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Algorithms, labour and normative spaces: rebalancing power to ensure democracy at work

Algoritmos, trabalho e espaços normativos: reequilíbrio do poder para a democracia do trabalho

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Abstract

Addressing concerns about the anti-democratic use of algorithmic management in labour relations, this article sets out to map the actions of actors in the world of work in order to redirect the studied institutional frameworks in a more protective direction. Working towards this aim, the authors outline the contours of these actions using materials found in the literature, produced by the European Trade Union Institute (ETUI) and researched in public hearings in the Brazilian Supreme Court (STF) and Federal Senate. It observes that the efforts to put collective labour regulatory concerns on the agenda have been more successful in the European guidelines. This action is under strain in the Brazilian regulatory sphere of digital platforms and artificial intelligence (AI). At the same time, debates in the Supreme Court on the recognition of employment relationships and in the Federal Senate on AI indicate a process of diluting labour protections.

Keywords: algorithmic control; labour rights; STF; digital platforms; artificial intelligence.

Resumo

Diante das preocupações sobre o uso antidemocrático do gerenciamento algorítmico nas relações de trabalho, este trabalho visa mapear as ações de atores do mundo do trabalho para redirecionar os arranjos institucionais estudados com sentidos mais protetivos. Para tanto, delineia os contornos de tal atuação por meio dos materiais produzidos pela literatura, pelo *European Trade Union Institute* (ETUI) e pesquisados em audiências públicas no Supremo Tribunal Federal (STF) e no Senado Federal brasileiro. Observa-se

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que os esforços para colocar as preocupações regulatórias trabalhistas coletivas em pauta tiveram mais sucesso nas diretrizes europeias. Essa atuação encontra-se tensionada no âmbito regulatório brasileiro das plataformas digitais e da inteligência artificial (IA). Por sua vez, os debates no STF, sobre o reconhecimento do vínculo de emprego, e no Senado Federal, sobre IA, indicam os sentidos de esvaziamento das proteções trabalhistas.

Palavras-chave: controle algorítmico; direitos trabalhistas; STF; plataformas digitais; inteligência artificial.

Introduction

Examining the labour economy in the United States – with a particular focus on companies like Amazon, Uber, Walmart and their subcontractors – Rogers (2023) argues that the subordination of workers to algorithmic management constitutes a form of digital Taylorism, in which both automation and control have intensified the pace of work. The author further explores how these companies employ data-aggregation techniques to map and monitor trade union activity. Even within this scenario, he stresses that technologies could perform a quite different role if workers had a say in their use. To achieve this goal, he highlights the need for reforms that facilitate unionization and union activity, promote workers' cooperatives and regulate data collection by employers.

While acknowledging that the term neoliberalism allows for multiple interpretations, Rogers argues that we should conceive the phenomenon as the political tendency to restructure law and social life in accordance with the imperatives of the market and to prioritize property rights over democracy, deepening the surveillance of workers and denying the diverse expressions of class conflict. In this way, he posits democracy as a counterpoint to the power of capital, associating it with the demand for institutional conditions that would allow workers to have a voice in technological changes (Rogers, 2023).

For the author, the exercise of democracy becomes difficult when workers face precarious labour conditions and are excluded from participatory rights. Along these lines, he observes the decline of unionization; constraints on organizing activities in the workplace; the absence of consultation with workers prior to decision-making; restrictions on the right to strike; and, above all, the vulnerability of workers who can be dismissed without cause. He further observes that workplace-level bargaining diminishes workers' power, making it necessary to promote sectoral bargaining (Rogers, 2023).

Companies exploit legal loopholes to evade employment contracts, hiring their workers as self-employed contractors, or, alternatively, relying on arrangements such as franchises, which make it harder to establish their responsibility for working conditions across the service chain. Through technologies and information control, firms manage their workers in much the same way as traditional employees, meanwhile consolidating a dominant position in the market. Hence, Rogers (2023) argues that current labour policy is marked by centralized information and control, with constant surveillance and little autonomy or voice for workers. In opposition to such practices of domination, he defends the right of workers to limit data control to what is strictly

necessary and to demand technological transparency, with human oversight, so as to prevent arbitrary management of workers in the various decisions concerning the labour contract.

He also makes various proposals to policymakers for responding to these transformations in the workplace, such as the establishment of wage councils aimed at defining minimum standards at the sectoral level, encouraging dialogue between government, employers and workers. He advocates codetermination rules, following the European example, with collective rights to information and consultation on technological changes. Additionally, he argues that collective bargaining should be required in order to promote the introduction and use of technologies that do not harm workers (Rogers, 2023).

Exploring the European context, more advanced in terms of regulatory debates overall, though still lacking greater specificity in the labour field, Todolí Signes (2024a) classifies technologies as follows: productive, which complement work, enabling workers to perform their tasks with greater productivity and less effort; and extractive, used to drain workers' energy and transfer risks onto them, which cease to generate value. He proposes that regulation should prevent extractive technologies by establishing rules that encourage innovation and improvements in working conditions. This, he argues, requires rebalancing of the employment contract through collective governance.

