

# Freelancers: instruments and victims of deregulated working conditions

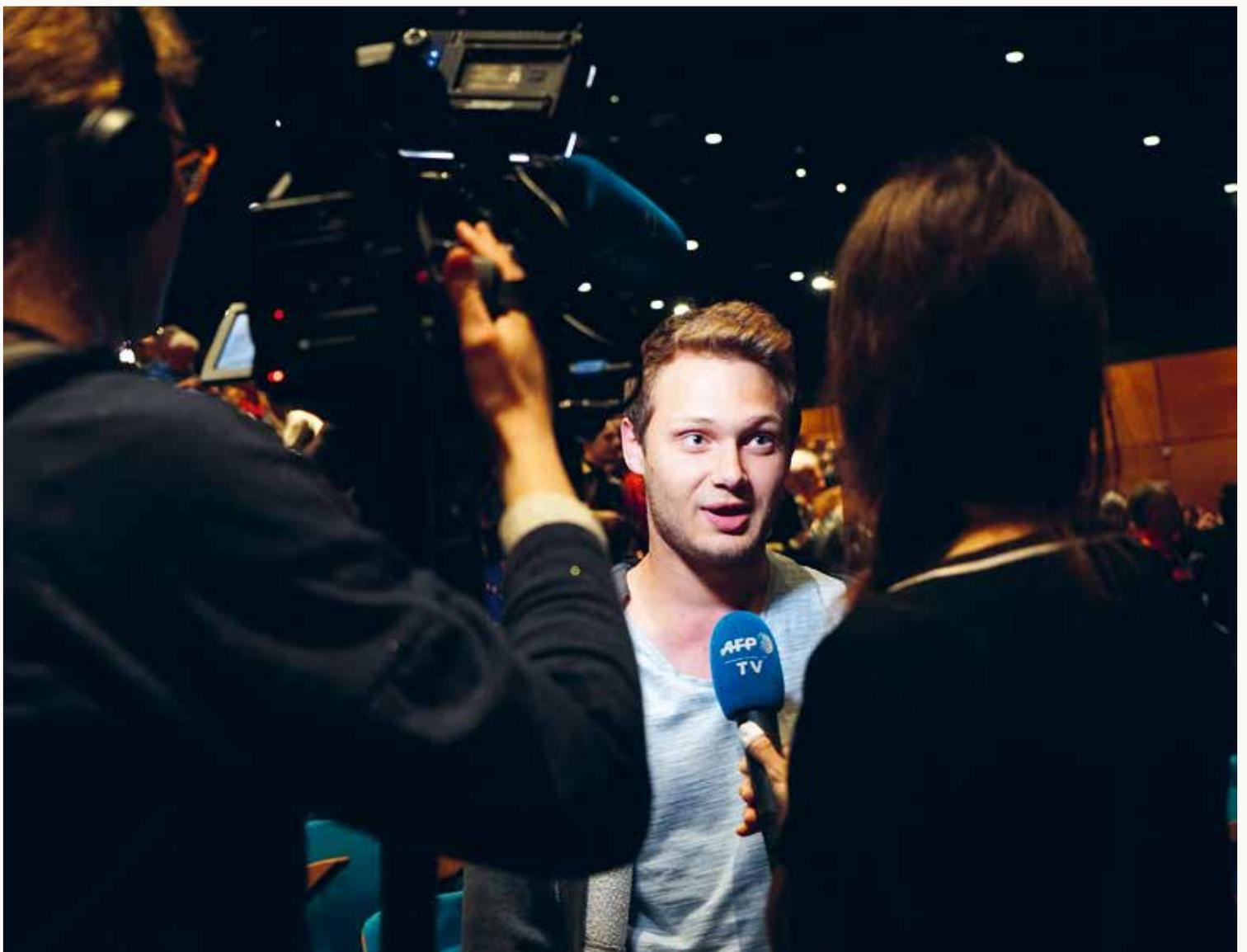
The result of waves of redundancies, the decline in the number of journalists with open-ended employment contracts in Europe has gone hand-in-hand with a proliferation of atypical jobs, especially 'gig' work. Workers hired under such contractual agreements are finding themselves faced with obstacles in defending their professional and social rights. This cheap workforce has become symptomatic of the precarious situations of journalists.

