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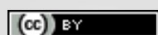
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# Balanço da reforma trabalhista em perspectiva econômica, as falácias dos argumentos de seus defensores e os impactos nas instituições públicas do trabalho

Balance of the labor reform in economic perspective, the fallacies of the arguments of its defenders and the impacts on the public institutions of labor.

Balance de la reforma laboral en la perspectiva económica, las falacias de los argumentos de sus defensores y los impactos en las instituciones públicas del trabajo

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## RESUMO

Fundamentado em estudos desenvolvidos no Centro de Estudos Sindicais e de Economia do Trabalho do Instituto de Economia da UNICAMP, CESIT/IE/UNICAMP sobre a reforma trabalhista vigente no Brasil desde novembro de 2017 e seus impactos e nas pesquisas realizadas no âmbito do Projeto Temático “Contradições do trabalho no Brasil atual: formalização, precariedade, terceirização e regulação”, o presente artigo traz reflexões sobre o sentido dessa reforma, abordando, a partir de uma perspectiva econômica, as falácias das promessas de seus defensores e procedendo a um balanço de seus efeitos depois de mais de ano de vigência em relação ao mercado e às relações de trabalho, ao sistema de proteção social, à organização dos trabalhadores e às instituições públicas que atuam no mundo do trabalho, com foco na Justiça do Trabalho. Nesse sentido, busca contribuir para com o debate sobre sua eficácia e seus desdobramentos, no contexto da crise econômica hoje vivenciada.

**PALAVRAS-CHAVE:** Reforma Trabalhista, flexibilização, desemprego, judicialização.

## SUMMARY

Based on studies developed at the Center for Syndical Studies and Labor Economics of the Institute of Economics of UNICAMP (CESIT/IE/UNICAMP) on the labor reform in force in Brazil since November 2017 and its impacts on researches conducted under the thematic project "Contradictions of labor in Brazil today: formalization, precariousness, outsourcing and regulation", this article reflects on the meaning of this reform, addressing, from an economic perspective, the fallacies of its defenders' promises and assesses its effects, more than a year of its enforcement, in relation to the market and labor relations, the social protection system, the organization of workers and public institutions that operate in the world of labor, with a focus on Labor Justice. In this sense, it seeks to contribute to the debate on the labor reform's efficacy and its unfolding in the context of the economic crisis experienced today.

**KEYWORDS:** Labor Reform, flexibilization, unemployment, judicialization.

## RESUMEN

Basado en estudios desarrollados en el Centro de Estudios Sindicales y Economía del Trabajo del Instituto de Economía de la UNICAMP, CESIT/IE/UNICAMP sobre la reforma laboral vigente en Brasil desde noviembre de 2017 y sus impactos sobre la investigación realizada en el marco del Proyecto Temático "Contradicciones del trabajo en Brasil hoy": formalización, precariedad, externalización y regulación", este artículo reflexiona sobre el significado de esta reforma, abordando, desde una perspectiva económica, las falacias de las promesas de sus defensores y evaluando sus efectos después de más de un año de efectividad en relación con el mercado y las relaciones laborales, el sistema de protección social, la organización de los trabajadores y las instituciones públicas que operan en el mundo del trabajo, con un enfoque en la justicia laboral. En este sentido, pretende contribuir al debate sobre su eficacia y su desarrollo en el contexto de la crisis económica que se vive en la actualidad.

**PALABRAS CLAVE:** Reforma laboral, flexibilización, desempleo, judicialización.

## INTRODUCTION

This article is based on studies on labor reform, Act No. 13,467, approved in July 2017 to be effective in November of that year, and its impacts, developed at the Center for Union Studies and Labor Economics of the Institute of Economics of UNICAMP, CESIT/IE/UNICAMP, and the research carried out under the Thematic Project "Contradictions of Labor in Brazil: Formalization, Precariousness, Outsourcing and Regulation", Process FAPESP No. 12/20408-1, bringing reflections that can contribute to the debate about its effectiveness and its consequences in the context of the economic crisis experienced today. This is the reform that, while recent, is already showing its deleterious effects on the market and labor relations, the social protection system, public institutions that operate in the world of work and the organization of workers. In this approach, in addition to contextualizing the theme, we highlight the fallacies of the unfulfilled promises of those who advocate for the reform, and through them, sought to convince social actors and, in July 2017, the senators of the Republic, about the need to be approved coming drafting from the House of Representatives (the rapporteur Substitute, Mr. Roberto Marinho, PSDB-RN) to be in force in November of that year. In addition to more general considerations about the meaning of the changes that the Brazilian reform sought to accomplish, it is set out its main impacts after more than one year of its validity, including public institutions operating in the labor market.

It is a reform approved in the context of a profound political, economic and social crisis and the promise of improving economic conditions. According to its advocates, in an environment of legal certainty and economic stability that the labor reform would provide, investments would flow naturally, generating economic growth and employment. After 18 months of its implementation, the balance shows both the incorrect diagnosis of its



defenders and the liberal theses that underlie them: false idea that its approval would be a condition of overcoming the economic crisis and unemployment then experienced. What we are witnessing today is that economic activity is slow, investments do not react and unemployment remains at unacceptable levels. The theses that advocated excessive rigidity in labor relations as responsible for labor market ills have no correspondence to the real dynamics of society, showing how profoundly inadequate these models are by tracing linear trajectories with approaches supported by theses that have been overcome and critically revised by extensive literature and international research.<sup>1</sup>

Despite this evidence – actual both in countries that implemented their pre-Brazilian labor reforms and in Brazil after their entry into force – the idea persists in some sectors that excessive labor legislation creates obstacles to the free movement of markets, economic activity and to investments. These postulates relate the supposed “rigidity” of the labor market to the root causes of rising unemployment. Thus, one of the main “recipes” to address this problem has been the relaxation of social protection standards at work, which would allow the market to find the balance between demand and supply of labor. In fact, this is the core of the Brazilian reform dealt with in this text which, by exchanging the sources of labor law, places in the autonomy of the will of the individuals who are sellers and buyers of the labor force the prevalent locus of production of the norm that certain aspects, governs this buying and selling (BIAVASCHI et al., 2018, p. 209-241; GALVÃO & TEIXEIRA, 2018, p. 153-181)<sup>2</sup>.

Encouraged by the fiscal austerity policies adopted by conservative governments, advocates of these postulates argue that state participation would be an obstacle rather

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<sup>1</sup> In 2015, the International Labor Organization, ILO, in two studies (ILO, 2015; ADASCALITEI; PIGNATTI MORANO, 2015), quantitatively analyzed the relationship between labor protection, unemployment, occupancy rate and participation. The first, in 63 countries, period from 1993 to 2013; the second, in 111 countries, from 2008 to 2014. According to the results, there is no statistical significance in the relationship between rigid legislation and employment level. In contrast: countries where there was more flexibility, the level of unemployment increased; where regulation has intensified, unemployment has fallen over the long term (ILO, 2015, p. 120).

<sup>2</sup> In the dossier that houses these works, we analyzed the fallacies of the arguments of the defenders of reform, summarized in the following statements: making the labor protection screen more flexible is essential to generate employment and improve productivity; the legislation is strict and needs to be “modernized”; low wages generate more jobs; Brazil is champion in the judicialization of labor conflicts, which contributes to generate more insecurity.



than a stimulus to economic growth. According to this view, the flexibility of the labor market is an alternative to the problem of unemployment and, also, an important element in overcoming the macroeconomic crisis and the resumption of productive investments.

