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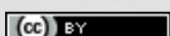
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Beyond Uber: a comparison with the lawyer's market

Além da Uber: uma comparação com o mercado de trabalho dos advogados

Además de la Uber: una comparación con el mercado laboral de los abogados

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ABSTRACT

The paper discusses the dynamics of the employment relationship of court hearing's lawyers hired through a computer application, comparing it with the working relationship between the driver and the Uber company. The research investigates the experience of court hearing's lawyers and presents the case study of such professionals hired and intermediated by a legal company, approaching the perspective of several social actors involved and judicial decisions of cases in which the recognition of the employment relationship of such professionals is asked, as a way of analyzing this professional category. The issue analyzed concerns the "uberization" phenomenon as applied to audiencist lawyers and the hypothesis of it being a similar situation of the "partner" drivers of Uber. For this, the present study analyzes the phenomena in question and the context of their emergence. It is also argued that the employment relationship of these lawyers, as well as those of the drivers of Uber, is in the gray area of employment, which causes workers to be unprotected from labor rights, and that most appropriate legal arrangement should be understood and sought for dealing with this issue.

KEYWORDS: algorithm; lawyers; uberization.

RESUMO

O presente trabalho aborda a dinâmica da relação de trabalho dos advogados audiencistas contratados por intermédio de aplicativo de computador, comparando-a com a relação de trabalho existente entre o motorista e a empresa Uber. A pesquisa investiga a experiência de advogados audiencistas e apresenta o estudo do caso de tais profissionais contratados e intermediados por empresa de negócios jurídicos para realizarem audiências para escritórios de advocacia, abordando a perspectiva de diversos atores sociais envolvidos e decisões judiciais de ações postulando o reconhecimento da relação de emprego de tais profissionais, como forma de analisar a categoria em referência. A questão analisada diz respeito ao alcance do fenômeno da "uberização" aos advogados audiencistas e a hipótese de estarem em situação similar a dos motoristas "parceiros" da Uber. Para tanto, o presente estudo analisa os fenômenos em questão e o contexto de seu surgimento. Sustenta-se também que a relação de trabalho de tais advogados, bem como dos motoristas da Uber, situa-se na zona cinzenta do emprego, o que causa desproteção aos trabalhadores face aos direitos trabalhistas, devendo ser entendido e buscado o arranjo legal mais adequado para seu tratamento.

PALAVRAS-CHAVE: algoritmo; advogados; uberização.

RESUMEN

El presente trabajo aborda la dinámica de la relación de trabajo de los abogados que hacen audiencias contratados por intermedio de aplicación de computadora, comparándola con la relación de trabajo existente entre el conductor y la empresa Uber. La investigación analiza la experiencia de abogados "audiencistas" y presenta el estudio del caso de tales profesionales contratados e intermediados por empresa de negocios jurídicos para realizar audiencias para oficinas de abogacía abordando la perspectiva de diversos actores sociales involucrados y decisiones judiciales de acciones postulando el reconocimiento de la relación de empleo de tales profesionales, como forma de analizar la categoría en referencia. La cuestión analizada se refiere al alcance del fenómeno de la "uberización" a los abogados "audiencistas" y la hipótesis de se lo ubicaren en situación similar a de los conductores "socios" de Uber. Para ello, el presente estudio analiza los fenómenos en cuestión y el contexto de su surgimiento. Se sostiene también que la relación de trabajo de tales abogados, así como de los conductores de Uber, se sitúa en la zona gris del empleo, lo que causa desprotección a los trabajadores frente a los derechos laborales, debiendo ser entendido y buscado el arreglo legal más adecuado para su tratamiento.

PALABRAS-CLAVE: algoritmo; abogados; uberización.

INTRODUCTION

Uber has been singled out as the best example of how new technologies can negatively impact the labor market^{1 2}. The company, with its billion-dollar investments, soon expanded its activities around the globe, challenging local laws and regulations. On the one hand it gained popularity, by the appearance of modernity, quality of service presented and for low prices. On the other hand, it has disorganized the transport labor market, especially in relation to taxi drivers, because it brings low prices impossible to be achieved for the self-employed and the taxi companies and brings the discussion about workers' control through their algorithm and the consequent questioning of the existence of employment relationship between Uber and its so-called "partners"³.

The purpose of this paper is to demonstrate that the use of technology in the form of collaborative economics, without regard to its principles⁴, can also be used to worsen labor and market disruption in other segments of the economy, reaching even intellectual workers, expanding the boundary of the so-called "cyber-proletariat"⁵ or "cybertariat"⁶. For this, the proposal is to study the case of court hearing lawyers and their relationship with companies that intermediate their services. Court hearing attorneys are those hired to hold hearings,

¹ ALOISI, Antonio. Commoditized Workers. Case Study Research on Labour Law Issues Arising from a Set of 'On-Demand/Gig Economy' Platforms (July 1, 2015). **Comparative Labor Law & Policy Journal**, Vol. 37, No. 3, 2016. Available at SSRN: <https://ssrn.com/abstract=2637485> or <http://dx.doi.org/10.2139/ssrn.2637485>.

² SCHOLZ, Trebor. **Uberworked and Underpaid**: How workers are disrupting the digital economy. Malden, Polity Press, 2017.