**Hélène Brédart**

*Journalist*

**For a growing number of journalists, precarious employment is no longer something they all have to endure at the bottom of the career ladder, but is becoming a permanent situation.**

Image: © Boris Delire



Four years ago, some twenty Italian MPs expressed their concern over the low remuneration received by freelancers in a parliamentary question addressed to the European Commission, citing the results of a study conducted by the journalist organisation *Libertà di stampa, diritto all'informazione* (Lsdi), in which the correspondents of Italy's major newspapers including *Il Messaggero*, *La Repubblica*, *Il Tempo* and ANSA, the national press agency, stated that they earned no more than € 5 – 20 for writing variable-length articles. This situation is no different in the broadcasting sector where local channels pay journalists around just € 15 for shooting a feature and its voice-over.

In 2015 the organisation published a new report, showing no change for the better: the average income of self-employed journalists amounted to € 11,241 p.a., equivalent to one fifth of what their employed colleagues were earning!<sup>1</sup> A large majority (83%) of the self-employed journalists, i.e. freelancers, earned less than € 10,000 p.a., i.e. € 40 less than the poverty threshold determined by the National Statistics Institute (ISTAT). Surprisingly, freelancers account for a fair slice of the workforce, representing 65.5% of journalists recognised by the National Social Security Institute for Italian journalists (INPGI).

Turning to France, fifteen freelancer collectives published an opinion column on 16 March 2017, targeting media employers and denouncing the continual decrease in their rates over the last ten years. 'Our opinion column highlights the increasing precariousness of our remuneration, which takes no account of how many years we have studied or how much experience we have. There are a great many freelancers who earn just a few hundred euros a month, despite working 70 hours a week.'

A little more than one fifth (22%) of card-holding journalists are freelancers. 'This figure is growing from year to year, as seen by the fact that 66% of all new press cards are issued to freelancers or people on fixed-term contracts. In contrast to popular thinking, we are not "greenhorns" – 57% of us are older than 35. Median monthly wages amount to € 1,960 gross, compared to € 3,469 for journalists with permanent employment contracts – despite the fact that we all have the same training. 30% of freelancers earn

1. Rea P. (2015) Rapporto LSDI sul giornalismo in Italia, *La professione giornalistica in Italia*, Aggiornamento 2015, Liberta Di Stampa Diritto All'Informazione.

less than € 1,500 gross a month. And who's talking about a 35-hour week? Our working hours are elastic – to breaking point.'

Whether they work for the printed or digital press or for broadcasting companies, whether they are paid by character, word, line, page, hour, a daily or monthly flat-rate, there are a great many freelancers living under difficult financial conditions in Europe. In many regions, 'gig' rates have remained unchanged for years. Or even worse, they have been reduced. This is probably one of greatest challenges facing journalist unions and professional associations.

We should also remember that these financial difficulties are often compounded by limited access to social security (unemployment benefits, maternity leave, work incapacity, pensions).

### Legal obstacles

Freelance journalists have a long tradition of unionisation in Europe, with professional organisations in only a limited number of countries – Greece, Ukraine, Serbia and Turkey – not officially admitting them as members. However, there are hardly any collective agreements protecting their remuneration. In 2015, the European Federation of Journalists (EFJ) carried out a survey to assess such protection among 40 unions and professional

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associations in 33 countries. Among those surveyed, more than half confirmed the impossibility of getting their self-employed members covered by collective agreements. Denying them this fundamental right (the right to collective bargaining is recognised for all workers under international labour law) stems from both a lack of willingness on the part of employers and certain legal factors.

To start with, regardless of whether we are talking about labour codes or collective agreements, labour law in many cases continues to require the existence of a contractual relationship between an 'employer' and an 'employee'. In the United Kingdom, unions must also obtain 'recognition' by employers, i.e. an agreement allowing the former to negotiate on behalf of staff working for the latter. Since the 1990s, a right to collective representation is recognised when more than half of employees express a wish for a union to take part in collective bargaining. This legal provision does not however apply to self-employed workers.

The president of the UK National Union of Journalists (NUJ), Tim Dawson, pointed out that, unlike other Western European countries, 'the majority of UK media companies are hostile to unions'.