This is an idea that fits into a more general context of strong pressure for labor relations flexibility as a way for companies to adapt, in part, to a context of lower return on investments, internationalization of economies based on competitiveness pattern imposed by low-wage Asian countries and market competition, shaped by a new international order run by global production chains and under the rule of finance capital. In this understanding, in the face of increasingly unstable and irregular demand, it is essential for capital to have the full-time workforce, adjusting the new forms of hiring, working hours, vacations and remuneration according to their needs so that they can eliminate porosity. To achieve these goals, the rights ensured by labor legislation are obstacles to be removed. Briefly, based on this logic, the Brazilian labor reform has the purpose of adjusting work to business needs, and can replace it when it suits them with new forms of hiring without, therefore, generating a single job.

## 1 DECONSTRUCTING THE ARGUMENTS AND STUDYING THEIR FAULTS

The above analyzes neglect other interpretations of the crisis as insufficient demand, the answer to which would be the exercise of expansionary monetary and fiscal policy, which, contrary to what has been claimed, involves the growth (not contraction) of public spending and effective demand, contributing, thus, to maintain employment and income levels. Still, these are analyses that disregard the reality of the Brazilian labor market, structurally unequal, flexible, where precarious jobs and vulnerable jobs predominate. These arguments somehow already appeared when the liberalizing reforms of the 1990s in Brazil, as pointed out in the Labor Reform Dossier of the Labor Reform WG of CESIT/IE/UNICAMP (TEIXEIRA et. Al, 2017, p. 19-113), punctual changes were introduced into the whole of labor legislation which, however, failed to alter the unfavorable economic context of low production expansion and high unemployment that continued until the early 2000s. The



economy only resumed a new expansive cycle from 2003, especially from 2004, as the data show.

If the initial effect of the resumption of economic activity can be attributed to the favorable external scenario - which boosted commodity exports – its consequences, through job creation, household consumption capacity intensification and minimum wage appreciation policy, Among other measures, it sustained a cycle of economic growth that combined: favorable balance of payments results, continued currency appreciation, balance in public accounts, falling inflation and improved purchasing power of wages with strong distributive impact that persisted until 2014.

Gross domestic product, GDP, which between 1998 and 2003 had grown by an average of 1.7% per year, between 2003 and 2013 its average annual growth more than doubled to 3.7% per year. The evolution of the components of the national accounts reflects the macroeconomic objectives, showing that the recovery that, initially, was provided by the positive results of exports, but, in a second moment, driven by household consumption and investments, presenting a performance above of GDP.

From the standpoint of primary public spending, income transfer expenses stand out, showing how federal government primary spending increases household disposable income, an important determinant of consumption. These are, for example, social security and welfare benefits, the family allowance and the salary appreciation policy. Between 2004 and 2014 (PNAD), the per capita household income of Brazilians grew 34%. Labor income grew by 43%. Between 2004 and 2014, the share of wages in GDP varied positively by 4.1%, and 65% is due to the composition effect, resulting from the improvement in the share of value added wages (ROSSI; DWECK; OLIVEIRA, 2018, p. 37). Added to this are the policies of valorization of the minimum wage and the expansion of public policies, both in the area of infrastructure and social policies. In other words, even in the years of greatest economic dynamism, the state was at the forefront of the process, as the driver of these changes, with multiplier effects on the economy as a whole.

The relevance of household disposable income is crucial to increase the effective demand and, consequently, of production. In Brazil, the strong expansion of this decade was



sustained by the expansion of credit, employment and formalization<sup>3</sup>. This favorable context that lasted until 2014 was constantly questioned by business elites pushing for reform claiming the lack of competitiveness of our products in the international market. The issue was not then unemployment as we were approaching full employment. Although pressures for labor reform were implicit in business actions and demonstrations, it gained prominence on the agenda from 2012 with the publication of two documents by the National Confederation of Industry – CNI and the letter “A Bridge to the Future” by PMDB (BIAVASCHI; TEIXEIRA, 2018).<sup>4</sup> By 2015, evidence of a crisis economy was already manifesting itself to society as a whole through rising unemployment.

Undoubtedly, for society the cruelest face of a crisis economy is that of unemployment. And it was fair to convince her of the necessity and relevance of the labor reform that economic sectors have strongly taken up that discourse of the 1990s that more flexible hiring and dismissal rules would result in more private investment and job creation. However, the empirical evidence did not favor and do not favor this thesis. The relationship between flexible working relations, resumption of investments, job creation and economic growth is much more complex than the statements of liberal theory advocate. There is a dynamic that this theory does not know, because the economic growth of a country depends on the level of public spending, household consumption, productive investments and exports simultaneously reflected in aggregate demand, employment and income.

Research has shown that labor reforms do not produce gains in terms of job growth, but they can accentuate their damage by replacing protected and rights-managed jobs with precarious work without social protection (KREIN; GIMENEZ; SANTOS, 2018). Similarly, studies emphasize that from a macroeconomic point of view, flexibilization strategies accentuate job destruction more quickly in times of crisis, so that the subsequent

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<sup>3</sup> Productive activity reacts positively to increases in demand that are in turn effected by the presence of disposable income to consume.

<sup>4</sup> The agenda of reducing labor costs, present in Brazil in the 1990s, the scene of measures to make social labor rights more flexible, was resumed in 2012. In the document of the National Confederation of Industry, CNI, “101 proposals for Labor Modernization”, the ideas of the negotiated supremacy over the legislature and the expansion of outsourcing appear to be structuring, being emphasized in 2015 in the | CNI's "Legislative Agenda for Industry 2015", the year of the PMDB's "A Bridge to the Future" document that highlights the need to reduction of social and labor policies.



resumption of economic activity, when it occurs, will not be sufficient to replace lost jobs (IBARRA CISNEROS & GONZÁLEZ TORRES, 2010). And today, after some retirement life, what it generated was not only frustration with initial expectations but, above all, a marked worsening of labor market behavior. Overall, the occupancy rate did not improve when comparing the period before and after the reform.

This experience reinforces the economic theses that state that changes in the system of regulation of the sale of the workforce cannot be expected to change, in themselves, the willingness of entrepreneurs to invest autonomously in their business, creating new activities or expanding existing ones, without being encouraged by internal or external factors, either by raising public spending or boosting exports. In other words, private investment responds adequately to increases in demand for products, but does not have the autonomy to decisively influence the expansion of this demand without the presence of public authorities (BALTAR, 2018). Thus, it can be said that the relationship between job creation and economic growth is mediated by what occurs in consumption and investment patterns, especially public investments.

It turns out that the forerunners of reform made use of these false ideas to convince society of the correctness of their purposes, as they are now repeating in defense of the ongoing welfare reform, PEC 06/2019. And in order to gain the strength of society, claims have been made that Brazil has one of the largest labor force costs in the world, which is the least competitive among its trading partners and that foreign investment does not feel attracted by a country that penalizes productive activity and has high "legal uncertainty". Mermaid songs already widely contested by the available literature (PIASNA & MYANT, 2017; KREIN, GIMENEZ, SANTOS, 2018; SILVA, 2018), which demonstrates that there is no causal relationship between the rigor of labor legislation and the persistence of informality and unemployment. And as evidence of these statements, labor market data for the first year of reform implementation show that informal work grew by 2.3% and formal work fell (-0.5%) (IBGE, 2019).

The labor market reflects the behavior of the economy more generally. The low economic dynamism driven by sectors of commerce and services guided the employment



profile generated in this first year of reform. Analyzing the profile of employed people from the point of view of their income also provides a picture of the precariousness of the labor market. Most of these occupations are of low productivity and low wages ranging from 1 to 2 minimum wages: 82.0% of black women, 63.4% of white women, 72.6% of black men and 50.5% of men whites received up to two minimum wages in the fourth quarter of 2018, PNADC data (2018).