³ ALOISI, Antonio, Il lavoro "a chiamata" e le piattaforme online della collaborative economy: nozioni e tipi legali in cerca di tutele. **Labour & Law Issues**, Milan, vol. 2, n. 2, 2016; FABRELLAS, Anna; DURAN, Sergi. Sharing economy vs. Uber economy y las fronteras de Derecho de Trabajo: la (des)protección de los trabajadores em el nuevo entorno digital. Barcelona, **Revista para el análisis del Derecho**, January 2016. Available at <http://ssrn.com/abstract=2737857>; DUBAL, Veena. Wage slave or Entrepreneur?: Contesting the dualism of legal worker identities. **California Law Review** (February, 2017), available at <http://ssrn.com/abstract=2796728>.

⁴ SCHOLZ, Trebor. **Uberworked and Underpaid**: How workers are disrupting the digital economy. Malden, Polity Press, 2017.

⁵ DYER-WITHERFORD, Nick. **Cyber-Proletariat**. Global Labour in the Digital Vortex. Chicago, Pluto Press, 2015.

⁶ HUWS, Ursula. **Labor in the Global Digital Economy**: The Cybertariat Comes of Age, New York, NYU Press, 2014.



hired by large law firms, to serve clients who litigate in Court⁷.

These companies, to make it difficult to verify the employment relationship, now use the electronic medium for the intermediation of these lawyers, with lower risks of recognition of the employment relationship with the professional, entering what can be called "gray areas of employment"⁸.

The following questions need to be raised: what are the similarities between Uber drivers and court hearing attorneys? What are the consequences for the labor market of lawyers regarding the use of new technologies in the form of collaborative economy? Is it a new form of job search by lawyers or the general worsening of the labor market in the competition of all against all?

To try to answer these questions, this paper is structured as follows: in the first part (A), it seeks to present the influences of the technologies in the organization of human work, favoring, in an intentional way, the migration of workers to what is called the gray areas of employment. Then (B), the training and development of the labor market of advocacy in Brazil is presented. In the third part (C), a case study is performed on the intermediation of lawyers through a company that uses an application for the distribution of tasks. In the last part (D), the correlation between this type of activity and the whole new work organization is made.

A – NEW TECHNOLOGIES, PLATFORM CAPITALISM AND GRAY AREAS OF EMPLOYMENT.

If it is true that Ford represents the work done in the 20th Century, it is also true to say that the current form of work is portrayed by Uber's work organization. This company, like that one, used technology, both in terms of material and people management, to better carry out its business activity.

If it is true that most workers are still organized in the previous Fordist pattern, the work organization by command or by programming⁹ has been increasing

⁷ CAPPELLETTI, Mauro; GARTH, Bryant. **Acesso à Justiça**. Porto Alegre: Fabris, 2018.

⁸ AZAÏS, Christian. Sécurité de la profession, insécurité des professionnels: la zone grise de l'emploi chez les pilotes d'hélicoptère au Brésil, in Ch. Azaïs, Carleial M. da F., Gediél, J.A.P. (dir.), Normes d'emploi et zone grise: quid **Du travail aujourd'hui ?**, Bruxelles, P.I.E. Peter Lang, à paraître, 2017.

⁹ SUPIOT, Alain. **La Gouvernance par les nombres**. Paris, Layard, 2015.



and will soon become hegemonic. Capital moves away from production, with the so-called "vector class"¹⁰ arising, which has limited interest in the material conditions of production, its power being based on the control of the logistics by which these conditions are organized. This power has two aspects: an intensive one, which is the power to model, simulate, monitor, and calculate information; and an extensive one, which is the power to move information from one place to another, to combine and recombine everything and anything as a resource ¹¹. This class avoids owning factories and paying wages directly. Uber represents the vectorialist class: a high degree of mastery of technology for the purpose of using workers to carry out their final activity, without paying wages directly, owning the final means of production, without losing, however, the ability to organize the global result through modeling, simulation, monitoring and calculation of the information, being able to move everything at a distance with apparent ease.

Such a reorganization of labor – and of capital - has gained notoriety in recent times, not only because of its dominance in market fundraising¹², but also because of its popularity with the population. People have engaged in modern cybernetics, with their facilities and apparent gratuities and almost gratuities. As with Apple and Google, Uber soon stood out for its cheap and innovative services and is now used by around 40 million users as a means of urban transportation around the world¹³. Uber presents itself as a technology company and only realizes the connection between users and independent workers, using the whole discourse of collaborative economy.

However, as soon as Uber, as well as its business model, just began their reign, their participation was questioned in the so-called collaborative economy, presenting to its critics another designation for its form of organization: "platform

¹⁰ WARK, Mckenzie. Considerations on a Hacker Manifesto. in SCHOLZ, Trebor (ed.) **Digital Labor: The Internet as Playground and Factory**, New York, and London, Routledge, 2013.

¹¹ WARK, Mckenzie. Considerations on a Hacker Manifesto. in SCHOLZ, Trebor (ed.) **Digital Labor: The Internet as Playground and Factory**, New York and London, Routhledge, 2013.p. 69

¹² Among the six largest US companies by capitalization in the market, five belong to the vector class, which holds the top three positions in the ranking (Apple, Alphabet-Google e Mirocosoft), cf.

