AI tou no dounyuu jyoukyou to rousi komyunikeshon no genjyo ni Tuite (The status of companies' introduction of AI, etc. and the current status of labour-management communication)” URL: https://www.mhlw.go.jp/content/12602000/000581113.pdf.

The MHLW. 2018. “Outline of the Act on the Arrangement of Related Acts to Promote Work Style Reform (Act No. 71 of 2018).” URL:https://www.mhlw.go.jp/english/policy/employ-labour/labour-standards/dl/201904kizyun.pdf.

The MHLW. 2021. “Reiwa sannnenn kugatsu tsuitachi kara rousaihokenn no Tokubetsu kanyu no kakudiahanni ga hirogarimashita (From September 1, 2021, the scope of ‘special enrollment’ for industrial accident insurance has expanded).” URL: https://www.mhlw.go.jp/stf/seisakunitsuite/bunya/koyou_roudou/roudoukijun/rousai/kanyu_r3.4.1_00001.html.

The MHLW. (n.d.). “Rōdōsya ni tsuite (About workers)” URL: https://www.mhlw.go.jp/file/05-Shingikai-11909500-Koyoukankyoukintoukyoku-Soumuka/0000181992.pdf.

MHLW. 2020. “Rōsai hoken seido ni okeru tokubetu kanyu no taishō hanni no kakudai ni kakaru teian iken no boshu ni tsuite (Call for Proposals and Comments on the Expansion of the Scope of Special Enrollment in the Industrial Accident Insurance System).
URL: https://www.mhlw.go.jp/stf/newpage_12091.html.

The MHLW. (n.d.). “Saitei chingin seido no gaiyou (Overview of the minimum wage system).” URL: https://www.mhlw.go.jp/www2/topics/seido/kijunkyoku/minimum/minimum-09.htm#:~:text=最低賃金には、地域,の２種類があります%E3%80%82

The MHLW. 2023. Tokuteijyutakujigyousya ni kakaru tekiseikatou ni kannsuru houritsu – furīrannsu, jigyousyakann torihikitekiseika touhou no gaiyou (Overview of the law concerning the deal optimisation for specified trustees - Act on freelance workers and optimisation of inter-business transactions). URL: https://www.mhlw.go.jp/content/001096814.pdf.

EU secondary sources

European Commission. 2021. Commission proposals to improve the working conditions of people working through digital labour platforms.
URL: https://ec.europa.eu/commission/presscorner/detail/en/ip_21_6605.

European Court of Human Rights. 2006. *Sørensen and Rasmussen v Denmark.*
URL: https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22002-3524%22]}.

Journals Articles

Aloisi, Antonio. 2022. Platform work in Europe: Lessons learned, legal developments and challenges ahead.” *European Labour Law Journal 2022, Vol. 13 (1).* pp. 4-29.

Araki, Takashi. (n.d.). Labor Law Scholarship in Japan. *Comparative Labor Law & Policy Journal Volume 23, Number 3, Spring 2002*.

Arthurs, Harry. 2011. Labour Law After Labour. *Comparative Research in Law & Political Economy. Research Paper No. 15/2011*. pp. 13-29.

Bryant, Antony. 2020. Liquid uncertainty, chaos and complexity: The gig economy and the open source movement. *Thesis Eleven 156, no. 1*.
URL: https://journals.sagepub.com/doi/epub/10.1177/0725513619898286.

Collins, Hugh. 2022. Fat Cats, Production Networks, and the Right to Fair Pay" *The Modern Review, Vol. 85*, January 2022, No. 1. 85(1) MLR 1-24.

Furåker, Bengt. 2020. The issue of statutory minimum wages: Views among Nordic trade unions. Economic and Industrial Democracy, 2020, Vol. 41 (2) pp. 419-435.

Hasegawa, Yuichi., et al. 2022. Who took gig jobs during the COVID-19 recession? Evidence from Uber Eats in Japan. *Transportation Research Interdisciplinary Perceptives 13.*

Hawley, Adrian J. 2018. Regulating labour platforms, the data deficit," *Article, European Journal of Government and Economics 7(1) June 2018,* pp. 5-23.