Algorithmic management may combine automated and semi-automated systems. Platforms have disseminated the use of automated systems in making decisions concerning workers. This use has expanded the possibilities of correlating data external to the employment contract (among them, a worker's political ideology and place of residence), thereby increasing the risk of algorithmic discrimination without workers being aware. Automated decisions can be utilized for: the selection of workers; the management of working time and pace, increasing productivity at the expense of lower wages and worsening health problems; surveillance; the management of networked companies (franchises, outsourcing, self-employed workers); and the weakening of workers' bargaining power through the prediction of organizing activities. As a result, the power of companies over workers has expanded and the effectiveness of legal protections, historically aimed at achieving a better balance in capital–labour relations, has been diminished (Todolí Signes, 2024a).

The author shows that the European Union's Artificial Intelligence Act (AI Act) encourages member states to establish broader protections through legislation or collective bargaining. Beyond safeguarding individual rights, it also seeks to promote knowledge of decision-making processes among worker representatives, in accordance with the right to information and consultation of works councils set out in the Charter of Fundamental Rights of the European Union. Along these lines, Spanish legislation has granted workers' representatives access to the parameters used by the algorithms that affect them, as set out in Article 64.4.d of the Workers' Statute. The difficulty, however, resides in extending this protection to trade unions. For this reason, the proposed European Union Platform Work Directive (EUPWD) introduces advances in algorithmic transparency within these kinds of employment relations, but the real challenge is to extend these protections to all workers (Todolí Signes, 2024a).

Specific legislation is required to make collective bargaining obligatory when companies wish to introduce algorithmic management measures. In this way, the right for a worker to control their personal data (informational self-determination) would

acquire a collective dimension, more appropriate to labour relations, since trade unions would be better placed both to prevent the use of algorithms in ways that harm workers' fundamental rights and also to help develop technologies that avoid discrimination, health risks and the treatment of workers as machines (Todolí Signes, 2024a).

Sharing the view that "algorithms are a central dimension of contemporary societies" (Mendonça, Filgueiras and Almeida, 2023, p. 128) and that "democracies require the democratization of […] algorithms" (Mendonça, Filgueiras and Almeida, 2023, p. 150), this article seeks to map the contours of the actions of labour actors in pursuit of such democratization, particularly in relation to platforms and the use of artificial intelligence at work, drawing on materials produced by the academic literature, the European Trade Union Institute (ETUI) in Europe and documents found in public hearings at Brazil's Federal Supreme Court (STF) and Federal Senate.

In addition to the introduction and the final remarks, this article divides into four parts. The first examines trade union participation in European regulation, considering different normative arenas. The second addresses the institutional and normative design of the area in the Brazilian context. The third sets out the debates developed in the country's Federal Supreme Court (STF), focusing on the denunciations of precarious working conditions and on whether or not an employment relationship exists in view of the algorithmic control exercised by digital platform companies. Finally, the fourth presents the discussions on workers' rights within the legislative debates on artificial intelligence taking place in Brazil's Federal Senate.

1. Trade union action in European legislation

With the spread of digital platforms, especially intense ever since the Covid-19 pandemic, the literature has become increasingly concerned with the issue of the algorithmic management of work and how this generates social problems such as disregard for data protection and restrictions on the right to collective organisation, as well as discrimination, work intensification with negative effects on health and safety, wage reductions and the loss of workers' autonomy (Bales and Stone, 2020; De Stefano, 2018, 2020; Ponce Del Castillo and Molè, 2024). Given this situation, organizations linked to trade unions have promoted a range of studies on the issue and its relationship to union entities. An analysis of these materials reveals the importance of trade union action across different regulatory arenas; here, our emphasis will be on the role of the ETUI.[4]

Reporting on data protection authorities highlights the case of the digital platform Glovo-Foodinho concerning the misuse of algorithmic management. In 2021, the Italian Data Protection Authority, responsible for implementing data protection legislation in the country, fined the company for failing to safeguard the digital rights of workers, in breach of both European legislation established by the GDPR (General Data Protection Regulation) and national legislation established under the Workers' Statute. Investigations revealed that the company's app collected data even outside working hours and shared this information with other companies, enabling the monitoring of workers even in their private moments (Agosti et al., 2023).

[4] The European Trade Union Institute (ETUI) is a research centre of the European Trade Union Confederation (ETUC). In addition to its publications, those interested can follow a series of meetings and lectures organized by the ETUI on the regulation of data protection, algorithmic management, artificial intelligence and working conditions on digital platforms. More information is available at: https://www.etui.org/.

Particularly important here is the framing within Italy's labour legislation, which sets out provisions for the protection of working conditions in general and for the use of technologies in the workplace. To provide a clearer understanding of this framework, we present the Italian legal context, which encompasses diverse legal measures adopted over the years – even prior to the GDPR – and includes obligations regarding the remote collection of data. The courts have always been able to reshape the legal landscape, interpretating the legislation in ways more or less favourable to employers. More positively, some of these rulings have recognized platform workers as employees and as subjects of protection within employment relations. Nonetheless, Italian trade unions have so far played only a limited role in the field of data protection, with few collective agreements addressing the issue. Because of this uncertain scenario, the authors argue that trade unions should incorporate national authorities into their strategies for defending these rights (Agosti et al., 2023).