## 2 INSIGNIFICANT ECONOMIC RECOVERY BETWEEN 2017 AND 2019

After two successive years (2015 and 2016) of falling production activity (-7%), the results for 2017 and 2018 suggested that the worst of the crisis was behind us, as 2017 and 2018 closed with a positive result (1.1%). However, this small recovery, which is still insufficient for the recovery of employment levels, has been contradicted by more current data on economic growth. If we look at vacancy rates, it remains extremely high. As PNAD continues, the unemployment rate in Brazil in the mobile quarter ended January 2019 was 12.0% and the underutilization of the workforce of 24.3% of the economically active population, PEA. In the comparison we will see that this unemployment rate had risen 0.3 percentage points over the previous quarter, from August to October 2018, which was of 11.7%. Already in the last published measurement, referring to the quarter that includes January, February and March, the increase in the unemployment rate increased to 12.7%, while the underuse data rose to 25.0%, i.e. 28, 3 million people. The data is alarming.

On the other hand, looking at 2019, analysts point to a rather pessimistic international scenario. The coming slowdown may unfold into recession or even a new financial crisis. There are several factors that can contribute to a more pessimistic scenario (CARNEIRO, 2008). Regarding economic performance, the Central Bank itself has already revised, through the Focus bulletin, numerous times the 2019 forecasts. As of May 31, the forecast for this year's GDP was 1.13%, against 1.49% four times weeks before (BRASIL, 2019). One reason for the poor performance of the Brazilian economy is the fiscal constraint introduced by Constitutional Amendment 95, which imposes a ceiling on social spending for the next 20 years. The larger increase in imports exposes the fragile contribution of the





external sector. Accumulated rates clearly demonstrate that it is household consumption and exports that have been holding back the positive results of these last two years.

Recent study published by the Central Bank analyzed the private components of aggregate demand (household consumption, household credit, GFCF, external sector)<sup>5</sup> based on the five most recent economic recovery cycles. The results suggest that the labor market recovery is relatively slow (in this cycle, 2016), registering an increase of 1.9% in the employed population level compared to 4.9%, 7.7%, 3.9% and 4.1% in the 1999, 2001, 2003 and 2009 cycles, respectively. Meanwhile, gross fixed capital formation increased by 4.4% (2016), well below the 2003 (13.3%) and 2009 (30.7%) cycles. The external sector, on the other hand, shows a small contribution in comparison with previous cycles. A common feature across all cycles is household consumption, which reached a 3.1% expansion in the fourth quarter of 2016, very close to the previous four cycles (BRASIL, 2018a). This recovery cycle is being sustained primarily by household consumption.

The analysis of household income composition highlights the importance of income from work in the household budget, with positive effects on the living conditions of the population. According to data from IBGE's 2008-2009 Household Budget Survey (POF), labor incomes corresponded to 61.1% of total household income and equity variation. Considering the income structure, 70.7% related to receipts came from employees, while 20.2% came from remuneration for self-employment, employer income accounted for 9.1%.

Thus, it is an illusion to imagine that a reform that makes rights more flexible, violates social rights, generates vulnerabilities and impacts public institutions that work in the world of work can leverage economic activity. In particular, household consumption, which accounts for 64% of GDP, is already being affected by the effect of more precarious and insecure jobs with an impact on aggregate demand. Decisions on spending will be postponed or unfeasible in the context of instability.

When reference is made to 2009, the policies adopted to keep the economy warm in

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<sup>5</sup> The study analyzes the behavior of private components of aggregate demand based on the five most recent cycles, including the current one. The periods of economic recovery after the recession are: 1999 (Q1); 2001 (Q4); 2003 (Q2); 2009 (Q1) and 2016 (Q4) (BRASIL, 2018a).



the face of the international crisis sought to expand consumption, public investments and facilitate access to credit. First, by stimulating domestic demand in labor-intensive sectors, through the expansion of the Growth Acceleration Program, PAC; creation of the housing program *Minha Casa Minha Vida*; reduction of IPI (Taxes on Industrialized Products) on automobiles and white goods; credit lines for key sectors of the economy; expansion of lending by public institutions such as Banco do Brasil, Caixa Econômica Federal and BNDES; interest rate reduction. Incentives were also implemented to stimulate the demand and protection of the most vulnerable families through measures to improve social protection: the *Bolsa Família* coverage and values were expanded, benefiting an additional 1.3 million families; unemployment benefits were extended to the sectors most affected by the crisis, reaching around 300,000 workers.

Since the 2015 inflection, the Brazilian public debate has been dominated by the discourse and practice of economic austerity, a policy of economic adjustment based on the reduction of public spending and the role of the state in its functions as generator of economic growth and promoter of social well-being. For a sector of society, in contexts of economic crisis and rising public debt, austerity is presented as a necessary way out and constitutes the basis for the defense of structural reforms aimed at reformulating the State's actions. With the objective of increasing the primary surplus without changing the forms of federal tax collection and reducing public spending, the Constitutional Amendment 95 was approved in December 2016, paving the way for reducing the size of the state and its own tax collection capacity in the near future. The measure limits the expansion of federal spending over the next 20 years to inflation correction the previous year, while GDP rises not only by inflation but also by real growth. Thus, each year federal expenditures will advance less than GDP, ensuring a fall in expenditure relative to output. This fiscal effort is motivated by the need to meet the demands of the financial interests that impose on the current government balance in public accounts to continue paying interest on public debt. Given the composition of federal public spending, regressive measures are proposed, as are labor and social security reforms.



The effects of this economic policy on society and its coping mechanisms to the crisis are noticeable. This new scenario is manifested by the signals it produces in the economy as a whole; the difficulties of reversing the recessive cycle that endures without signs of overcoming are reiterated by low expectations for 2019 and reflect the weakening of the role of the state as a driver of economic growth. On the other hand, measures to relax labor standards are ineffective in solving unemployment problems. In this sense, the experience of coping with the 2008 crisis revealed that state action is fundamental in proposing countercyclical policies. In fact, this is shown by studies carried out by researchers within the scope of CESIT/IE/UNICAMP in agreement with the Public Ministry of Labor, MPT (KREIN; GIMENEZ; SANTOS, 2018).

Supply side behavior analysis of sectors and economic segments over a six-year historical series suggests a slow recovery. (Table 1 – IBGE, 2018b). In 2017 influenced by the performance of agriculture (12.5%) and 2018 by the service sector (1.3%). Considering the weight of household consumption in the composition of demand in 2018, it is expected that the sector that would react the most on the supply side would be services. Between Q4 2017 and Q4 2018, more than 1 million jobs were created in the service sector, while industry, agriculture and construction declined for the same period. The result of the industry is seen as a reflection of the crisis in Argentina, a country in which ultraliberal measures have been adopted since 2016 and with strong impacts on the economy, employment and social inequality. This slowdown also reflects the weak performance of the domestic and consumer markets. Industry grew (0.6%) in 2018, the first year of positive results since 2014. In December 2018 industrial production was 21.9% below its 2012 capacity (Table 2). And its lack of dynamism reflects economic policy options or rather their absence. Every strategy focuses on approving the social security reform.