Institute of Social Science, the University of Tokyo. 1952. Shiryō senngo rōdōkyouyaku no bunnseki – Shoppu sei joukou oyobi saiyou kaiko ni taisuru kumiai-sannka jōkou (Analysis of Labor Agreements after the War - Shop System Clauses and Union Affiliation Clauses for Employment and Dismissal). *Labour law journal, Vol. 2.*

Kawaguchi, Daiji. and Mori, Yuko. 2021. Estimating the effects of the minimum wage using the introduction of indexation. *Journal of Economic Behavior & Organization. Vol. 184, April 2021*. pp. 388-408.

Kawaguchi, Daiji. and Mori, Yuko. 2009. Saitei chingin Rōdōsha no zokusei to saitei chingin hikiage no koyouheno eikyō (Attributes of minimum wage workers and the influence/impacts of minimum wage increase. *The Japan Institute of Labour. No. 593, December 2009.*

Kjellberg, Anders. and Nergaard, Kristine. 2022. Union Density in Norway and Sweden: Stability versus Decline. URL:
https://lucris.lub.lu.se/ws/portalfiles/portal/114477394/Union_Density_Sweden_Norway_Kjellberg_Nergaard.pdf.

Kjellberg, Anders. 2019. Sweden: collective bargaining under the industry norm. URL:
https://lucris.lub.lu.se/ws/portalfiles/portal/129732152/Collective_Bargaining_Industry_Norm_A_Kjellberg_November_2022.pdf.

Koutsimpogiorgos, Nikos. et al. 2020. Conceptualizing the Gig Economy and Its Regulatory Problems. Policy & Internet 12, no. 4. URL: https://onlinelibrary.wiley.com/doi/full/10.1002/poi3.237.

Kullmann, Miriam. 2021. 'Platformisation' of Work: An EU Perspective on Introducing a Legal Presumption. *European Labour Law Journal Vol. 13, Issue 1, March 2022*. pp. 66-80.

Mantouvalou, Virginia. 2007. Is There a Human Right Not to be a Trade Union Member? Labour Rights under the European Convention on Human Rights. LSE Law, Society and Economy Working Papers 08/2007.

Minter, Kate. 2017. Negotiating labour standards in the gig economy: Airtasker and Unions New South Wales. *Economic and Labour Relations Review 28(3)* pp. 438-454.

Mishiba, Takenori., et al. 2023. Legal Protection of Health and Safety for Gig Workers: The Present Status and Future Protects in Japan. *Journal of work health and safety regulation, 2023, Volume 1, Issue 1.* pp. 54-91.

Nogawa, Shinobu. 2014. Legal Meaning of Union-Shop Agreement. URL: https://meiji.repo.nii.ac.jp/?action=pages_view_main&active_action=repository_view_main_item_detail&item_id=11471&item_no=1&page_id=13&block_id=21 https://www.mhlw.go.jp/toukei/itiran/roudou/roushi/kiso/14/dl/01.pdf.

Nakakubo, Hiroya. 2009. A New Departure in the Japanese Minimum Wage Legislation. Japan Labor review, ISSN 1348-9364, Vol. 6, 2, 2009. pp. 22-3.

Nakamura, Keisuke. 2007. Decline or Revival? Japanese Labor Unions. URL: https://www.jil.go.jp/english/JLR/documents/2007/JLR13_nakamura.pdf.

Ōishi, Yoshio. 1948. Nihon kenpō to rōdō ken (The Japanese Constitution and labour rights). *Law Culture Vol. 3 10-12.*

Okayama Kouhou Hannrei Kennkyukai (The Association of Law of Okayama University). 2009. Rōdō kumiai karano dattai no jiyū to kessha karano jiyū - Tōshiba rōdōkumiai komukaisibu Tōshiba jikenn (Freedom to withdraw from trade unions and freedom of association - Toshiba Labor Union Komukai Branch/Toshiba Case). *Okayama Law Journal, Vol. 59, 2.*

Onimaru, Tomoko. 2015. Kigyobetsu kumiai to yunionn shoppu (Enterprise union and union shop).” *Nihon Rōdō Kenkyū Zasshi, 2015 nenn 4 gatsugō, No. 657 (The Japan Institute of Labour).*

Ōuchi, Shinya. 2000. Yunion shoppu ga rōdōdanntai rironn ni oyoboshita eikyou (The Effects of Union Shop Agreements on Labor Organization Law Theory). *Kobe Law Journal 49 (3), 461-548, 2000-1.*

Ratti, Luca. 2023. The Sword and the Shield: The Directive on Adequate Minimum Wages in the EU. *Industrial Law Journal*, 2023. URL: https://doi.org/10.1093/indlaw/dwad001.