<<http://www.cnn.com/2017/03/08/the-top-10-us-companies-by-market-capitalization.html?slide=1>>. Accessed on May 21, 2017.

¹³ Available at: <<http://fortune.com/2016/10/20/uber-app-riders/>>. Accessed on May 21, 2017.



capitalism”¹⁴. Some of its contradictions were also presented.¹⁵ However, the most criticism it receives is about the impact it had on the urban transport labor market, especially on taxi drivers ¹⁶, as well as questioning the condition of work of their own drivers called "partners"¹⁷. Likewise, there were manifold demonstrations and strikes that were contrary to the company's performance across all continents, whether by its taxi driver competitors,¹⁸ or by its own drivers.¹⁹ In addition to this, there were some judicial and administrative convictions that considered both the alleged condition of a technology company with regard to self-employed drivers, and the decisions were judged it be a passenger transport company and that the relationship with drivers is one of employment.²⁰

The system of intermediation of workers through algorithmic platforms is rapidly expanded to several sectors: TaskRabbit²¹ (domestic services), CrowdFlower²²

¹⁴ SCHOLZ, Trebor. **Uberworked and Underpaid**: How workers are disrupting the digital economy. Malden, Polity Press, 2017, P. 1291

¹⁵ One of these contradictions lies in the discourse that it makes several trips and provides millions of jobs, while for other purposes - mainly legal - it states that it only mediates between users and has no employees (SCHOLZ, Trebor. **Uberworked and Underpaid**: How workers are disrupting the digital economy. Malden, Polity Press, 2017, p. 1306).

¹⁶ DUBAL, Veena. Wage slave or Entrepreneur?: Contesting the dualism of legal worker identities. **California Law Review** (February, 2017), available at <http://ssrn.com/abstract=2796728>.

¹⁷ FABRELLAS, Anna; DURAN, Sergi. Sharing economy vs. Uber economy y las fronteras de Derecho de Trabajo: la (des)protección de los trabajadores em el nuevo entorno digital. Barcelona, **Revista para el análisis del Derecho**, January 2016. Available at <http://ssrn.com/abstract=2737857>.

¹⁸ Available at: <http://www.telegraph.co.uk/technology/picture-galleries/11902080/Anti-Uber-protests-around-the-world-in-pictures.html?frame=3458643>. Accessed on May 23, 2017.

¹⁹ Available at: <http://www.theaustralian.com.au/business/technology/melbourne-uber-drivers-strike-for-day-over-pay-safety/news-story/6b94b7555ca02ef92750c62b91907d23> Accessed on May 23, 2017. <https://www.ft.com/content/9653ace2-f1d9-11e6-8758-6876151821a6>;

<http://fortune.com/2017/02/13/uber-strike-qatar/>. Accessed on May 23, 2017; http://www.the-star.co.ke/news/2017/02/20/uber-taxi-drivers-go-on-strike-demand-higher-rates_c1509898;

<http://www.euronews.com/2017/03/16/spanish-taxi-drivers-strike-against-uber-and-cabify>. Accessed on 23, may, 2017.; <https://www.bloomberg.com/news/articles/2016-02-01/uber-drivers-plan-strike-to-protest-fare-cuts-in-new-york-city>. Accessed on May 23,

2017 http://brasil.elpais.com/brasil/2016/12/19/economia/1482164970_634000.html. Accessed on May 23, 2017.

²⁰ Available at: <http://www.bbc.co.uk/news/technology-39882766>. Accessed on May 23, 2017

<https://www.theguardian.com/technology/2016/oct/28/uber-uk-tribunal-self-employed-status>.

Accessed on May 23, 2017.; <http://www.srf.ch/news/schweiz/uber-blitzt-ab-fahrer-sind-angestellte>.

Accessed on May 23, 2017.; <http://www.reuters.com/article/us-uber-tech-brazil-labor-idUSKBN15T2OC>. Accessed on May 23, 2017.

²¹ <https://www.taskrabbit.com/>

²² <https://www.crowdfunder.com/>



(data analysis), Zaarly²³ (various professional services for the home); Postmates²⁴ and Loggi²⁵ (deliveries), using the same system: intermediation of workers via application with an algorithmic control of the performance of the services, without the recognition of the employment relationship, maintaining self-representation as a technology services company. Intellectual workers, such as teachers, did not escape this (dis)organization of the world of work, also seeing the movement of their status slip to a less secure place²⁶.

The organization of the capitalist platform work is based on the structure of subordination by programming²⁷ or even rhizomatic control²⁸. This form of organization of workers for production dispenses with direct control over the people, performing it through algorithmic programming, creating a mutable and adaptable system of awards and punishments, introjecting in the subjectivity of each worker the discipline and the commands, imposing self-control, and at the same time dispersing control centers into the multitude of service users. Unlike the Fordist pattern, on the capitalist platform there is the mobility of workers and their standardization by the normalization of conduct by more widespread forms of control.

What authors called “cyber-proletariat”²⁹ or “cybertariat”³⁰ can also comprise the situation of these workers: a proletarian multiverse made up of several salaried workers or not, divided into various forms of dependent, informal, slave labor and other obscure forms, being possible to organize them through digital and algorithmic networks, including mobile³¹. Industrial work goes to the periphery, in global

²³ <https://zaarly.com/>

²⁴ <https://postmates.com/>

²⁵ <https://www.loggi.com/>

²⁶ HALL, Gary. **The Uberfication of the University**. University of Minnesota Press, 2016.