**Table 1**



Year-to-date rate between 2013 and 2018 (compared to the same period of the previous year) (%) - Brazil						
	2013	2014	2015	2016	2017	2018
<b>GDP</b>	<b>3.2</b>	<b>0.5</b>	<b>-3.5</b>	<b>-3.3</b>	<b>1.1</b>	<b>1.1</b>
<b>Farming - total</b>	<b>8.4</b>	<b>2.8</b>	<b>3.3</b>	<b>-5.2</b>	<b>12.5</b>	<b>0.1</b>
<b>Industry - total</b>	<b>2.2</b>	<b>-1.5</b>	<b>-5.8</b>	<b>-4.6</b>	<b>-0.5</b>	<b>0.6</b>
Extractive Industries	-3.2	9.1	5.7	-1.2	4.2	1.0
Transformation industries	3.0	-4.7	-8.5	-4.8	1.7	1.3
Electricity and gas, water, sewage	1.6	-1.9	-0.4	6.5	1.0	2.3
Construction	4.5	-2.1	-9.0	-10.0	-7.5	-2.5
<b>Services - total</b>	<b>2.8</b>	<b>1.0</b>	<b>-2.7</b>	<b>-2.3</b>	<b>0.5</b>	<b>1.3</b>
Commerce	3.4	0.6	-7.3	-6.7	2.1	2.3
Transport, storage and mail	2.6	1.5	-4.3	-5.6	1.2	2.2
Information and Communication	4.0	5.3	-0.9	-2.1	-1.0	0.3
Financial, insurance and service activities						
Related services	1.8	-0.6	-1.2	-3.4	-1.6	0.4
Real estate activities	5.1	0.7	-0.4	0.2	1.2	3.1
Other service activities	1.6	1.9	-3.7	-1.4	0.7	1.0
Public administration, health and education and Social security	2.2	0.1	0.2	0.3	-0.2	0.2

Source: IBGE - Quarterly National Account System – Own elaboration

<https://sidra.ibge.gov.br/tabela/5932#n1/all/v/6563/p/201704,201801,201802,201803,201804/c/11255/all/d/v/6563%201/1/v,p,t/c/11255/resultado>

Analyzing from the perspective of employment and informality, the data indicate that the sectors in which employment reacted positively, informality expanded at a greater proportion: transport, storage and mail, employment grew (4.9%) and informality (13,1%); housing and food advanced (2.1%) and informality (4.6%); information, communication and financial activities increased by 2.1% and informality (6.8%); education, human health and social services evolved (5.3%) and informality (12.3%) and other services grew (4.2%) and informality (7.5%). In industry, employment fell (-0.9%), but informality expanded (1.0%). PNADC data for the fourth quarter of 2017 and 2018. (Table 2).

The scant positive effects of the labor market were channeled into informality by dismantling the thesis that labor reform would promote the creation of protected jobs.

**Table 2**



<b>Evolução das pessoas ocupadas, por posição na ocupação entre 4ºT de 2017 e o 4ºT de 2018</b>			
<b>Grupamentos de atividade no trabalho principal</b>	<b>Total</b>	<b>Informal</b>	<b>informais (%)</b>
Agricultura, pecuária, produção florestal, pesca e aquicultura	-0,3%	-0,7%	82,0%
Indústria geral	-0,9%	1,0%	34,3%
Construção	-1,8%	-1,0%	75,7%
Comércio, reparação de veículos automotores e motocicletas	-0,6%	-0,5%	49,0%
Transporte, armazenagem e correio	4,9%	13,1%	52,9%
Alojamento e alimentação	2,1%	4,6%	64,9%
Informação, comunicação e atividades financeiras, imobiliárias, profissionais e administrativas	2,1%	6,8%	33,5%
Administração pública, defesa e seguridade social	-0,6%	-5,9%	20,8%
Educação, saúde humana e serviços sociais	5,3%	12,3%	27,0%
Outros Serviços	4,2%	7,5%	79,1%
Serviços domésticos	-2,1%	-1,0%	71,6%

Fonte: PNAD Continua - IBGE

## **Evolution of employed people, by position in the occupation between 4<sup>th</sup> Q, 2017 and the 4<sup>th</sup> Q, 2018**

### **Groups of activity in the main job | Total, informal, informal**

Agriculture, livestock, forest production, fishing and aquaculture.

General industry

Construction

Trade, repair of motor vehicles and motorcycles.

Transport, storage and mail

Lodging and feeding

Information, communication and financial, real estate, professional and administrative activities.

Public, defense and social security administration

Schooling, human health and social services

Other services

Household services

Source: Continuous PNAD - IBGE



Own preparation - 4<sup>th</sup> and 3<sup>rd</sup> quarter 2017 microdata

### 3 INCREASE OF INEQUALITY

The Gini index or coefficient seeks to quantify income inequality by demonstrating the disparity between the poorest and the richest in a given locality. The coefficient is represented between 0 and 1, and the closer to zero the lower the social inequality, 1 being the maximum inequality attributed by the measure. The chart below shows that the Gini index rose again after the 2016 coup after a period of sharp decline from 2003, returning to the income inequality levels of the early 1990s. Chart 01 (VILLAS BÔAS, 2019), as follows, expresses this reality as regards labor income:

**Graph 01 – Gini index of per capita home office income**



Source: VILLAS BÔAS, 2019.

#### Rising inequality

Gini index of per capita household labor income

The closer to 1, the worse the inequality of income distribution.

1<sup>st</sup> Q. 2012



4<sup>th</sup> Q. 20131<sup>st</sup> Q. 2019

Source: Ibre/FGV

#### 4 PUBLIC AND PRIVATE INVESTMENTS

The debate of the last decade among experts, economists and public managers reaffirmed the importance of changing the growth pattern by increasing the investment rate in Brazil, which in 2010 was 20% to around 25% and increasing the share of infrastructure in total investment, from 10% -13% to 18% -20%. It was also planned to expand the presence of the National Content in the apparent consumption of industrial goods and services, strengthening income and employment, and reducing interest rates, thus returning to a new cycle of investments supported in sectors producing public goods. However, recent data indicate that private investments did not return to the pre-crisis pattern (in 2013 it reached 19.0%) and public investments are compromised by constitutional amendment No. 95 which, unusually, defined by the freezing of social spending by the top limit for 20 years. In 2014, public investments totaled R\$ 76,092 billion, already in 2018 they retreated to R\$ 52,497.7 billion, the private sector's reaction was not to compensate public investments; on the contrary, they also retracted as a reaction to the fall in public spending. (Graph 02).