Rönnmar, Mia. (n.d.). The Personal Scope of Labour Law and the Notion of Employee in Sweden. URL: https://www.jil.go.jp/english/events/documents/clls04_ronnmar2.pdf.

Rosin, A. 2022. Towards a European Employment Status: The EU Proposal for a Directive on Improving Working Conditions in Platform Work.” *Industrial Law Journal, Vol. 51, No.2, June 2022*.

Schildt, Henri. 2017. Big data and organizational design - the brave new world of algorithmic management and computer augmented transparency. Innovation. URL: https://www.tandfonline.com/doi/epdf/10.1080/14479338.2016.1252043?needAccess=true&role=button.

Shibata, Saori. 2020. Gig Work and the Discourse of Autonomy: Fictitious Freedom in Japan's Digital Economy. *New Political Economy 25, no. 4.* URL: https://doi.org/10.1080/13563467.2019.1613351.

Sjödin, Erik. 2022. European minimum wage: A Swedish perspective on EU’s competence in social policy in the wake of the proposed directive on adequate minimum wage in the EU. *European Labour Law Journal, vol. 13, issue 2.* pp. 273-291.

Stefano, Valerio. 2015. The Rise of the 'Just-in-Time Workforce': On-Demand Work, Crowd Work and Labour Protection in the 'Gig-Economy.’ *SSRN Electronic Journal.* URL: https://doi.org/10.2139/ssrn.2682602.

Stewart, Andrew, Stanford, Jim. 2017. Regulating work in the gig economy: What are the options?. The Economic and Labour Relations Review 28. pp. 420-437.
Tago, Shinya. et al. (n.d.) Employment and Employee Benefits in Japan: Overview. URL: https://uk.practicallaw.thomsonreuters.com/9-637-4003?transitionType=Default&contextData=(sc.Default)&firstPage=true.

Tamada, Keiko. 2009. Saitei chinnginn ha donoyouni kimatteirunoka (The deteminants of the minimum wages in Japan).” *The Japan Institute of Labour. No. 593, December 2009*. p. 17.

Todolí-Signes, Adrían. 2017. The 'gig economy': employee, self-employed or the need for a special employment regulation?. *Transfer-European Review of Labour and Research 23(2).* URL: https://journals.sagepub.com/doi/abs/10.1177/1024258917701381.

Tsuru, Tsuyoshi. and Rebitzer, James B. 1995. The limits of enterprise unionism: prospects for continuing union decline in Japan. *British Journal of Industrial Relations, 33(3)*, pp. 459-92.

Uchiyama, Yosuke., et al. 2022. Labour Union’s Challenges for Improving for Gig Work Conditions on Food Delivery in Japan: A Lesson for Malaysia” WILAYAH: *The International Journal of East Asian Studies, 11(1)*. pp. 83-111.

Umer, Hamza 2021. Illusory freedom of physical platform workers: Insights from Uber Eats in Japan. *Economic and Labour Relations Review 32, no. 3*. URL: https://journals.sagepub.com/doi/full/10.1177/1035304621992466.

Younan, Yu. 2020. Current status of minimum wage research. *Economic Journal of Kyushu University*. pp. 77-103.

Webpages and Reports

Aoyagi, Chie. et al. 2016. Minimum Wage as a Wage Policy Tool in Japan.” International Monetary Fund Working Paper. WP/16/232.

Business Sweden. (n.d.). Japan. URL: https://www.business-sweden.com/markets/asia-pacific/japan/.

Countouris, Nicola. 2021. Regulating digital work: from laisser-faire to fairness. URL: https://www.socialeurope.eu/regulating-digital-work-from-laisser-faire-to-fairness.

Coyle, D., et al. 2021. Uber & Beyond: Policy Implications for the UK. URL: https://deliverypdf.ssrn.com/delivery.php?ID=063089102008121096083105023083018105032011084085035089120072067100017106125099003066005016043056061048060064074099065077114012019053039035048090093100116103123062069075123113099027092125012076074100096119125121087088127102092070090012099009088096&EXT=pdf&INDEX=TRUE.