The decision of the GPDP (*Garante per la Protezione dei Dati Personali*) noted the superficiality of Glovo-Foodinho's privacy policy, as well as the need to implement an impact assessment – deemed high-risk – given the company's creation of an automated work management system. Moreover, it concluded that the delivery workers should be regarded as employees, since the app effectively managed the workforce. In conclusion, the authors argue for joint action between actors and institutions to fill the gaps in data protection legislation in the workplace. Accordingly, workers must be informed about the role of algorithmic management, including the data collected, its processing, automation, and the parameters used in performance evaluation (Agosti et al., 2023).

In an analysis by an ETUI specialist (Ponce Del Castillo, 2024), the author highlights the strategy of trade unions in justifying, at the legislative level, the need for technological interventions and their regulation to be carried out with regard to existing rights, particularly in the labour sphere. To this end, trade unions acted primarily at the legislative level, both in relation to the AI Act and to the EUPWD (European Union Platform Work Directive). As a result, guidelines were introduced into the AI Act to ensure that its provisions are interpreted in line with preexisting legislation on data protection, consumer rights, fundamental rights and labour rights, as stated in Recital 9.[5]

Beyond this point, trade unions successfully secured other provisions, chiefly the possibility for the European Union and its member states to introduce laws more favourable to workers in the regulation of artificial intelligence and to promote collective agreements with improved conditions (Art. 2.11). We can also highlight other elements of collective governance on this issue, involving workers and their representatives, namely: information sharing (Art. 26); the need for digital education on artificial intelligence (Art. 4); involvement in the drafting of codes of conduct (Art. 95); participation in the Advisory Forum (Recital 150 and Art. 67) and the provision of specialized technical expertise and the design and development of systems (Recital 165). The author adds, however, that trade unions should also be involved in the impact assessment before these systems are implemented, and be given a role on the European Artificial Intelligence Board (Ponce Del Castillo, 2024).

With regard to the EUPWD, the author highlights the innovation of integrating labour law, health and safety regulations – paying close attention to psychosocial risks – and data protection. The legislation incorporated the GDPR (General Data Protection

[5] Recitals are documents that set out the justifications and objectives of the AI Act.

Regulation) and adapted it to the labour sphere (although limited to digital platforms), imposing restrictions on the processing of certain worker data, the right to human supervision of automated decisions, the right to an explanation of automated decisions, and the right to a review. It simultaneously established the obligation to inform workers, their representatives and the competent national authorities about the objectives and use of automated decision-making and monitoring systems in platform work (Ponce Del Castillo, 2024).

She also provides other European examples of trade union action. As well as mentioning some national advances – for example, in Spain – and several sectoral agreements on the issue of digitalization and algorithmic management, the author cites the creation of a web-based information repository providing access to existing clauses on the subject in six countries: Finland, Germany, Italy, Spain, Switzerland and the United Kingdom. Most of these clauses address the issue of training, however, with few dealing with the obligation to provide information on the existence of the system, its programming, modification and data usage (Ponce Del Castillo, 2024).

The ETUI organizes meetings on the importance of workplace democracy, insisting on the idea that political democracy cannot develop without the democratization of corporate decision-making – recalling the argument of Todolí Signes, cited above. In a recent text (Todolí Signes, 2024b), the latter reflects on the limits of legislation on artificial intelligence and data protection in the face of the exploitation of employees in precarious labour conditions, with potential harms to health, exposure to discriminatory treatment and unfair decisions, along with the vulnerability of their privacy and personal data.

The regulations focus on privacy rights and the protection of personal data, whereas in labour relations various other rights are involved, such as the right to workers' health, non-discrimination and collective bargaining, among others. Moreover, many of these protections are conceived in terms of the exercise of an individual right and do not improve workers' overall conditions. Todolí Signes points out that, in any case, a collective strategy for addressing these issues may prove ineffective if not accompanied by institutional rules that strengthen democracy in labour relations.

For this reason, the author sets out from the idea of strong codetermination, which demands obligations of information sharing and negotiation before any decisions are taken on the implementation of technology, including the possibility of a veto by workers' representatives. In relation to algorithmic management and artificial intelligence, therefore, worker representation must also be supported by structures that provide the necessary expertise for their analysis.

With regard to impact assessment, an explanation of the processing, purposes and risks of rights violations needs to be provided, accompanied by measures to mitigate those risks. But given the institutional weakness in publicising and monitoring the quality of its content, the author identifies negotiation of the impact assessment with worker representatives as a potential solution, followed by the opportunity for workers to debate the measures to be taken so as to reduce negative impacts. Other proposals are also made by the author, such as conducting audits of the actual and specific functioning of the algorithmic system, together with its results and impacts (Todolí Signes, 2024b).