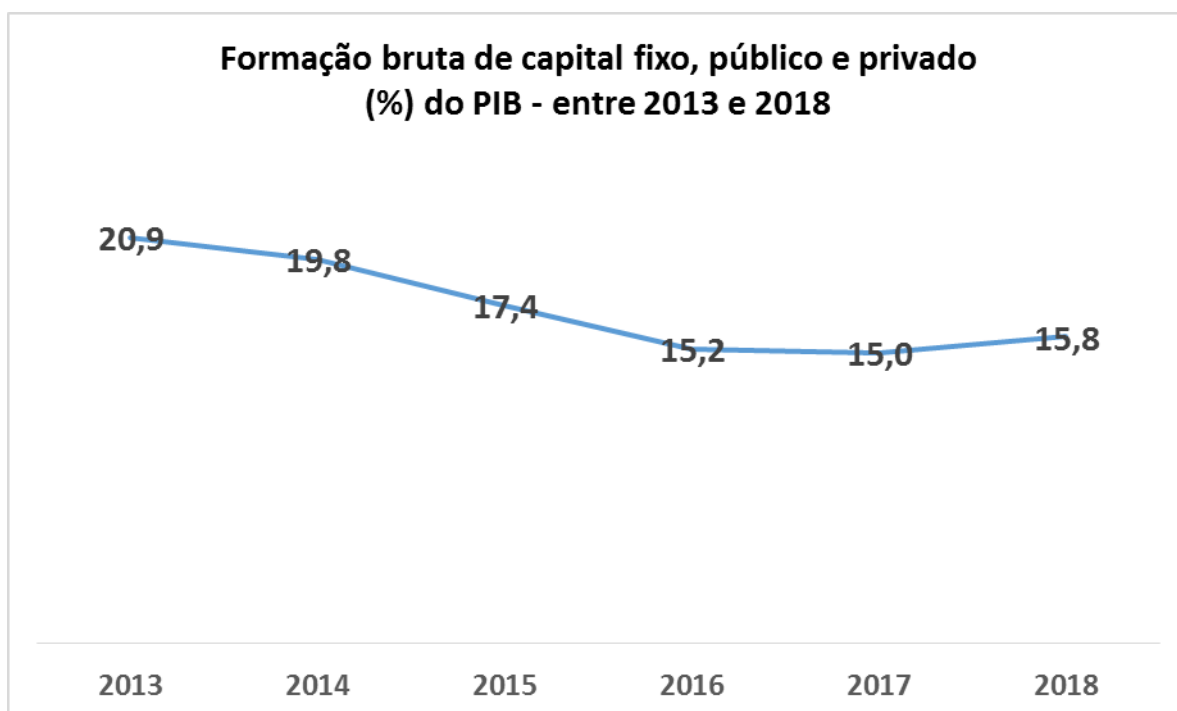
The falling profitability of companies is treated by the economic literature as the main responsible for the reduction of investment rates. The decline, according to some authors, has accentuated since 2011 (MARQUETTI, 2018). With the deceleration of the growth rate from 2014 onwards, it led to macroeconomic imbalances. The combination of a set of elements resulted in a 14.1% drop in investment in 2015. However, the share of profits and profit rate in 2015 increased without any immediate effects on the economy as expected. 2018, profitability grows, but does not materialize in more investments and jobs. That is, the realization of profit does not require productive activity. Therefore, the reforms contributed to increase profitability, reduce expenses, recompose profit margins without impact on productive activity.



On the other hand, the participation of financial applications in the results of companies draws attention to its magnitude. Data released by Economic Consulting points out that the financial sector was the one that won the most in 2016: with 23 institutions, the banks managed to make R\$ 48,595 billion. And of the top 20 profits, four companies, included in the mining, energy and cellulose and paper sectors, had presented negative results in 2015, recovering in 2016. In the face of the crisis and reduced capacity of investments, the companies bet on profitability, focusing on the reduction of costs, especially of work, by means of layoffs and reorganization in the productive processes. An American capital company admitted that the good results presented in 2016 were not a reflection of sales revenue, but of the dismissal of employees, renegotiation of contracts and adoption of the home office. The data show a connection between productive investments and financial profits that move according to the interests of large corporations migrating from the productive structure to investments in the financial market.

#### Graph 02

#### Gross fixed capital formation, public and private (%) of GDP - between 2013 and 2018





Source: Own preparation, based on IBGE - 2018 Quarterly Account System (estimates) (IBGE, 2018b)

## 5 PRODUCTIVITY AND COMPETITIVENESS

According to some authors, the condition of Brazil's entry into the globalized world in the early 1990s was the promotion and development of its system of production of goods - quite lagged by the absence of industrial policies in the 1980s. Thus, the country would be able to compete with the imported and expand its export agenda, which did not materialize. With the structuring and consolidation of large transnational networks, the country was left out of this production chain and lost with the indiscriminate opening, as links in the intermediate goods production chain were disrupted, with the intensification of imports favored by the increased exchange rate (BALTAR, 2014).

Therefore, the competitiveness gains in the period were due to cost reduction of companies, introduction of organizational and management process changes, introduction of outsourcing to all stages of the production process and attempts of flexibility, turnover and low remuneration. According to Baltar (2014), industrial production was particularly impaired and its interrelationship with the provision of services is fundamental for the generation of better qualified jobs and income. Thus, the new forms of production organization in the 1990s were through low-skilled and low-income jobs.

Since 1996, personnel costs over total cost in industry have been falling. The rise began in 2006, stopping in 2007 and 2008, and resumed from 2009 on a continuous basis, while returns on capital behaved more irregularly, so that in 2008 margins fluctuated around 10% and fell to 5% in 2012. The reduction in profit margins and rising wages above inflation since 2003 have prompted strong reaction from business sectors to push for public policies for subsidies, exemptions and tax exemptions. However, this effort, which consumed R\$ 182 billion in 2012, R\$ 225 billion in 2013, R\$ 254 billion in 2014 and R\$ 378 billion in 2016, did not produce the expected results, since private investments were not achieved and the promised jobs were not generated.



In this demarche, a business discourse was consolidated that Brazil is not competitive due to factors linked to low productivity and high costs of its workforce. Recently (2019) the National Industry Conference, CNI, published the document “Brazil 2018-2019 competitiveness: comparison with selected countries”. This is an annual follow-up with 18 countries. The analysis covers 9 determining factors of competitiveness and the only one in which Brazil occupies the 6th position is the factor on availability and labor cost, including rising position: in 2017/2018 it occupied the 10th changing to 6th position in the period 2018 / 2019. In the overall classification Brazil is in 16th position. In this assessment, the positive result reflects the country's competitiveness in terms of labor availability, which ranks 5th in the ranking, mainly due to the growth of the workforce. According to CNI, this result in relation to labor supply more than compensates for Brazil's poor performance in the Labor Cost sub-factor. The relatively high cost is mainly due to low productivity. (CNI, 2019).

It is from this perspective that improvements in competitiveness indicators are pursued: by the abundance of the workforce, expanding the dismissal and hiring facilities. Between November 2017 and April 2019 the formal job market generated 527,318 thousand jobs, for this it was necessary to move 22,323,865 hired and 21,949,761 dismissed. Analysis for large groups indicates that only the commerce and services sector generated jobs (+527,318), however, industry, construction and agriculture dismissed (-153,214). The great promises of intermittent and part-time work have not come to fruition precisely because we have a highly flexible labor market. Around 0.5% of the admissions made in the analyzed period refer to intermittent work. On the other hand, 34% had up to 5.9 months of employment and 53% up to 11.9 months<sup>6</sup>

## 6 INSERTION IN GLOBAL CHAINS OF PRODUCTION AND PARTICIPATION IN WORLD TRADE

Another element to be considered is the degree of internationalization of the economy, which reduces the margins of companies that are part of a global chain and that have a low impact on these chains. In 2015, Brazil represented 1.3% of world trade and one

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<sup>6</sup> The data refer to the CAGED - General Register of Employed and Unemployed, from the microdata accessed on the Ministry of Labor website.



fifth of this trade was with China. Since 2011, especially under the Greater Brazil Plan, industry pressures for subsidies, exemptions, exemptions and special regimes have intensified. This became the main business strategy in the face of a valued exchange rate, which favors the importation of machinery and components and the substitution of domestic production by imported ones, thus promoting deindustrialization. Between 2010 and 2014, the share of industry in value added fell from 27.4% to 23.8%, with the largest drop occurring in the manufacturing industry, from 15.0% to 12.0%, while the trade and services increased from 67.8% to 71.2%<sup>7</sup>.

Competitive pressures indicate that companies have been systematically reducing labor costs as a way of managing other costs, such as inputs and raw materials, in addition to financial costs. These are expenses on which companies integrated into global chains have no governability. The effect is associated with the traits of a standard in terms of integration into the global economy, which is marked by the predominance of the settings in production that are related to the national economy, open, enlightening, productive, and organized in networks and global value chains, and the de-structuring of the production chain in the 1990s, lends to a position of minor importance in the trading world.