Donovan, Sarah A., et al. 2016. What does the gig economy mean for workers?. URL: https://sgp.fas.org/crs/misc/R44365.pdf

Employment and labour policy division of Hiroshima Prefecture. (n.d.). Yunionn shoppu ni motoduku kaiko no yūkou sei (Validity of dismissal under union shop agreements). URL: https://www.pref.hiroshima.lg.jp/uploaded/attachment/300745.pdf.

Euractiv. 2021. Adequate Minimum Wages proposal – an attack on collective bargaining” (2021). URL: https://www.euractiv.com/section/economy-jobs/opinion/adequate-minimum-wages-proposal-an-attack-on-collective-bargaining/.

European Employment Lawyers Association. (n.d.). Court Catch.
URL: https://eela.eelc-updates.com/court_watches/eelc-2020-0041210.

Hara, Masato. (2022). “Hataraki-kata no tayōka ~ Furīransu, gigu wākā tou ni kansuru houritsu monndai wo chūshinn ni (Diversification of work styles
~ Focusing on legal issues related to freelancers, gig workers).”
URL: https://www.mhlw.go.jp/churoi/roushi/dl/R041111-2.pdf.

Heeks, Richard. 2017. Decent work and the digital gig economy: a developing country perspective on employment impacts and standards in online outsourcing, crowdwork, Etc. *Development Informatics Working Paper, no.* 71.

ICLG.com. 2023. Employment & Labour Laws and Regulations Germany 2023.
URL: https://iclg.com/practice-areas/employment-and-labour-laws-and-regulations/germany.

Ilsøe, Anna. and Larsen, Trine P. 2021. Non-standard work in the Nordics: Troubled waters under the still surface. TemaNord 2021:503.

Ilsøe, Anna. and Söderqvist, Carl F. 2022. Will there be a Nordic model in the platform economy? Evasive and integrative platform strategies in Denmark and Sweden. Wiley Online Library.
URL: https://onlinelibrary.wiley.com/doi/10.1111/rego.12465.

Japanese Law Translation. (n.d.). Labor Union Act. URL:
https://www.japaneselawtranslation.go.jp/en/laws/view/3805/en.

Japanese Law Translation. 2012. Minimum Wage Act.
URL: https://www.japaneselawtranslation.go.jp/en/laws/view/3937/en.

Japanese Law Translation. (n.d.). URL: https://www.japaneselawtranslation.go.jp/en/laws/view/174.

Jesnes, Kristin. & Oppegaard, S.M.N. 2020. Platform work in the Nordic models: Issues, cases and responses. Nordli. Nordic Council of Ministers. TemaNord 2020:513.

Kyodo News 2022. Tokyo says Uber Eats labor union has collective bargaining rights.
URL: https://english.kyodonews.net/news/2022/11/0af8510ca624-tokyo-says-uber-eats-labor-union-has-collective-bargaining-rights.html.

Lancers. 2021. Freelance Jittai Chousa 2021 (Freelance Survey 2021). URL:
https://speakerdeck.com/lancers_pr/huriransushi-tai-diao-cha-2021.

L&E GLOBAL. 2022. 10. Trade Unions and Employers Associations.
URL: https://leglobal.law/countries/sweden/employment-law/employment-law-overview-sweden/10-trade-unions-and-employers-associations/.

Matsui, Masanobu. 2022. Koramu ‘union shoppu kyōtei wo meguru houteki ryūitenn (Column ‘Practical Legal Considerations Concerning Union Shop Agreements.’)
URL: https://www.hiroso-law.jp/topics/81/.

Medlingsinstitutet. (n.d.). The Swedish model and the Swedish National Mediation Office.

Ministry of Foreign Affairs of Japan. 2016. Japan-Sweden Relations.
URL: https://www.mofa.go.jp/region/europe/sweden/data.html.

Nordic Co-operation. (n.d.). Trade unions in Sweden.
URL: https://www.norden.org/en/info-norden/trade-unions-sweden.

OECD and AIAS. 2021. Institutional Characteristics of Trade Unions, Wage Setting, State Interventions and Social Pacts. OECD Publishing, Paris.
URL: https://www.oecd.org/employment/collective-bargaining-database-japan.pdf.

Oppegaard, S. et al. 2019. Uber in the Nordic countries: Challenges and adjustments. Nordic future of work Brief 1. March 2019.