In this way, the author argues that "[…] there should be a shift from individual informational self-determination to collective informational self-determination"; that is, for the processing of workers' data "[…] the consent of workers' legal representatives should be required" (Todolí Signes, 2024b, p. 245).

In Brazil, in an institutional environment shaped by labour reform that reinforced the effects of precarious contracts, curbed worker rights and weakened trade unions (Krein, Oliveira and Filgueiras, 2019), trade union action is still incipient and lacks the support of collective protection legislation with regard to algorithmic management. Moreover, there is no legislation protecting workers from automation – the subject of Direct Action of Unconstitutionality by Omission (ADO) 73 – or ensuring more effective forms of worker participation in company management, although the Federal Supreme Court (STF) has recently ordered the National Congress to address the issue in ADO 85.

Institutional efforts, such as those of the Public Labour Prosecutor's Office (MPT) and academic research, have mainly been directed towards mapping the working conditions in on-demand digital platforms, their dynamics and forms of subordination, which could potentially result in recognition of an employment relationship and, consequently, labour protection (Abílio, Grohmann and Weiss, 2021; Cardoso, Artur and Oliveira, 2020; Machado and Zanoni, 2022; Oitaven, Carelli and Casagrande, 2018). More recently, initiatives have been observed which, taking inspiration from international studies and experiences (Hiessl et al., 2024), have sought to introduce the question of the specificity of labour protections, particularly collective safeguards, in response to new technologies. In the next section, we present the national regulatory framework, followed by an examination of the action of institutions in public hearings convened by the Federal Supreme Court (STF) and in the Federal Senate.

2. The Brazilian legislative framework

Brazil has a General Law on the Protection of Personal Data (LGPD), Law No. 13,709 of 14 August 2018 (Brazil, 2018), without providing any specific provisions in the labour sphere. In the National Congress, Bill (PL) No. 2,338/2023 is now under consideration, its substitute text having been approved in the Federal Senate and forwarded to the Chamber of Deputies at the end of 2024 (Brazil, 2023). This law bill addresses the regulation of artificial intelligence, with several regulatory tensions, including in labour relations.

There has been extensive litigation over the existence or otherwise of an employment relationship in digital labour platforms, particularly those involving drivers and delivery workers. The current government, within an economic, political and social dynamic that favours the evasion of labour regulation – still shaped by the 2017 Labour Reform and seeking to reinforce the entrepreneurial discourse – has introduced Complementary Bill (PLP) No. 12/2024, which classifies drivers as "platform-based self-employed workers." Although the bill provides for some rights, it represents a normative setback and fails to specify any participatory mechanisms for workers (Lima, 2024).

With the enactment of the LGPD, jurists and labour institutions strove to spell out the specificities of protection in employment relations on the basis of European guidelines, particularly the GDPR. The provisions of Brazil's LGPD establish consent

as one of the grounds for data processing, which must be free, specific, informed and unequivocal. Since the debates surrounding the drafting of the GDPR, there have been concerns over the legality and legitimacy of employee consent, given that the relationship is marked by imbalance and therefore susceptible to informational asymmetries, discrimination and exploitation. In this respect, Carloto (2024) recommends that other legal grounds be prioritized, further emphasizing the need for data processing practices to be fair and transparent given that fundamental rights are at stake.

From a civil law perspective, Korkmaz (2023) highlights a central point debated in the legal and political sphere, namely the right of the data subject to a review of any decisions taken solely on the basis of automated processing of personal data that affect their interests. Although human review was provided for in the original text of the LGPD, Provisional Measure 869 – which amended Law 13,709/2018 among other changes – gave new wording to the main provision of Article 20 of the LGPD by removing the phrase "by a natural person" after review. The removal was justified on the grounds of the economic costs of adopting human review.

Law Bill No. 2,338/2023, which regulates artificial intelligence, restores the centrality of the human dimension. This bill innovates not only in its approach to risk classification but also in its "grammar of rights," possessing a more detailed regulatory framework than the LGPD, since it emphasizes human intervention in decision-making processes (Korkmaz, 2023). In an analysis of judicial decisions in both the civil and labour spheres (in actions seeking recognition of an employment relationship based on digital platforms with automated decisions), the author concludes that "the Judiciary is resistant to entering into the merits of automated decisions, without further consideration of their protective basis or information about their dynamics" (Korkmaz, 2023, p. 352). Faced with this scenario, and going beyond the individual action of the rights-holder, attention is focused on the collective dimension of the problem of automated decisions, with collective institutions being tasked with defending rights (Korkmaz, 2023).

This protection is a social construct, therefore, shaped by tensions within each institutional arrangement involving companies, trade unions, agencies and others. In a regulatory context that is still incipient, marked by asymmetrical relations in labour regulation and social participation, the collective dimension of these new rights has been marked by attempts to dilute any explicit provisions concerning the meanings, actors and labour institutions that ought to constitute this dimension.