## 7 REFORM AND PUBLIC INSTITUTIONS FOCUSING ON LABOR JUSTICE

The reform under analysis brought as one of the justifications the necessary “modernization” of labor rules whose “rigidity” would need to be removed in order to expand jobs, increase competitiveness and pursue the desired “legal certainty”. According to its defenders, the excessive judicialization of conflicts and the performance of the Labor Justice would be generating insecurities, driving away the necessary investments for development. This is why several of its devices, directly or indirectly, are aimed at reducing the role of this institution and limiting its scope. They do so either by restricting the ways of access to the Labor Judiciary by adopting charges on claims, by reducing their powers and

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<sup>7</sup> Data refer to the national accounts 2010-2014 published by IBGE (n.d.).



the interpretative possibilities of their judges, or by shifting sources of labor law beyond universal law and, in certain respects, to beyond the collectively negotiated.

False ideas are unmasked, above all, as has been seen above, by the performance of the Brazilian economy in recent times, when there was some economic growth, a rising labor income, formalization of contracts and low unemployment at the time that the same screen of rights held responsible. unemployment and insecurity. By defining as prevailing the norm produced in the "free" meeting of individual wills of employees and employers, the reform participates in a regressive movement that violates the principles of labor law, the constitutional (1988 Constitution) and international treaties and conventions. In fact, it affects regulation and public institutions, specifically the Labor Court, introducing impediments to their access. On the other hand, litigation does not stem from the sharp breakdown of labor obligations, but from the systematic non-compliance with labor protection rules. This increase in demands is *pari passu* with the increase of dismissals and breaches of legislation, in a country where low penalties do not discourage injury to rights. It is understood that its contents regress to the levels of the Brazilian Civil Code of 1916. This return is clear, for example, when in its text it imposes on judges and courts to limit themselves to applying the formal aspects of the expression of will, even if the clauses collective bargaining violate the principles of social non-regression and the stability of social relations (TEIXEIRA, et al., 2017). In other words, it aims the Labor Court, whose decisions have, for the most part, comprised the legal system expressed in the Consolidation of Labor Laws, CLT, and the 1988 Constitution in the light of its principles. And thus deciding, as research shows, it gives precedence to the provisions of collective bargaining as long as they respect the minimum civilizational level achieved. The text of the reform, thus, abandons the foundations of the Brazilian Republic that are inscribed in the Constitution of 1988 (article 1, III and IV and article 3, I, III, IV), contrary to the reducing path of social inequalities (TEIXEIRA et. al., 2017).

As evidenced by data from the Superior Labor Court, TST, and the National Council of Justice, CNJ, most of the claims seek the payment of installments due on dismissals, overtime and recognition of the circumvented employment bond (Table 4). Therefore, the



legal certainty sought by reform advocates is, in reality, the freedom to breach the minimum screen of job protection, leaving the worker in absolute insecurity and instability. Already the "free meeting" of individual wills beyond the negotiated, in the field of collective guarantee, with significant reduction of the relevant and de-commoditizing role that union organizations have, evidences the privatist shift. As for collective bargaining, the system hitherto in force, incorporated by the 1988 Constitution, prioritizes it as long as the minimum legal civilization level is respected. The reform seeks to deconstruct this system by giving it prevalence over universal law. On the other hand, flexibility is a structural component of the Brazilian labor market, based on intense labor turnover and rapid adjustments in employment, with structural features of fragility, low wages and great heterogeneity, reinforcing the importance of public regulation and the institutions that implement it (TEIXEIRA, et. al., 2017, p.19-113).

With profound contradictions in its text, "reform", while rhetorically grounded in the need for strengthening unions, limits their participation (workers' unions), when, for example, it eliminates the obligation for unions to assist workers at the moment of payment of installments resulting from the dismissal, the so-called homologation of contractual terminations of workers with more than one year of contract. In fact, an important factor, together with others, to reduce the number of lawsuits, as will be seen in the following item. In addition, it eliminates its source of funding with brutal damage, which is now deepened in view of Provisional Measure 873, submitted by President Bolsonaro, which creates more obstacles to this cost.

These circumstances lead to the claim that the actors affected by the reform are: public labor legislation, labor unions, and institutions charged with overseeing compliance with labor protection regulation and enforcing it in court decisions. In this scenario there are measures introduced by the reform that hinder complaints by requiring, for example, the payment of costs by the complainant when the fact is filed for unjustified absence to the hearing, even though it is a beneficiary of Free Justice. Still, on the assumption that free access to the judiciary stimulates litigation and, in order to curb litigation, the Brazilian reform provides that even workers benefiting from the Free Justice will be responsible for



the fees charged by the expert of the Court when succumbing to the purpose objected to, including establishing that they may be deducted from the credit recognized in the judgment. In the same vein is the reciprocal defeat, that is, the responsibility for the payment of attorney's fees of the opposing party in the aspects in which the worker succumbs (and vice versa), with the possibility of deducting the corresponding amount of judicially recognized credit (BIAVASCHI et al., 2018, pp. 209-241), in opposition to the principle of gratuitousness, intrinsic to the labor process.

From a dialogue with similar reforms carried out prior to the Brazilian one, it is important to note that the UK reform provisions that restricted access to the judiciary were declared unconstitutional by the Supreme Court in July 2017, in the appeal judgment proposed by UNISON, United States Union. UK Public Servers. For in the Employment Tribunals and the Employment Appeal Court Fees Order 2013, the British government, seeking to reduce litigation and to deter claims and stimulate prior settlements, set fees for access to labor courts. In both the United Kingdom and Brazil, taxation has substantially reduced demands. Hence the Direct Unconstitutionality Action, ADI No. 5766, distributed on August 25, 2017, having as rapporteur Minister Barroso, signed by the then Attorney General Rodrigo Janot, not yet judged. This action discusses the constitutionality of provisions that would be in violation of the principles of equality, full defense, due process, all of the Federal Constitution of 1988. After the vote of the Rapporteur, who partially accepted it, and of Minister Edson Fachin that fully accepted, there was a request for the view of Minister Luiz Fux. The unconstitutionality pointed out are: payment of expert fees if the expertise is unfavorable to the claim of the complaining worker, even if beneficiary of free justice, article 790-B, caput and paragraph 4; payment of succession fees to the lawyer of the other party, including making it possible to offset against other labor claims; payment of procedural costs in a plaintiff in which the complainant missed the hearing, even beneficiary of free justice, article 844, § 2. By comparing the realities of the United Kingdom and Brazil, the precedent imposes itself.

ADI 5794, filed in October 2017, requesting the National Confederation of Workers in Water and Air Transport, Fisheries and Ports, CONTTMAF, and Rapporteur Minister



Edson Fachin, was dismissed as unsuccessful, the Rapporteur, Minister Rosa Weber and Minister Dias Toffoli, with serious damage to the already fragile trade union movement. But there are other proposed ADIs against the reform not yet judged. And in this demarche, the strategy adopted by some stronger unions in the face of the reform and the decision of the Supreme Court, with collective bargaining foreseeing the payment of the union contribution by workers, was recently wounded to death with Provisional Measure 873 which, sealing this form of definition costing requires that the discount be authorized individually, employee by employee. Again, the "freedom" of option is assured to equal subjects in the relationship between employee and employer. Incidentally, this sense the prevailing vote, in defense of the liberal order without limits.