'Although we have managed to conclude collective agreements in several workplaces, agreements for freelance journalists are very difficult to negotiate and enforce. Employed

journalists have a recognised right to union representation, whereas freelancers do not. This makes things a lot more complicated, over and above the challenges raised by workforce fragmentation', he explained.

Elsewhere in Europe, attempts undertaken by freelancers and their unions to collectively negotiate gig rates have been ruled illegal under the European principle of free competition.

Twenty years ago, the Danish Competition Authority initiated proceedings against Dansk Journalistforbund (DJ), the Danish journalists' union, accusing it of illegally fixing prices by recommending minimum rates to its freelancer members. This ruling was appealed against, with the subsequent ruling stating that self-employed journalists who performed work on a basis equivalent to that of employed workers were not subject to competition rules. As for freelancers working on a more self-employed basis, they are sometimes excluded from collective bargaining. In 2010, the Dansk Journalistforbund again lost a legal battle against magazine publisher Aller Media. Of 700 self-employed journalists, less than one hundred were considered to be 'comparable to employees' and thus covered by a new collective agreement.

In Ireland, the Competition Authority warned the majority of organisations representing freelancers that recommendations concerning rates were, in its view, illegal. The 'gig guide', containing recommendations for rates, has been removed from the NUJ website. In 2016, members of the Irish Senate unanimously adopted a draft law amending competition law to allow self-employed workers to conclude collective agreements. 'There

is a great chance that the law will be adopted before summer 2017. We are benefiting from support from all parties', said Seamus Dooley, NUJ deputy Secretary General.

We should remember that in 2011, the Irish Congress of Trades Unions (ICTU) sent a complaint to the International Labour Organisation (ILO), stating that Ireland was not complying with its obligations under ILO Convention 98 – the Right to Organise and Collective Bargaining Convention. Last year, this complaint was ruled as admissible. Its outcome could mark history, especially as, in the meantime (in 2013), the European Commission has confirmed, in reply to a request from the Irish Parliament, that EU legislation does not allow self-employed workers to bargain collectively.

This conflicting legislation (collective bargaining vs. free competition) does not apply to all EU Member States. In certain States, self-employed journalists benefit from an agreement, and sometimes even from guaranteed rates, without competition authorities finding fault with this.

### Rates too low

In Italy, a low-rate policy is applied by the majority of printed press and broadcasting companies (see above). In 2014, following intensive negotiations, an agreement was concluded between the Italian Journalists' Union (FNSI) and newspaper publishers, under which freelancers were to receive a minimum of € 250 for writing twelve articles. Journalists were not very enthusiastic about these rates (i.e. € 21 per article). 'Many journalists considered these rates to be too low.

The Labour Tribunal put a stop to this agreement which anyway had never been applied', explained FNSI delegate Anna Del Freo.

According to her, the journalists' organisations were having difficulties negotiating with employers who used freelancers to run their businesses flexibly. 'These days, it has become difficult to negotiate better working conditions and wage increases. Employed journalists benefit from a robust collective agreement. And that's the reason why employers prefer to recruit bogus freelancers, despite this being forbidden by law.'

Olivier Da Lage, representative of the French National Union of Journalists (SNJ), similarly stated that the situation was not conducive to bargaining. 'Short-term contracts have become the rule. Employers do not want to enter into medium- or long-term commitments, a fact linked to financial uncertainty. This in turn also puts pressure on permanent staff', he said. He went on to explain that manager profiles had changed. 'We have been seeing this trend over the last 25 years, and it is now commonplace. Fewer and fewer journalists are taking on management roles. These days, managing editors are no longer journalists but legal experts who run a press company like any other company, whatever the sector.'

### An agreement does not automatically mean protection

In Germany, the law on collective agreements (*Tarifvertragsgesetz*) provides for an exception with regard to self-employed journalists, considering them as dependent workers when at least 33% of their income (for other trades this rate is 50%) comes from a single employer and thereby exempting them from all competition regulations. Several agreements stipulate collectively agreed remuneration rates both in the printed press and the broadcasting sector.