²⁷ SUPIOT, Alain. **La Gouvernance par les nombres**. Paris, Layard, 2015.

²⁸ GRISCI, Carmen. Controle Rizomático. In CATANI, D. **Dicionário de Trabalho e Tecnologia**, Porto Alegre, Zouk, 2011..

²⁹ GRISCI, Carmen. Controle Rizomático. In CATANI, D. **Dicionário de Trabalho e Tecnologia**, Porto Alegre, Zouk, 2011.

³⁰ HUWS, Ursula. **Labor in the Global Digital Economy: The Cybertariat Comes of Age**, New York, NYU Press, 2014.

³¹ DYER-WITHERFORD, Nick. **Cyber-Proletariat**. Global Labour in the Digital Vortex. Chicago, Pluto Press, 2015, p. 13.



arbitration, and the opposite path is also taking place: the normalized working conditions of the periphery (informality, precariousness, disappearance of state protections, vulnerability to disasters) also apply to the central zones of the world economy.

Another key of reading related to the phenomenon is also related to the so-called "gray zones" process, which are characterized by the vitality, ambiguity and overcoming of traditional actors and public policies that ensure equal redistribution, bringing the germs of the wage society and future work³². Thus, the gray area comes from two movements: from a displacement of status by existing professions or, in the case of emerging figures or new professions, norms that relate them to an unequal institutionalization. It coincides with the emergence of ever more fluid boundaries between forms of employment and work, which hinder the binary rationale between legal and illegal, formal and informal, autonomous and subordinate)³³.

The notion of gray zone is important, not only as a relevant feature of current labor relations, but as a clear need to go beyond the construction of categories, interpretations, representations, and nomenclatures based on the Fordist norm, which already has clear signs of not being able to handle the current world of work³⁴.

We now analyze the constitution of the labor market of lawyers in Brazil.

B – THE DEVELOPMENT OF THE LABOR MARKET OF LAWYERS IN BRAZIL

Lawyers, like doctors and engineers, are among the traditional liberal professions in Brazilian society, stemming from the intellectual nature of their activities. Initially their activity consisted of acting in offices, attending to their clients

³² KESSELMAN, Donna; AZAÏS, Christian. **Les zones gris d'emploi**: vers un nouveau concept dans la comparaison internationale du travail? L'exemple des Etats-Unis et de la France, 2011. Available at : <http://metices.ulb.ac.be/IMG/pdf/KESSELMAN-AZAIS.pdf>.

³³ AZAÏS, Christian. Sécurité de la profession, insécurité des professionnels: la zone grise de l'emploi chez les pilotes d'hélicoptère au Brésil, in Ch. Azaïs, Carleial M. da F., Gediél, J.A.P. (dir.), Normes d'emploi et zone grise: quid **Du travail aujourd'hui ?**, Bruxelles, P.I.E. Peter Lang, à paraître, 2017.

³⁴ AZAÏS, Christian. Sécurité de la profession, insécurité des professionnels: la zone grise de l'emploi chez les pilotes d'hélicoptère au Brésil, in Ch. Azaïs, Carleial M. da F., Gediél, J.A.P. (dir.), Normes d'emploi et zone grise: quid **Du travail aujourd'hui ?**, Bruxelles, P.I.E. Peter Lang, à paraître, 2017.



in a personal way.

All of that has changed. The mass society of advanced capitalism involves giant corporate organizations, which gain competition by the amount of realized turnover. Only those who concentrate survive in the market, to produce the profit by the amount of movement.³⁵

Doctors today are mostly concentrated in hospitals controlled by investment funds, often foreign, managed not by healthcare professionals but by professional company managers.³⁶ Doctors work in shifts in these hospitals, sometimes through precarious contracts, totally linked to the corporate organizational structure, without any dominion over their patients, no longer perceiving self-arbitrated fees, but they have pre-fixed remuneration by the hospital or clinical enterprise and, consequently, no control over their career.

Engineering companies, mainly in the heavy construction sector³⁷, but also in relation to civil construction in general, currently act in the form of large economic groups, often accused of forming cartels, even generating national scandals.³⁸ Engineers are hired in bulk, replacing the old Master of Works. Most engineers today are employed in these large companies as wage earners.³⁹

³⁵ Capitalism always moves towards concentration. Ten companies concentrate almost everything that is consumed in the United States. The 10 largest banks concentrate more than 50% of the financial market. In Brazil, the 5 largest banks account for 80% of the market. 90% of the media in the United States is in the hands of 6 companies. The four largest Latin American media conglomerates - Globo do Brasil; Televisa of Mexico; Cisneros of Venezuela; and Clarín of Argentina - together, hold 60% of the total revenues of Latin American markets. In Brazil, concentration on open television is acute. According to a survey of the project *Os Donos da Mídia* (The Owners of the Media), six private networks (Globo, SBT, Record, Band, Rede TV and CNT) dominate the Brazilian television market. These private networks together control 138 of the 668 existing vehicles (TVs, radios, and newspapers) and 92% of the television audience. Globo, in addition to half the audience, still has broad supremacy in attracting advertising funds and sponsorships. Cf. <<http://www.cartamaior.com.br/?/Editoria/Midia/Por-que-a-concentracao-monopolica-da-midia-e-a-negacao-do-pluralismo/12/28352>>. Accessed on October 05, 2015.