The Federal Government established a tripartite Working Group (WG) to draft a proposal for the regulation of activities executed through technological platforms (Brazil, 2023a). Antunes (2024), a participant in the WG and an analyst at the Ministry of Labour and Employment, highlights the merits of establishing collective bargaining frameworks and setting the regulation of work. However, he also criticizes the difficulties of defining a regulatory standard given the institutional arrangement in place. His criticisms point to: (i) the restriction of the discussion to transport workers, excluding the sectoral diversity of digital platform labour; (ii) the lack of bargaining practices between platforms and their workers; and (iii) the consensual methodology set out in the regulatory decree, which was undermined as a result of the issue identified in the previous item.[6]

[6] It should be noted that, in the public hearing analysed in the following section of the article, the representative of the CUT, who also took part in the Working Group, stated that the STF's decisions

As a consequence, the results of the Working Group, embodied in PLP 12/2024, has been subject to diverse criticisms. Compared with the EUPWD, the bill is silent on data protection and fundamental rights, and excludes the recognition of an employment relationship by affirming a form of autonomy that is nonetheless stripped of rights (Carelli, 2024). Porto and Araújo (2024) emphasize that the bill's provisions with regard to the protection of workers' rights are virtually worthless, designed to lend it a veneer of decent work, while recognizing platforms merely as transport intermediaries and workers as self-employed, subject to exhausting working hours. Compounding these issues, it leaves the question of transparency to future regulation and completely ignores the effects of algorithmic management. With respect to collective bargaining, PLP 12/2024 provides for it only as a means of securing rights, without introducing instruments to make it effective in digital platform work (Lima, 2024). Moreover, it fails to tackle the multitude of issues raised by this type of employment relationship concerning privacy rights, data protection and algorithmic management.

Below we examine the debates on the regulation of on-demand digital platforms in Brazil, particularly in the public hearing convened by the Federal Supreme Court (STF).

3. Debates in the STF on the regulation of digital labour platforms

The Federal Supreme Court (STF) has been analysed as a political actor in key labour reforms (Droppa and Oliveira, 2024; Dutra and Machado, 2021; Grillo, Artur and Pessanha, 2023), as evidenced by rulings that uphold labour reform, legitimize extensive outsourcing and, in the name of freedom of enterprise, overturn Labour Court decisions that ruled the misclassification of workers as self-employed contractors as fraudulent and that recognize the existence of an employment relationship in on-demand digital labour platforms.

The Constitutional Court was called upon to decide on the recognition of an employment relationship between an app-based driver and a digital platform, through Extraordinary Appeal 1446336. The appeal was lodged by Uber against a ruling of the 8th Panel of the Superior Labour Court (TST), which had upheld the employment relationship recognized in a decision of the Regional Labour Court of the 1st Region/Rio de Janeiro. The Federal Supreme Court (STF), accepting Uber's arguments, recognized the "general repercussion" of the issue (Theme 1291),[7] estimating that more than 10,000 cases concerning digital platforms were being processed by the Labour Courts (Brazil, 2024).

In notice of convocation issued on 24 October 2024, the Court set out the requirements for selecting participants in the public hearing in the capacity of *amicus curiae*. At the hearing, held over three sessions on 9 and 10 December 2024, representatives of 58 entities were heard, including civil society organizations, entities representing workers and companies, as well as academics (Public Hearing […], 2024a, 2024b, 2024c).

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denying the existence of an employment relationship for platform workers – issued in the course of the Working Group's activities and thus contrary to the European proposal – influenced the drafting of the bill (Public Hearing […], 2024a).

[7] "General repercussion" is a filter through which the Federal Supreme Court (STF) assesses whether an issue goes beyond the dispute between the parties involved in the appeal. In other words, by deciding on a specific case, the Court will also be deciding multiple identical cases on the same constitutional issue, one that has social, political, economic and legal significance.

At the close of the first day, Justice Edson Fachin, rapporteur of the Extraordinary Appeal and vice-president of the Court, concluded that, despite the disagreements inherent to democratic debate, consensus had prevailed on the relevance of the matter and the need for its resolution within the framework of institutionalization. He further emphasized that, through due constitutional process, the STF fulfils its primary mission as guardian of Brazil's Constitution.

The questions converged on four thematic axes: (i) the appropriate legal regime for regulating the relationship between drivers and app-based (digital platform) companies; (ii) the implications arising from the possible recognition of an employment relationship, both for companies and for Social Security; (iii) the availability and control of relevant statistical data, some of which is held exclusively by the companies, such as the number of drivers, hours worked, financial information and the number of drivers actually making Social Security payments; and (iv) international experiences in regulating this matter across different legal systems.

Although the specific case concerns Uber, as the National Association of Labour Magistrates (ANAMATRA) rightly pointed out, the phenomenon under judgment – referred to as *uberization* – is much wider, encompassing all activities that have the potential to be developed via a platform. The need to regulate the work performed by means of apps was presented by the hearing's participants as essential.