Michael Hirschler, a member of the EFJ's Freelance Experts' Group (FREG) representing the German Journalist's Federation (DJV), nevertheless pointed out that only public broadcasting companies actually paid these rates. 'In the private broadcasting sector, companies are out to make money. That's the bottom line. The German newspaper

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publishers' federation has signed a collective agreement because that was part of the negotiations with the employees. But newspapers don't care a fig about what their own federation is doing: they are just not paying the rates set in the agreement. And what if a journalist dares to demand to be paid the agreed rate? Quite simple. He won't get any more gigs from the newspaper.'

At the end of the day, this exception foreseen by the law is not very effective. 'In the current economic situation, freelancers don't dare go on strike. They have no work guarantee. However, it's difficult to improve collective contracts without a strike. But we have no strong bargaining position. Far from it, we have to get down on our knees and beg – a really distressing situation', summarised the German trade unionist.

In the face of such non-compliance with agreed rates and the drop in the value of gigs, the Austrian journalists' union (GPA-djp) set up a website in 2015 where freelance journalists could post cases of unfair treatment, thereby highlighting what journalists are experiencing and calling on the media companies to react. The union is also reporting employers suspected of working with 'bogus self-employed' journalists to the health insurance company, possibly leading to employers being fined and/or being made to employ them. Since the beginning of this year, some ten such cases have been reported.

### Repercussions on professional organisations

In 2011, the EFJ noted that certain unions and professional associations were getting worried about the increasing rarity of permanent jobs among organised members<sup>2</sup>. 'The old structures of solidarity and commitment which we used to take for granted are disappearing due to dismissals, subcontracting and the increase in atypical work. Traditionally unionised members are becoming increasingly rare.'

Freelancers sometimes have to take on other work, but this can lead to them not fulfilling the membership criteria of professional organisations. Renaud Dubois, a journalist working for a local Belgian TV company, stated: 'I get paid € 115 gross for a gig,

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i.e. for shooting a feature, editing it and the voice-over. That includes my travel expenses. Certain features involve more than 10 hours of work. When I invoice this amount via an interim contract, I cannot write down more than 4 hours of work, because otherwise the rate would be illegal, i.e. below the minimum wage.' He is not a member of the Belgian Association of Professional Journalists (AJP). 'As I can't get by as a journalist, I've started making advertising videos and getting paid for commercial work. But this is incompatible with the status of a professional journalist in Belgium.'

In addition, the feeling of belonging is also difficult to come by in an environment of individualised career management. In Romania, the University of Bucharest's Research Institute (ICUM) has published two studies on journalists below 30 years of age working for magazines and the digital press.<sup>3</sup> These studies highlight the fact that, though their working conditions are extremely difficult (they sometimes have to work more than 60 hours a week), they are against joining a professional organisation, a fact mainly explained by an individualistic approach to employment relations and a lack of concrete benefits from being a member.

### Employees not better off

In several Eastern European countries, the precarious situation of journalists is not limited to freelancers, with even regularly employed journalists affected. Since the

2. Bittner A. (2011) *Managing change in journalism innovation and trade union in the news industry*, Brussels, European Federation of Journalists.

3. Surugiu R. (2013) *Labour conditions of young journalists in Romania: a qualitative research*, *Procedia – Social and Behavioral Sciences*, 157-161. Surugiu R. (2012) *Working for Glossies. A case study on young magazine journalists in Romania*, *Journal of Media Research*, 5 (3), 21-28.

4. Cagé J. (2015) *Sauver les médias. Capitalisme, financement participatif et démocratie*, Seuil, La République des idées, 128 p.

privatisation of the media in the 1990s in Poland, there is just one collective agreement, that of the Polish public radio company.

In Montenegro, there are no collective agreements. 'The employers are not legally bound to conclude agreements, but just to negotiate them. And negotiations can drag on *ad infinitum*. The latest case: for years now, we have been negotiating a collective agreement with the TV company Budva. But, although nearly all provisions have been agreed, the employer just refuses to sign the document', explained Marijana Camovic, president of the Montenegro media union, SMCG. Unions for the private media were set up just two or three years ago. 'But they are still not in a position to put any pressure on the employers, forcing them to the negotiating table', she said. In Albania, numerous journalists are working under simple verbal agreements on their wages and working conditions.