³⁶ <http://economia.estadao.com.br/noticias/negocios,carlyle-investe-r-1-75-bilhao-na-rede-dor-de-hospitais,1676833>

³⁷ CAMPOS, Pedro. "Semeando gigantes: centralização de capitais e diversificação das atividades das empreiteiras brasileiras no final da ditadura civil-militar". in **Revista Lutas Sociais**, n. 25-26. São Paulo: PUC/SP, 2011, p. 72-87.

³⁸ Available at : <<http://politica.estadao.com.br/blogs/fausto-macedo/procuradoria-aponta-16-empresiteiras-alvo-de-clube-do-cartel/>>. Accessed on October 05, 2015.

³⁹ Cf. estudo da CSI, SENAI, SESI, IEL e CONFEA, Available at <<http://www.univasf.edu.br/~edmar.nascimento/iee/RelatoriodaPesquisaRevisado2008.pdf>>. Accessed on October 5, 2015.



The new formation of advanced capitalism, which favors and imposes concentration, also comes to the world of law. Small offices, trusted by the customer - some still resist! -, like the family doctor, are being replaced by the concentration of causes in large offices, which act as real companies, often like corporations.

The current phenomenon of concentration in the law firms arises from two processes, which come together at the end: 1) competition between offices, phenomenon of the current stage of capitalism, used as a tool to address mass legalization, 2) but it is also the result of the strategic advantages brought about by the mass legalization, well observed phenomenon by Mauro Cappelletti and Bryant Garth⁴⁰.

As for the first process, companies seek in the market offices that present the best prices and organization to deal with the mass legalization of issues, in practically all areas of Law. Thus, companies place in direct competition the offices, which make "packages" of legal assistance. Offices, in turn, are structured as companies in search of profit maximization and the management of the attorney "business". Those offices that are not organized in this way cannot establish themselves in the market, not being hired by clients, who seek cheap judicial litigation. The low price practiced by the offices feeds the mass judicialization, because it becomes interesting to break the law, due to the low legal costs of confrontation in the judicial field. It thus becomes a vicious circle in which it is no longer known whether the low price paid by companies to the offices is caused by the act of the companies or the competing offices. What is certain is that the spiral is always descending.

Another related phenomenon is that large corporations, using large offices, take advantage of the inefficiency of procedural reforms - or even of their connivance - and manage to maintain the usual litigation as a business strategy. As usual litigants, they have a number of competitive advantages: they can carry out litigation planning, acting in a studied and strategic manner in the scheduling of debts; gain from economies of scale, because hiring large offices in competition makes litigation cheaper; with more contact - practically daily with the Judiciary

⁴⁰ CAPPELLETTI, Mauro; GARTH, Bryant. **Acesso à Justiça**. Porto Alegre: Fabris, 2018.



Power -, take advantage of informal relations with the members of the decision-making body⁴¹ ; dilution of the risks of demand by the existence of more cases, being able to lose some, win others, in the judicial lottery; and, finally, have the possibility to test procedural strategies, continuing to apply those that do not work, and continuing other theses that are accepted.⁴² And, incredible as it may seem, the companies with the highest number of demands are now called "partners" by the Judiciary itself.⁴³

Thus, corporations choose large offices to maintain the competitive advantages of being habitual litigants. Corporations sometimes engage in direct competition among some offices, hiring more than one to keep them competitive with each other, comparing and giving notes and concepts. They lower their prices for the customer, even charging next to nothing for a hearing or a procedural piece.

All of that is the byproduct of the unreachable dream of a world governed only by numbers, losing reference to other values⁴⁴.

An example of this type of office was described in a report cleverly named "A salsicharia do direito" (The law sausage shop), stating that the mass litigation model resembles the one used by low-cost companies such as JetBlue and Ryanair, or retailers such as Walmart. The icon phrase of the report, and that type of office, is that the office partner openly states that "our business has no fat to burn".⁴⁵

It is interesting to note that this practice, although common in law, violates the Code of Ethics of the Brazilian Bar Association, which in its art. 5 expressly states: "the practice of advocacy is incompatible with any commercialization procedure."

Another important point to note is the explosion of Law courses, which floods the market with professional graduates, without any expectation, other than the lottery of the public tender, or the submission to low salaries in precarious positions

⁴¹ CAPPELLETTI, Mauro; GARTH, Bryant. **Acesso à Justiça**. Porto Alegre: Fabris, 2018.

⁴² CAPPELLETTI, Mauro; GARTH, Bryant. **Acesso à Justiça**. Porto Alegre: Fabris, 2018, p. 25.

⁴³ Available at: <http://portaltj.tjrj.jus.br/web/guest/home/-/noticias/visualizar/21809>. Accessed on May 26, 2017.

⁴⁴ SUPIOT, Alain. **La Gouvernance par les nombres**. Paris, Layard, 2015.