According to Justice Aloysio Corrêa da Veiga, president of the Superior Labour Court (TST) and the Superior Council of Labour Justice (CSJT),[8] the diversity of this work model makes its regulation difficult, since for some workers it may be the main source of income, while for others it is merely supplementary. Nevertheless, he stressed the urgency of ensuring security for workers, particularly through insurance against occupational accidents and through social security, guaranteeing income in cases of misfortune and the right to retirement. Moreover, he emphasized the need to establish mandatory disconnection, preventing a worker from remaining tied to a platform for more than 12 hours a day.

Substantively, the interventions made in the public hearing, though informed by the questions formulated by the STF, can be categorized under the following themes: (i) the constitutional jurisdiction of the Labour Courts to resolve the controversy concerning the legal nature of the contract established between drivers and digital platforms; (ii) the recognition of such a contract as an employment relationship, in strict accordance with the current legal framework; (iii) the defence of the classification of the relationship as self-employment, likewise supported by the normative framework currently in force; and (iv) the need to devise regulatory solutions that transcend the traditional paradigms of labour relations, recognizing the singular dynamics inherent to digital platforms.

Several entities[9] expressed the view that the Labour Courts have jurisdiction to resolve the controversy concerning the legal nature of the contractual relationship established between drivers and digital platforms. They pointed out that the erosion

[8] Justice Veiga has argued that these workers do not fit the profile of either self-employed or employee, a view met resistance from labour law scholars, who regard such an intermediate classification as a social setback, since it reduces labour protection.

[9] Notable participants included: the Federal Council of the Brazilian Bar Association (CFOAB); the National Association of Labour Magistrates (ANAMATRA); the National Association of Labour Prosecutors (ANPT); the Association of Judges for Democracy (AJD); trade unions; the Unified Workers' Confederation (CUT); and participating academics.

of the jurisdiction of the Labour Courts amounts to the suppression of the natural judicial forum for labour relations and the constitutionally guaranteed social protection.

Among those arguments that recognize the requirements of an employment relationship, the general understanding is that Uber cannot be characterized merely as a technology company, but rather as a passenger transport company, insofar as it owns and controls a digital infrastructure – the platform – through which it enables and manages its economic activity.[10] This conception contrasts with the company's own narrative,[11] which presents itself as a new business model within the technological innovation ecosystem and the sharing economy market.

Two trade union confederations, Nova Central Sindical and Força Sindical, took a stance against the discourse of worker autonomy and argued for the recognition of an employment relationship between app-based drivers and platforms. In their argument, they cited the examples of Spain and Portugal, which have already established an employment relationship for these workers, showing that it is possible to reconcile the continued viability of the companies with the guarantee of rights and the promotion of social justice.

All these submissions emphasize the factual characteristics of the provision of work, framing it as an employment relationship. The personal nature of the employment contract is evidenced by the driver's registration through their CPF (taxpayer identification) number and by the penalty imposed by Uber if another person is found to have been driving the vehicle in their place. The remunerated nature of the contract is shown by the fare being set by Uber without any input from the driver. The latter's variable salary is calculated as a percentage of the outcome of the activity performed. With respect to the requirement of regularity and continuity in employment, the flexible working schedule aligns perfectly with the provisions of the CLT (Consolidation of Labour Laws), especially with respect to drivers.

Particular emphasis is placed on subordination, which is manifested in an intensified form through the platform's algorithms, controlling all of the driver's activities, from completed to cancelled rides, as well as the passenger rating, which serves to reward or penalize the driver. Hence, the company exercises extensive managerial power and, through algorithmic control, can monitor driver locations in real time, determine the frequency of task execution, set performance targets, and assess the volume of work performed. Moreover, the company imposes sanctions, such as suspensions and summary dismissals, in cases of non-compliance with its guidelines.

Organizations representing app-based drivers denounced the serious problems faced by the sector. Among the complaints, these entities highlighted Uber's lack of responsibility in cases of occupational accidents, robberies and even the deaths of drivers, as well as reprisals against those who form spontaneous WhatsApp groups. They also reported the reduction in fare values, pressure for rapid deliveries, and non-

[10] On this point, the following took a position: ANAMATRA; AJD; ANPT; the Federal Public Defender's Office (DPU); the Brazilian Association for Labour Studies (ABET); the Network for Studies and Monitoring of Labour Reform (REMIR); the Centre for Trade Union and Labour Economics Studies (CESIT/Unicamp); researchers; and trade unions of motorcycle, vehicle and delivery drivers.

[11] In alignment with Uber: Agência de Restaurantes Online S.A. (iFood); the Brazilian Association of Mobility and Technology (Mobitec); 99 Tecnologia Ltda; and the Digital Innovation Movement (MID).

payment for the time drivers remain at the platform's disposal while waiting for rides. On the question of Uber's payments for rides, they pointed to the company's lack of transparency in relation to the data it ought to provide.

Another point highlighted[12] was the almost insurmountable difficulty of unionizing the sector. Even when unions exist, the lack of official recognition and the absence of trade union registration prevent their full operation, creating obstacles in terms of both political representation and judicial proceedings.