Okazaki, Morinobu. (n.d.). Case *Kansai Medical University*."
URL: http://sakaisogolaw.net/jiken/278.html.

Prassl, Jeremias. 2018a. Collective voice in the platform economy. Challenges, opportunities, solutions. Report to the ETUC. Brussels: ETUC.

Rankin, Jennifer. 2021. Gig economy workers to get employee rights under EU proposals. The Guardian. URL: https://www.theguardian.com/business/2021/dec/09/gig-economy-workers-to-get-employee-rights-under-eu-proposals.

Schmidt, Florian A. 2017. Digital Labour Markets in the Platform Economy: Mapping the Political Challenges of Crowd Work and Gig Work. URL: https://library.fes.de/pdf-files/wiso/13164.pdf.

Schulten Thorsten. 2014. Contours of a European Minimum Wage Policy. Berlin: Friedrich Ebert Stiftung.

Skedinger, Per. "Reglering av minimilöner på EU-nivå – rätt väg att gå?" (SIEPS 2020).

The European Trade Union Institute (ETUI). (n.d). Sweden.
URL: https://www.worker-participation.eu/national-industrial-relations/countries/sweden.

The ETUC. 2015. ETUC action programme 2015–2019.
URL: www.etuc.org/sites/www.etuc.org/files/publication/files/ces-congrecs_2015- rapport-uk-ld_def_0.pdf.

The Japan Institute for Labour Policy and Training. 2013. Minimum Wage System. Labour Situation in Japan and Its Analysis: General Overview 2013/2014.

The Japan Institute for Labour Policy and Training. (n.d.). "Rōdōsha no teigi (the definition of workers)" URL: https://www.jil.go.jp/hanrei/conts/01/01.html.

The Japan Times. 2022. Tokyo recognizes Uber Eats workers' collective bargaining right.
URL: https://www.japantimes.co.jp/news/2022/11/26/business/uber-eats-union-tokyo-ruling/.

The Swedish Trade Union Confederation. (n.d.). The Swedish Model - the Importance of Collective Agreements in Sweden." URL:
https://www.lo.se/home/lo/res.nsf/vres/lo_in_english_1366027847830_the_swedish_model_may_2011_pdf/$file/The%20Swedish%20Model%20May%202011.pdf.

Westregård, Annamaria. 2019. Key concepts and changing labour relations in Sweden, Part 1 Country report. Nordic future of work project 2017-2020: Working paper 8. Pillar VI.

Table of cases

C-692/19, Yodel Delivery Network [2020] ECLI:EU:C:2020:288.

Case C-434/15, Asociación Profesional Élite Taxi vs. Uber Systems Spain SL [2017] EU:C:2017:981.
Case 52620/99 and 52562/99, Sørensen and Rasmussen v Denmark [2006].

Case C-19/23, Kingdom of Denmark v European Parliament and Council of the European Union. URL: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62023CN0019&from=EN.

Application no. 7601/76; 7806/77, Young, James and Webster v UK [1981].

Application No. 4072/69. X v Belgium [1970].

Application no. 1107043, Gustafsson v Sweden [1998].

Saikōsaibbansho [Supreme Court] April 25, 1975. Japanese Salt Manufacturing. Minji Hanreishu [Collection of civil cases, 'Minshu'] Vol. 29, 4, p. 456.

Saikōsaibbansho [Supreme Court] March 29, 1984. Seishinkai Yamamoto Hospital. Rōdō Hanreishu [Collection of labour law cases, 'Rōhan'] Vol. 427, p. 17.

Saikōsaibbansho [Supreme Court] June 3, 2005. Kansai Medical University. Rōdō Hanreishu [Collection of labour law cases, 'Rōhan'] Vol. 831, p. 36.

Saikōsaibbansho [Supreme Court] May 6, 1976. CBC Orchestra Union. Keiji Hanreishu [Collection of criminal law cases, 'Keishu'] Vol. 30. No. 4, p. 591.

Saikōsaibbansho [Supreme Court] December 14, 1989. Mitsui-Soko Harbor Transportation. Rōdō Hanreishu [Collection of labour law cases, 'Rōhan'] Vol. 552, p. 6.

Saikōsaibbansho [Supreme Court] December 21, 1989. Nippon Kokan Tsurumi Seisakujo. Vol. 553, p. 6.