⁴⁵ Available at: <http://exame.abril.com.br/revista-exame/edicoes/990/noticias/a-salsicharia-do-direito>>. Accessed on October 08, 2015.



in offices. The offices occupy increasingly large spaces, sprawling across several floors in commercial buildings, arranging lawyers in bays almost identical to telemarketers. Lawyers work in the production line, becoming actual Law workers, producing mass pieces from prefabricated petition models. Low wages disguised as "pro labore," withdrawals, distributions, or any name given to the almost miserable retribution they perceive from the offices. No autonomy, because they are attached to the structure of the large office in the form of a corporation. No right, as they were hired by precarious adjustments, in violation of labor law.

Thus, large law firms act as large companies. In order to carry out their activities, lawyers are hired in a few different ways: a few offices hire as lawyers employed, and the large part hires in three basic ways: 1) as minority partners of the firm (from 0.000001% to 1% of shares); 2) under the figure of the contract of association (intermediate figure between the employee and the partner, whose legality is strongly questioned in the courts).

3) and even precariously and informally, as autonomous service providers.

Court hearing attorneys hired only to conduct hearings and court proceedings are directly solicited by the offices and hired informally or through companies,⁴⁶ as will be the case studied in this paper.

Regarding court hearing attorneys specifically, the Brazilian Bar Association, Rio de Janeiro Branch - OAB/RJ, held a public hearing in 2013, in which its president stated that:

there are colleagues working under conditions that are not compatible with advocacy. It is a scenario of debasement for all, and the Order represents from the partners of the large offices and the legal directors of companies to the litigation lawyers and also the court hearing attorneys. However, as the latter are, in this case, the weakest link, the OAB/RJ is coming out in their defense. This precariousness is incompatible with the advocacy we want.⁴⁷

The president of the corporation also questioned the use of the denomination

⁴⁶ Ordem dos Advogados do Brasil – Seccional do Rio de Janeiro. *Revista Tribuna do Advogado*. Rio de Janeiro: OAB/RJ, October 2013, p. 9.

⁴⁷ Available at: <http://www.oabRJ.org.br/noticia/83264-situacao-de-audiencistas-e-aviltamento-de-honorarios-em-pauta>. Accessed on May 26, 2017.



"court hearing attorney":

Why create this figure of the court hearing attorneys? They are lawyers, who represent parties at a hearing.

At the public hearing, there was criticism of the work performed by the hearing attorneys by lawyers:

It is necessary to hold accountable the directors of companies that hire lawyers in degrading manner. In the office where I work, if a resume by a court hearing attorney appears, it is discarded. This professional is not properly prepared to act as a lawyer

The argument was rebutted by a court hearing attorney:

We are not deliverers of defense parts, and I say this on behalf of all court hearing attorneys. Our work is not second-rate. Nobody does 20 hearings a day because they want to, and we do not just do hearings, we often do due diligence and other work. If I worked for an office that paid me enough, I would only do two or three hearing and I could prepare myself better.

The president of the Attorneys Society Commission stated that it is necessary to:

Contextualize the figure of hearing attorneys in the so-called 'mass litigation', because it is in this segment of the market that we witness the proletarianization of the profession in all aspects. The root of professional vulgarization is in purely mercantilist contracting that encourages the fixing of paid wages below the floor of the category, the exploitation of the labor of other lawyers for isolated diligences at a negligible amount of fees and the creation of anomalous figures that are today on the agenda of advocacy and are widely disseminated and consumed by the legal market as legitimate and legal practices. "

C –CASE STUDY: THE CONTRACTING OF HEARING ATTORNEYS BY ELECTRONIC PLATFORM BY GRUPO PRAZO

The relationship between Grupo Prazo, which performs the intermediation of attorneys and agents for law firms, to meet the demand for judicial hearings, was chosen for a case study. The choice of this company is because it is the company with



the highest number of demands for recognition of employment relationship in the scope of the State of Rio de Janeiro and because it is the only known one that performs the intermediation of lawyers by technological application.

The representatives are hired as employees by the company; however, lawyers are hired without any formality or respect for rights, receiving by act performed.

There is not much information about Grupo Prazo on its website. According to the company itself, it presents itself as "a new concept of technology and legal logistics."⁴⁸ It affirms that the enterprise was born with the "advent of the Consumer Protection Code, which changed the scenario of Advocacy and Judiciary in Brazil, since the population began to seek more and more the jurisdictional provision of the State to solve the conflicts derived from the relationship of consumption with large service providers in the areas of telephony, banking, health, electricity and transportation, among many others." It informs that the Legal Departments were in search of "equalizing their costs," then the so-called "SISCORP - Brazil Correspondents Control System" and the "Seven Process Manager" were developed, which "controls the production conveyance to the management of consequences and outcome of a litigation operation, all via workflow. "

In the part that it presents its application, the company states that:

Focused on information security, and financial control of the services provided for approval, billing and payment, SISCORP manages this account that is almost always in the top 3 of the cost list of the operation of a Litigation Office, so we developed a tool capable of integrating with any procedural management system, making the control of sending and returning the request of the services of hearings and diligences as well as the deadlines of these services, attachments, etc., all with authorization of assertiveness by the contractor of the service (Office) so that the system can carry out the invoicing of each of the Correspondents on the date agreed upon between the parties. Completely web, SISCORP provides the **Correspondent** with the necessary mobility for printing and downloading any request or documentation from any point where they can be connected to the internet. (sic)

⁴⁸ <http://www.prazo.adv.br/institucional/>. Accessed on May 26, 2017.