### New business models

In the face of this lack of bargaining power on the part of journalists and their representatives, authors are now looking at new media governance models. In her book *Sauver les médias* (Save the media), Julia Cagé<sup>4</sup>, Professor of Economics at Science Po Paris, puts forward the idea of creating a new legal status, that of a 'not-for-profit media company'. At the crossroads between a foundation and a public limited company, this model would supervise the power of shareholders, be open to

participative financing (crowd funding) and offer a new 'home' to publishers and readers.

In existence for a long time, alternative media companies refuse to pursue profitability at any price. Whether employees, freelancers or volunteers, journalists are the ones taking the decisions. In France, for example, the magazine *Alternatives Economiques* is published by a SCOP (*société coopérative et participative*), in which the employees have a majority shareholding. The remaining shareholders are the readers (forming an association) and a civil society investment company. The only funds

allowed to finance its further development are any profits made from the venture. In 2016, *Alternatives Economiques* raised more than € 100,000 via a crowd-funding campaign.

In Belgium, the quarterly magazine *Médor* is organised as a social cooperative with a rotating system of editorial responsibility. For each issue, three journalists share the roles of 'pilot', 'co-pilot' and 'visual pilot'. Journalists are paid by gig. To establish the price of each gig, the journalists used the rates recommended by the Association of Professional Journalists as a base, increasing them by 25 – 100%. ●

## Further press occupations under threat

Denis Grégoire  
*ETUI*

Nathalie Simon's CV reveals 20 years of experience in publishing and the press, including many assignments for leading French magazines such as *Télérama* and *L'Express*.

Now aged 53, she still finds herself running after assignments. "Since leaving Roularta, I've had great difficulty finding steady work", she admitted. "I managed to get a week's work at Easter for the French consumer magazine *60 Millions de consommateurs*, but nothing more. Even if their sales are doing well, their budget for freelance work is very limited." To somewhat boost her income, she is also working with the French publishing house "Seuil Jeunesse".

The never-ending crisis of the printed press has not only left journalists out in the cold, but also may other writing professionals responsible, like Nathalie, for such specialist functions as "proofreading", "copyediting" or "sub-editing", background occupations contributing to the quality of information, both in terms of substance and form.

Nathalie Simon started her career at *Télérama*, employed under a series of fixed-term contracts. "At that time, I wasn't looking for a permanent job. I wanted to maintain a certain amount of independence, able to set my own course. And I also wanted to work in publishing. At the end of the 1990s, the magazine sector was doing very well, with advertising revenues at their peak. It wasn't difficult at all to find work in the sector", she explained.

In theory, an employer may only resort to fixed-term contracts for precisely defined and temporary tasks and functions within a company. To prevent abuse, the legislator provides for a waiting period (called in French "*délai de carence*") when a fixed-term contract comes to an end. For example, at the end of a 4-month fixed-term contract (120 days worked), the company must wait 40 days before concluding a new fixed-term contract.

Despite these measures supposed to encourage employers to convert short-term employment contracts into permanent ones, Nathalie Simon has never enjoyed any other status than that of a non-permanent employee. In 2010, after working with *Télérama* for 13 years and having twice been refused a permanent contract, she took her case to the labour tribunal. She would have been able to have had her fixed-term contract reclassified as a permanent one, but her relationship with the magazine's management had deteriorated so much in the meantime that she preferred to negotiate a "formal" dismissal and be awarded compensation.

The second hard blow for the copy-editor came in 2015, when French telecom billionaire Patrick Drahi acquired *L'Express* from the Belgian media group Roularta. "A quarter of the workforce was shown the door", remembered Nathalie Simon, who had been working for the magazine for four years – and she was one of them.

She now questions whether such specialist writing occupations have any future. Can the traditional media, most of which fighting to survive, continue to afford the luxury of such services? In the face of competition from the social media, and more generally from online information sources, quality requirements are going down the drain.

"We get requested to 'vaguely' correct the texts. Our work is becoming more and more technical, to the detriment of our journalistic skills. You are seeing this in the quality of articles", she complained. "I'm a great fan of good writing, viewing any grammatical errors in an article as inadmissible. Verifying information and spelling, checking that names have been written properly – all of this takes time. But one editor just told me 'You're not Balzac', when I asked for more time to improve a text."

The new owners of the main French newspapers and magazines, nearly all of them billionaires, obviously have other priorities: newspapers are well on their way to becoming just another commodity.