The problem of data capture by platforms was also raised, a process known as datafication.[13] In this case, in a single operation, companies obtain multiple simultaneous and cumulative gains. The first profit comes precisely from datafication – that is, from the collection and use of mass information. In addition, they profit from the exploitation of labour power, the formation of monopolies and financial speculation through investment funds. This problem recalls what was seen in the Italian case of Glovo-Foodinho.

The classification of drivers as self-employed workers is defended mainly by company representatives,[14] who ground their argument in economic freedom, a principle guaranteed by Brazil's Federal Constitution. This model, they assert, preserves the flexibility and independence of professionals, avoiding the imposition of an employment relationship. In this context, the company representatives argue that platforms control neither the duration, nor the manner of work performance, nor the time of connection, which is left to the driver's discretion. They note that drivers may connect simultaneously to other apps, which in their view indicates a lack of subordination. Likewise, they contend that rewards granted to drivers highly rated by users are common practices in contractual relations and do not amount to labour subordination.

The companies further argue that the platform automatically selects the driver closest to the user, which removes the strictly personal nature of the work. According to this logic, unlike a traditional employment relationship, there is no direct choice of the worker nor any obligation of a continuous bond between the parties, reinforcing the argument of autonomy. They also contend that the app is a tool at the driver's disposal, enabling them to maximize their earnings and provide rides according to the most efficient and economical model of intermediation. Following this reasoning, the platform functions solely as a technological means of connecting supply and demand, without directly interfering with the worker's autonomy.

There were positions in favour of Complementary Bill (PLP) 12/2024, proposing the classification of digital platform self-employed worker. Among these,[15] we can highlight Federal Deputy Daniel Agrobom, representing the Parliamentary Front in Defence of App-Based Drivers and Delivery Workers. He expressed concern about attempts to undermine the autonomy of these workers by seeking to classify them as subordinate employees, which, in his view, runs counter to the freedom and flexibility

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[12] Addressed by the Union of Self-Employed Drivers of Individual Private Transport by Apps in the Federal District (SINDMAAP-DF); and the Union of Licensed Taxi Drivers and Auxiliary Drivers of the Federal District (SINPETAXI).

[13] An issue raised by CESIT/Unicamp.

[14] Notable participants included: the Brazilian Association of Economic Freedom (ABLE); the Brazilian Association of Mobility and Technology (Mobitec); the National Confederation of Industry (CNI); and the National Confederation of Services (CNS).

[15] Others in favour included Uber; Mobitec; 99 Tecnologia Ltda.; MID; the Office of the Attorney General of the Union; the Ministry of Labour and Employment; and the Ministry of Social Security.

that characterize this work model. For the deputy, the future of workers must be built on three pillars: freedom, legal certainty and decent remuneration. He argued that freedom is one of the foundations of the Brazilian Constitution and that app-based professionals are examples of self-employed workers engaging in free enterprise, organizing their own schedules and workplaces. He further noted that innovation entails change but must also include responsibility, and that it is unacceptable for a worker to be disconnected from their only source of income without the right to be heard.

This position thus contrasts with those that sought to emphasize the importance of adopting a regulatory standard as one of the pillars of an economic and social development model that positively impacts society as a whole.

4. Regulatory tensions over labour relations in the Brazilian Artificial Intelligence Bill

Returning to Bill No. 2,338/2023, it is notable that its passage through the Federal Senate was monitored by civil society organizations, which denounced both the difficulties in securing its approval and the attempts to water it down (Coalizão Direitos na Rede, 2024). Statements by business representatives in favour of this legal dilution can be found on social media. By way of example, the Federation of Trade in Goods, Services and Tourism of the State of São Paulo published a statement arguing that regulation of artificial intelligence at specific levels within labour relations generates normative conflicts and litigation, undermines economic freedom, and has negative impacts on society (Marco […], 2024).

On the other hand, as resistance to this process of dilution, debates were held in the public hearing convened by the Federal Senate's Human Rights and Participatory Legislation Committee (CDH) at its 51st Meeting on 3 December 2024. The meeting featured speakers who sought to inform society and workers about the progress of the bill and the importance of a regulation that takes human rights into account in labour relations involving artificial intelligence (CDH debate […], 2024).

One of the speakers was Renan Bernardi Kalil, a labour prosecutor, national coordinator of the National Coordination for Combating Fraud, and member of the MPT Working Group on Artificial Intelligence. In his testimony, he stated that technologies are not neutral but embedded in power relations, and that society cannot play only a marginal role in the debate on their regulation. After citing the invisibilization of the workers who feed artificial intelligence and concerns over robotization, he presented positive experiences of international regulation, such as European standards and collective bargaining, which make it possible to achieve fairer working conditions in relation to the issue under debate. Trade unions thus have a central role in these issues, which needs to be institutionally strengthened. He also stressed the importance of clarity in terms of what is happening in labour relations through algorithmic management and with respect to the obligation of human review in decisions that affect labour relations. He pointed out that the regulatory provisions on such matters within the labour sphere have been narrowed, citing the changes from

Article 56 to the current Article 58 (CDH debate […], 2024).[16] It can be observed that the objective of promoting collective bargaining and strengthening trade union bodies already required better institutional arrangements to protect individual rights and to counter exploitative algorithmic management, but the substitute text provides only a vaguer commitment to "value" collective bargaining. In addition, it entails the removal of other elements essential to collective action, such as impact assessment and human review, among others, which ought to be specific in the labour field.