The company also provides its clients with "agents," i.e., representatives of the companies in the lawsuits. The company presents its service as follows:

It is important to emphasize that all our agents are Law bachelors, having with us the contracting regime ruled by the Consolidation of Labor Laws (CLT). The performance of our agents also includes the printing of defenses, subsidies, representation kit and any other documentation necessary for their performance of the process, as well as that of the Lawyer, because it is up to our staff to deliver the documentation to the Correspondent indicated by our Clients for the hearing. (sic)

On the other hand, observing the judgments handed down in the lawsuits against the company in the Regional Labor Court of the 1st Region - Rio de Janeiro, another table should be drawn.

According to the Court's decision in action No. 0010492-52.2013.5.01.0225,⁴⁹ the company had on its website, at the time of its judgment, another story.

It said that Grupo Prazo would be a "joint venture formed by the companies Destaque, Domingues e Santos and Prazo. That the Destaque company was created in 1999, becoming the "main supplier of publications of the Official Gazettes of Brazil," attending to "Legal Departments and renowned Law Offices in the National and International scenario." Domingues e Santos would be a correspondence law firm, offering "a logistics with 200 lawyers, who daily execute at least 700 hearings and 1200 diligences dispersed by the Fluminense Judiciary Bodies." (sic) "To complete the Triad, PRAZO technology and systems, has brought to the GROUP its systems tools that have always served platforms of high demand in the Legal sector, the consecrated SISCORP and the managed web SEVEN [...]." (sic) According to its words, it would have been born "the largest provider of services and solutions in the Brazilian legal market, counting on a team of more than 500 professionals, and an annual turnover of R\$ 20,000,000.00, the GROUP does not stop growing, opening new branches, gaining new customers and innovating the Market with solutions

⁴⁹ BRASIL. RIO DE JANEIRO. **Tribunal Regional do Trabalho da 1ª Região**. Acórdão RO 0010492-52.2013.5.01.0225. Available at <<https://trt-1.jusbrasil.com.br/jurisprudencia/221629887/recurso-ordinario-ro-104925220135010225-rj/inteiro-teor-221629896>>. Accessed on May 25, 2017.



tailored to every need." (sic)

In this case, a hearing lawyer required recognition of the employment relationship with the companies that formed Grupo Prazo. It alleged that it provided services with the requirements of the employment relationship, holding court hearings for clients of that group. In the cited action, the lawyer's employment relationship with the economic group was recognized, affirming that if the group provides the so-called "legal logistics," as it identifies itself, "lawyers are necessary for the group to have access to the clients' processes both to photocopy them, continuing the feats, and to attend the hearings. Therefore, Grupo Prazo's preponderant activity is to guarantee to clients the hearings and diligences with brevity (24 hours according to the website) and for that, obviously, they need lawyers." It was found that lawyers were contacted by Grupo Prazo's application and held about 10 court hearings per day. They received instructions by e-mail and perceived R \$ 7.00 (seven reais)⁵⁰ per conciliation hearing or instruction and trial, leading magistrate judges to assert that "fraud is shown in the most serious case, considering that advocacy is an indispensable function of the administration of justice, [...], in the face of the meager amounts paid for the performance of hearings and procedural follow-ups." It also verified that monthly the lawyer received R\$ 1,224.27, below the salary level of the category of lawyers that would be R\$ 1,630.99.

In the judgment of Case No. 0010691-03.2014.5.01.0011,⁵¹ the company defended itself by stating that "there is a commercial relationship between three different companies, namely, the 1st Defendant, the company ORION IMPRESSOS ELETRÔNICOS DO DIÁRIO OFICIAL LTDA (fantasy name: Highlight Electronic Forms of the Official Gazette) and the company FERREIRA E SANTOS ADVOGADOS (former Domingues e Quintanilha Advogados and Domingues e Santos Advogados)." The company said that the lawyer would have provided autonomous services, as a

⁵⁰ Equivalent to US\$ 2.33, according to the exchange of the decision date.

⁵¹ BRASIL. RIO DE JANEIRO. **Tribunal Regional do Trabalho da 1ª Região**. Acórdão RO 0010691-03.2014.5.01.0011. available at:

http://consultapje.trt1.jus.br/visualizador/pages/conteudo.seam?p_id=ZFKo3JQzloLfN5%2F5oMAY%2Bw%3D%3D&p_completo=0&p_tamanho=0&cid=136111. Accessed on May 25, 2017.



business partner, "without subordination, personal nature, exclusivity and without salary consideration." It maintained the thesis that it would have "as its social object the commercialization of development of computer, technical support, maintenance programs and other services." The Court recognized the employment relationship with the economic group, in view of the way the business group controls the work of the lawyer.

In Process nº 0011696-74.2014.5.01.0071,⁵² the company denied the existence of an employment relationship, because it affirmed that the lawyer "could or would not accept the service and that she received from the client the fees without interference from the Appellant (Term), which was not supervising her work, with her working hours being in accordance with those of the hearings, thus demonstrating that the work was in the form of autonomous services, without subordination, and she was actually free to deny the service, which she would certainly not be as an employee and if she failed she would deal directly with the client, which proves that her contracting was that of a service provider and not a CLT employee because otherwise the default would result in penalty to the employer in view of the hierarchical power it maintains over the CLT employee." (sic).