Moreover, the reform law incorporates other provisions that preclude free access to labor jurisdiction, such as paragraph 3 of article 790 of the CLT that limits the Free Justice to workers who receive a salary equal to or less than 40% of the maximum benefit limit pension scheme, which is known to be very low, as well as Article 507-B which provides for annual discharge of the employment contract, to prevent further legal challenge; and Article 8, paragraph 3, which seeks to prevent the Labor Court from declaring the nullity of clauses of collective agreements and agreements harmful to workers by limiting jurisdiction to the examination of the formal requirements of normative instruments. Here, for reform advocates, TST magistrates and ministers in interpreting the standards and editing Precedents extrapolate in the role of interpreters, into true "judicial activism," which they say needs to be contained. Hence the mechanisms that stimulate the out-of-court settlement of conflicts, including the adoption of the Voluntary Jurisdiction Process for Homologation of Extrajudicial Settlement, which, in addition to institutionalizing the possibilities of rights fraud through out-of-court agreements, may lead to an increase in court proceedings, as it becomes a body that approves agreements potentially harmful to rights. Also, as a way of "controlling the judicial activism" of the labor magistrates that the reform imposed limits on their performance by providing, on the one hand, that TST and Regional Courts Precedents and Statements of Jurisdiction cannot restrict legally foreseen rights, which is obvious and, on the other hand, denying judges the possibility and create obligations not provided for by



law, limiting case law. Other examples of this limitation are the charging of moral damages and the adoption of the “principle of minimum intervention in the autonomy of collective will” when examining the clauses of collective agreements or conventions, a judgment to be based on article 104 of the Civil Code, bringing to the labor relations the *pacta sunt servanda* which presupposes equality of the parties. This goes against the very origin of labor law (BIAVASCHI et al., 2018, p. 209-241).

There are other articles that limit the power of the judge, such as: what restricts the disregard of legal personality (liability of partners for unpaid debts of the legal entity); what defines the use of the Referential Rate, TR, to update the labor credit corresponding to a real setback in relation to the jurisprudence of the TST that was established to use the IPCA; what prevents the insertion of those executed in the National Bank of Labor Debtors, BNDT, in protest office or systems of the credit protection agencies, before 45 days from the citation; which, in execution, seeks to remove from the Judge its power / duty to promote it by trade, regardless of the provocation of the party, bureaucratizing it and making it even less agile.

## **8 THE FALLACY OF THE ARGUMENTS: JUDICIAL AND "LEGAL UNCERTAINTY"**

The CNJ and TST data disallow the justifying arguments for measures that restrict or seek to restrict judicialization, which are fallacious. It is important to mention that from 2008 to 2013 the number of magistrates per inhabitant was increasing, rising from 1.75 per 100 thousand inhabitants in 2008 to 2,04 in 2012. However, from 2013 it starts to decrease, dropping to 1,97; in 2014 to 1.95; in 2015 to 1.93; and in 2017 to 1.92 per thousand inhabitants, making clear the gradual disappearance and overload of the institution (BRASIL, 2018c). Meanwhile, the number of processes has increased. In 2016, there were 79.7 million cases awaiting final settlement. Of these, 13.1 million, or 16.4%, were suspended or overdue or on provisional file, awaiting some future legal situation. During 2016, 29.4 million cases were filed and 29.4 million were downloaded. A growth over the previous year in the order of 5.6% and 2.7%, respectively (BIAVASCHI et al., 2018, p. 209-241). Even though it dropped almost the same amount entered, with Demand Satisfaction Index of 100.3%, the process





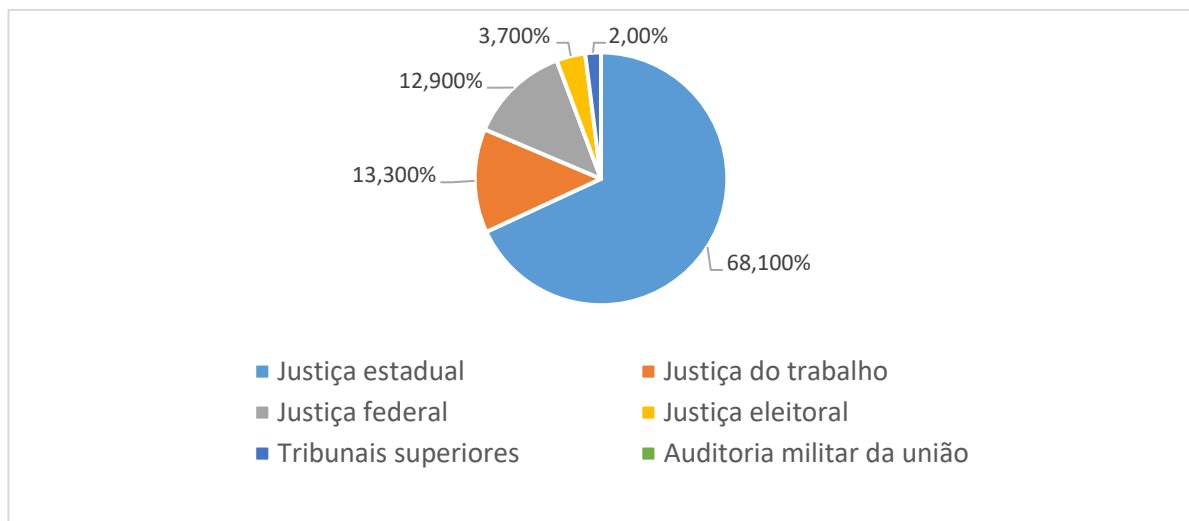
inventory grew by 2.7 million, or 3.6%, reaching 79 at the end of 2016, 7 million waiting for some definitive solution (BRASIL, 2017d).

Meanwhile, this same database shows that the State Court (and not the Labor Court) is responsible for 79.2% of pending cases; Federal by 12.6%; Labor only by 6.8%. The historical series of new cases shows an increase in almost all segments, except the Superior Courts and the State Military Justice, showing that, in the period, as a whole, the demand growth was 19.2%, despite the occasional reductions in 2010 and 2015. In just one year, between 2015 and 2016, the number of decisions grew by 11.4%, while the cumulative growth of the previous six years was 16.6%. This increase in productivity reached 30.8 million cases judged in 2016. It is noteworthy the difference between the volume of pending cases and those filing per year. In State Justice, the stock is 3.2 times the demand and in Federal Justice, 2.6 times. In the other segments, the pending cases are closer to the incoming volume, and in 2016, they followed the ratio of 1.3 pending per new case in the Labor Court and 1.3 pending per new case in the higher courts (BIAVASCHI et al., 2018, pp. 209-241). These data are sufficient to highlight the fallacy of the arguments of reform advocates.

Regarding the new lawsuits filed, the 2016 Report - the year in which the reform was presented to Parliament by then President Michel Temer - shows that the largest number of lawsuits filed by far are in the Labor Court. State Justice is responsible for 68.1% of new actions in 2016; The Labor Court received 13.3% of the new lawsuits, followed by the Federal Court, which received 12.9% of the new lawsuits filed in the period. Therefore, the alleged “excessive judicialization” in relation to the Labor Court, when compared to the other branches of the judiciary, does not hold

### Graph 03 - New cases by branch of Justice in 2016 (percentage)





Source: TST - Justice in Numbers Report 2017 (Base Year 2016) (BRASIL, 2017).

- State Justice
- Federal Justice
- Superior Courts.
- Labor Justice
- Electoral Justice
- Union military audit

The general data of the labor court filings show that they grew systematically from 1988 to 2016, except for 2010 whose percentage was negative and that, after some stabilization, returned to grow in 2015, as shown in Table 03.