Also heard at the hearing was Admirson Medeiros Ferro Jr., a member of the National Human Rights Council, representing the National Forum for the Democratisation of Communication and serving as secretary of the CUT. In his statement, he referred to the efforts made within the Council to put the protection of workers onto the institutional agenda, through events addressing the impacts of artificial intelligence. He further stressed the need to defend these rights as human rights, citing the example of the activities of the *Instituto de Políticas Públicas en Derechos Humanos del MERCOSUR* (IPPDH) and the G20 Social, as well as the pressure exerted by the Unified Workers' Confederation (CUT) in the vote on the bill.

In Brazil, therefore, there has been an effort by actors working in the sphere of labour rights (academics, the Public Labour Prosecutor's Office, representatives of the National Council for Human Rights) to make explicit the rights of workers in the implementation and use of artificial intelligence in labour relations – issues that have already been under discussion in internationally. However, this stance has been

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[16] These changes are transcribed below, based on information obtained from the analysis of documents related to the bill's proceedings in the Senate (Brazil, 2023b), comparing Article 58 of the approved substitute with Article 56 of the original draft:

"Art. 56. The competent authority, the sectoral authorities that make up the SIA, and the Council for Regulatory Cooperation and Artificial Intelligence (CRIA), in cooperation with the Ministry of Labour, shall develop guidelines and regulations for the definition of public policies, as well as for compliance by the direct and indirect Public Administration, public enterprises, and the private sector as a whole, with the purpose, among other objectives, of:

I – mitigating potential negative impacts on workers, particularly risks of job displacement and related career opportunities; II – enhancing the positive impacts for workers, especially regarding improvements in workplace health and safety, as well as training and upskilling of the workforce, fostering professional development and recognition; III – promoting collective bargaining and the negotiation of collective agreements and conventions, thereby strengthening trade unions in this context and advancing discussions aimed at improving working conditions for professional categories, alongside economic development; IV – encouraging the expansion of employment opportunities and the recognition of active workers, as well as the improvement of workplace organizational structures; V – fostering the development of continuous training and capacity-building programs for active workers; VI – drafting algorithmic impact assessments concerning the use of artificial intelligence systems on the workforce, in order to contain and mitigate negative externalities for workers and the work environment; VII – preventing mass dismissals or extensive substitution of the workforce through the use of AI, particularly when carried out without collective bargaining; and VIII – ensuring human oversight in automated decisions that impose disciplinary sanctions or terminate workers' employment."

Current Article 58 of the approved substitute:

"Art. 58. The competent authority, the sectoral authorities that make up the SIA, and the Council for Regulatory Cooperation and Artificial Intelligence (CRIA), in cooperation with the Ministry of Labour and Employment, shall develop guidelines and regulations for the definition of public policies and for compliance by the Public Administration (direct and indirect), public enterprises, and the private sector, with the purpose of: I – mitigating potential negative impacts of artificial intelligence on workers, especially risks of job displacement and career opportunities related to AI; II – enhance the positive impacts for workers, especially regarding improvements in occupational health and workplace safety; III – value the instruments of collective bargaining and collective agreements; and IV – foster the development of continuous training and qualification programs for active workers, promoting their recognition and professional advancement."

challenged by economic and political actors advocating a regulation framed in terms of so-called legal certainty, minimal in form, who drew on a long-standing institutional discourse from labour law reforms that presents regulation grounded in rights as an obstacle to economic growth. Yet, despite the political weighting in favour of capital, there has been mobilization within human rights spaces, strategically employed to confront this conservative position.

5. Final remarks

The conservative political context in Brazil has led the country to promote a bill that grants concessions to platform companies by removing the employment relationship, in contrast to what has been proposed by European institutions. In this context, despite the debates promoted in the Supreme Federal Court and the Senate, efforts to make explicit not only the power of platforms and their broader social impacts, but also workers' rights – both individual and collective – have been curbed by discourses that prioritize economic demands to the detriment of these rights.

In addition to these discourses, clear strategies have emerged to hollow-out legislative on the labour dimension of AI regulation, which could otherwise serve as a real basis for empowering workers in the shaping of technologies that are less opaque and extractive, and more participatory and geared towards economic and social development.

Yet, despite the regulatory advances in European regulatory frameworks, international studies indicate that it is still necessary for trade unions to appropriate these standards through collective bargaining in order to bring them to life.

In Brazil too, it is not enough merely to disseminate international experiences. There remains a long road ahead for redirecting the labour policies of these corporations towards a democratic institutional configuration in which workers gain real autonomy in steering technological change, so that the problems can be collectively addressed.

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