In another lawsuit,⁵³ filed by an employee, the company stated that its employees, who support its system, are not tied to the workers' union in the area of Information Technology, because they "provide services in the legal area."

In lawsuit no. 0010854-62.2015.5.01.0038,⁵⁴ the Judge recognized the condition of employed of the hearing lawyer, stating that:

⁵² BRASIL. RIO DE JANEIRO. **Tribunal Regional do Trabalho da 1ª Região**. Acórdão 0011696-74.2014.5.01.0071. Available on https://consultapie.trt1.jus.br/consultaprocessual/pages/consultas/DetalhaProcesso.seam?p_num_pje=98419&p_grau_pje=2&p_seq=11696&p_vara=71&dt_autuacao=11%2F04%2F2016&cid=624199. Accessed on May 26, 2017.

⁵³ BRASIL. RIO DE JANEIRO. **Tribunal Regional do Trabalho da 1ª Região**. Acórdão RO 0010989-78.2015.5.01.0069. Available at https://consultapie.trt1.jus.br/consultaprocessual/pages/consultas/DetalhaProcesso.seam?p_num_pje=163880&p_grau_pje=2&p_seq=10989&p_vara=69&dt_autuacao=08%2F05%2F2017&cid=624142. Accessed on May 25, 2017.

⁵⁴ BRASIL. RIO DE JANEIRO. **Tribunal Regional do Trabalho da 1ª Região**. Sentença RT 0010854-62.2015.5.01.0038, available at https://consultapie.trt1.jus.br/consultaprocessual/pages/consultas/DetalhaProcesso.seam?p_num_pje=683818&p_grau_pje=1&popup=0&dt_autuacao=&cid=656962. Accessed on May 29, 2017.



The practice of the Defendant (company) to hire lawyers as freelancers, acting as an intermediary in the outsourcing of services related to the end-activity of a large number of clients, law firms, with the payment of fees below the OAB table and without the signature of CTPS, makes clear the precariousness of the rights of the worker.

D – THE NEW ORGANIZATION OF LABOR AND HEARING ATTORNEYS

The introduction of market logic into advocacy brought with it competition among professionals and the concentration of economic activity in large corporations.

The work performed by hearing lawyers, because it is carried out outside the office environment, favors their hiring in ways that are different from those legally envisaged. The organization and distribution of work through management by computer application brings a form of control different from the one carried out in the old patterns, in which the personal control of the work of others prevailed.

In this way, as it happens with Uber drivers, the hearing attorneys begin to realize a form of work inserted in the “gray zone of employment,” making the realization of rights difficult, being subject to a more precarious condition.

The new technologies allow companies to hide behind the technologies that are the instrument for their economic reality. Companies are referred to as “technology companies” in order to escape the employment relationship, and may sometimes contradict themselves, depending on their interest. As Uber claims in terms of marketing that generates jobs, denying this condition judicially, Grupo Prazo, depending on the situation, presents itself as a technology or legal company, as we have seen above.

The relative novelty of the situation of hearing attorneys is that it is not only manual workers who are being displaced from traditional hiring ways. As has also occurred with translators⁵⁵ and teachers⁵⁶, intellectual workers have been brought

⁵⁵ <<http://www.economist.com/news/books-and-arts/21722609-profession-under-pressure-why-translators-have-blues?fsrc=scn/fb/te/bl/ed/whytranslatorshavetheblues>>. Accessed on May 27, 2017. Um dos objetivos do estudo da zona cinzenta é justamente apontar a necessidade de readaptação da compreensão da proteção dos direitos frente às novas formas de organização e realização do trabalho humano, quando a classificação binária.

⁵⁶ HALL, Gary. **The Uberfication of the University**. University of Minnesota Press, 2016.



into the gray zone because of the organization of work brought about by new technologies, which dispense with the personal control of Fordism.

The price workers pay is high: their incomes have declined, insecurity has increased and their status, even within their profession, has been undervalued.

The use of the new form of control, through the computer application, allows the company to use the argument that it only manages and links the hearing attorney to the law firm, disregarding the labor obligations. The hearing attorney engages in fragmented pieces of work, hearings, and instructions for their work are given through the application. Thus, it departs from the traditional lines of testing performed to verify the existence of employment relationship.

One of the objectives of the study of the gray zone is precisely to point out the need to readapt the understanding of the protection of the rights to the new forms of organization and accomplishment of human work, when the binary classification of employment/independent work is at least satisfactory⁵⁷.

FINAL CONSIDERATIONS

The case of hearing attorneys is paradigmatic: intellectual workers proletarianized, and hired by fragmented jobs, intermediated for profit by company hidden behind a computer application, which controls the whole accomplishment of the work, in the "cybertariat" style. That is, they are in the same situation as the drivers referred to as "partners" of Uber. The uberization of work has reached the world of lawyers.

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⁵⁷ KESSELMAN, Donna; AZAÏS, Christian. **Les zones gris d'emploi: vers un nouveau concept dans la comparaison internationale du travail? L'exemple des Etats-Unis et de la France**, 2011, p. 6. Available at: <http://metices.ulb.ac.be/IMG/pdf/KESSELMAN-AZAIS.pdf>.



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