**Table 03 - Rate of expansion of claims in Labor Justice**

Year	Average increase in filings compared to previous year	Year	Average increase in filings compared to previous year
1989	17,59	2003	8.04
1990	9.42	2005	8.33
1991	19.12	2006	1.95
1992	3.88	2007	7.24
1993	4.38	2008	3.75
1994	8.13	2009	7.83



1995	10,27	2010	-3,09
1996	4,53	2011	5,53
1997	2,03	2012	6,6
1998	1,39	2013	5,56
1999	-3,17	2014	0,62
2000	5,88	2015	7,66
2001	0,26	2016	4,17
2002	0,06		

Source: TST - Justice in Numbers Report 2017 (Base Year 2016) (BRASIL, 2017).

The content of lawsuits is variable. According to CNJ data more than 60% of the issues referred to the Labor Court refer to the installments resulting from the dismissals, “Termination of the Employment Contract”, followed by the “Compensation and Indemnity Payments” at 19.29%. The sum of these main demands reaches 80.04% of the total, and it can be seen that the vast majority of actions in the Labor Court are linked to non-payment of basic rights such as salaries and severance pay, expressing the instability of permanence in employment, as expressed in Table 04, below:

**Table 04 - Main Issues Referred to Labor Justice in 2016**

Topic discussed	No. of lawsuits with the theme	%
Termination of Employment Contract	18,341,347	60.75
Compensation and Indemnities	5,824,952	19.29
Employer's Liability	2,583,404	8.56
Holidays	1,538,079	5.09
Solidary/Subsidiary Responsibility	765,489	2.54



Special Professional Category	280,786	0.93
Other Labor Relations Agreement and Collective Conventions	256,674	0.85
Trade union law and similar issues	247,340	0.82
Prescription	211,832	0.7
Normative Sentence	66,664	0.22
Retirement and Pension	38,043	0.13
Strike / Lockout Right	28,750	0.1
	7,203	0.02
<b>Total</b>	<b>30,190,563</b>	<b>100</b>

Source: BRASIL, 2018d.

Each year, the “Justice in Numbers” report highlights the negative impact of enforcement on judiciary litigation data, which accumulates high procedural volume and high congestion rate. This volume makes effective judicial protection difficult. The Judiciary had 80 million pending cases at the end of 2016, with more than half of these cases (51.1%) referring to the execution phase. Most executions are tax foreclosures, 75% of the stock, which is responsible for the high congestion rate of the judiciary, representing about 38% of total pending cases, with 91% congestion in 2016. The impact of enforcement is especially in the State, Federal and Labor courts. The most reconciling is Labor, which resolves 26% of cases by agreement, a percentage that increases to 40% when only the first degree is considered.

## 9 THE REFORM AND THE COURT FILINGS. TERMINATION OF THE CONTRACT BY "COMMON AGREEMENT"

If the promises of the defenders of the reform proved fallacious, the goal of reducing judgments was successful. Today, which has been in force for more than a year, it can be



seen that the reduction in the number of actions proposed before Labor Justice has been appreciable. As the data from the 2017 CNJ report, drawn up in reference to the 2016 base, the percentage (in the order of 61%) of the actions that were adjudicated in 2016 was high, the prevailing request for payment of the installments due during the unjust layoffs. 19% already concerned unpaid wages and compensation payments due and not paid in dismissals. Therefore, the claims filed in these actions, mostly, stem from the non-compliance of minimum rights guaranteed to the redundant workers. A large part of the demands before the Justice of Labor, therefore, arise from the excessive failure of the rules of protection to labor caused, among other factors, by the difficulties of supervision and the low value of the fines applied to the companies, which do not discourage the non-compliance. And if in more than half of the actions that the authors seek is the payment of the installments resulting from the dismissal, in a legal system where there are no restrictions on dismissal, the fallacy of the arguments that place the justifications for the approved reform in the overregulation or paternalism of the magistrates is evident.

Perhaps the restriction on free access to the judiciary partly explains this significant reduction. Perhaps the lawsuit boom just before the reform was in part driven by action by law firms based on fear of the new rule and grounded in the thesis of intertemporal law that benefits workers. But this fact is not sufficient to explain the considerable fall after and after the Reform Law, which continues, with relative increase in 2018. It is that, as we have seen before, one of the items of reform is the imposition of burdens on prosecution of the claims, either by way of conviction in succession fees, or by conviction in expert fees or even in the face of fines for the allegedly bad faith dispute. Also, as it was seen, by the principle of gratuitousness, in relation to the labor process, the worker was exempt from expenses arising from the filing of the lawsuit when he was declared poor and without resources to bear the costs of the process. In addition, there was no provision for payment of successive fees. These burdens, analogous to those imposed on the parties to the Common Justice, bring insecurities and discourage filing, even if the worker continues to be harmed in their rights.



According to the TST Statistics Coordination, between January and September 2017 the Labor Courts received 2,013,241 labor claims. In the same period of 2018, the number dropped to 1,287,208 complaints. However, this reduction does not mean a reduction in non-compliance with rights granted to workers. Of course, reducing litigation by reducing non-compliance would be a positive thing. However, when this reduction happens, as in the case of Brazil and the one of the United Kingdom previously mentioned, because obstacles to access to the judiciary are created, it becomes a disrespect to the Federal Constitution which guarantees this broad access to all. This is a first conclusion that studies conducted so far authorize.

As regards the case law of the TST, no significant change has yet been possible, since the actions have a time of processing, and the TST - which has as one of its tasks to standardize national jurisprudence - has not yet reached appeals against decisions of the Regional Courts involving the interpretation of the new law. In June 2018, the TST Plenary approved Normative Instruction 41/2018, with procedural law rules related to the reform, stating that the application of the new rules is immediate. However, they do not reach situations that are started or committed before the changes. Therefore, most procedural changes do not apply to proceedings initiated before November 11, 2017.

Regarding to out-of-court settlements and “common agreement” dismissals, data from the first degree reveal significant and legitimizing impacts of the reduction of rights by the judiciary. Data from the General Register of Employees and Unemployed, CAGED, indicate that the number of dismissals by “common agreement” has increased since the labor reform, and only in November 2017 there were 805 dismissals in this model. In February 2019, the last record released by CAGED, there were 19,030 dismissals in this modality. Throughout the new legislation, CAGED recorded 202,927 “common agreement” dismissals in Brazil (VASQUEZ; BIAVACHI; DROPPA, 2019).

## FINAL CONSIDERATIONS



As the implementation of labor reform progresses, its objectives become clearer to adjust the demands of companies to the logic of their business, rationalizing economic activity and thereby eliminating porosity, downtime and increasing business efficiency to their demands for results, thus shaping the pace and working conditions of the imperatives of capital.

Maintaining high levels of unemployment contributes to further retracting the economy in a process of feedback in which, if there is no job, no income is generated, jeopardizing the consumption of families living on wages. The precarious, informal and insufficient working hours, characteristic of this last period, do not provide the necessary stability for families to regain confidence and to consume again. Business discourses, by emphasizing market logic, cost reduction, and the consolidation of competitive markets, and that overregulation sustains privileges because they do not reach the poorest on the fringes of society, disguise the euphemistic way of covering up violence against the working class by placing workers in direct competition for jobs and wages.

However, if we look at Mexico today, whose previous labor reform had not solved the problem of employment, let alone informality, the possibilities for a new journey are real from the possession of López Obrador. The changes in labor legislation published on May 1, 2019 positively point to the resumption of a system of labor relations based on public regulation that, from the formal point of view, incorporates the principle of non-regression by clearly stating that Labor rights ensured by public policy standards may not be reduced or removed by the will of the parties. These changes are still too recent to be evaluated for effectiveness, but they already show a new perception of the need for public regulation of labor relations, in the opposite sense to the idea that “the liberation of the forces that drive the accumulation of capital is a 'natural' and 'irreversible' movement towards the progress and autonomy of the individual” (BELLUZZO, 2013, p.33).

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