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The pejotization : transformation of the employee into a legal entity

Pejotization : transformation of employees into legal entity

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Summary
The theme of this article is pejotization : Transformation of the employee into a legal entity. The following problem was investigated: Pejotizing is hiring legal entities instead of individuals through a contract for the provision of autonomous services, does the worker end up being harmed? The objective of this work is: To identify and analyze what are the practical consequences for the worker's life, evaluating the legal limits of such an institute and its consequences when used for the purpose of avoiding the incidence of labor legislation. This work is important for a Law operator, as it addresses the effects on the worker's life, assessing the legal limits of such an institute and its consequences when used for the purpose of avoiding the incidence of labor legislation. This is a theoretical qualitative research lasting six months. It is concluded that this is a type of employment contract, which in the irregular version, in addition to constituting labor and social security fraud, constitutes a precarious type of work that does not offer substantial gains for either side and, for these reasons, must be be avoided.

Keywords: Work. Labor Law. Work process. Pejotization . Right.

Abstract
The theme of this article is pejotization : Transforming the employee into a legal entity. He investigated the following problem: Pejotizar is to hire legal entities instead of natural persons through an autonomous service contract, does the worker end up being harmed? The objective of this work is: To identify and analyze what are the practical consequences for the worker's life, evaluating the legal limits of such an institute and its consequences when used for purposes of removing the incidence of labor legislation. This work is important for an operator of the Law, because it addresses the reflexes in the worker's life, evaluating the legal limits of such institute and its consequences when used for purposes of removing the incidence of labor legislation. This is a qualitative theoretical research lasting six months. It is concluded that this is a type of employment contract, which in the irregular version, besides constituting labor and social security fraud, constitutes a precarious type of work that

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does not present substantial gains for either side and, for these reasons, must be avoided .

Keywords: *Job. Labor Law. Work process. Pejotization . Right .*

Introduction

Labor Law has solid foundations, either in the Constitution (Brasil, 1988) or in the Consolidation of Labor Laws – CLT (Brazil, 1943) or in other legal diplomas that guide the matter. However, as in other areas of the social sciences, Law is not static, it is a dynamic science. Every day, all branches of law undergo small mutations whose genesis is in the core of society itself.

Modern man needs a job or a profession to survive, in general terms, this individual will receive a fixed salary in exchange for accepting to receive technical orders regarding his production or the individual earns his earnings by providing a service to individuals or to one or more people. more companies. The first case is subject to labor laws and the second to the Civil Code (Brasil, 2002) which governs service provision contracts.

However, in recent years, a different phenomenon has occurred in the Brazilian labor market, involving a more careful analysis of Labor Law operators. Companies have sought to hire labor without paying their social charges, advising the worker to set up an individual company, a legal entity and, in this way, contracting the provision of services by the company of this worker. Once the contract is formalized, the contracting company, when conditioning a contractor to comply with orders from hierarchical superiors, office hours, and all other attributes constituted as worked by the consolidation of labor laws, why aren't they? It is, therefore, a fraudulent simulation to mischaracterize the employment relationship, representing a modern form of precarious work.

This phenomenon received the name of pejoização , due to the demand of companies for the hiring of labor via legal entity - PJ. By hiring workers as companies, these employers believe they are evading the legislation, not generating an employment relationship or tax obligations. In general, these same employers close a contract with remuneration based on a fixed part and a variable part, forcing the worker to work 10, 12 to 15 hours a day, under the false argument that it is an agreement, which in principle is good for the worker, because in general, considerable and encouraging remuneration values are earned. However, this type of service provision does not guarantee labor rights or Social Security.

The hypothesis raised in view of the problem in question was the exploration in a more perverse way, where employers condition the maintenance of the employee to the prior termination of the old employment contract and new hiring under the pejotized model . The worker feels coerced, as he needs income to survive and ends up consenting to such a practice. He believes, at first, that it was a valid alternative, but over time he realizes the loss of quality of life. Generally, after being hired as a self-employed service provider, he ends up accepting the goals and the increase in the workload, submitting himself to strict controls of hours and subordination, giving up the rights and guarantees that he would have if he were an employee. Thus, the present research work approaches the subject of pejotization and its implications in the world of Law. Intending to know the differences and similarities between CLT employee and self-employed worker, the consequences of this hiring, for employer and employee, as well as understanding the threshold between legal and illegal in this area (PEREIRA, 2019b, p.237; DELGADO, 2019 , p.438).

The employment relationship encompasses several types of legal situations involving the workforce, such as self-employed, independent, temporary, occasional and employees. However, the vast majority of employment contracts presuppose an employment relationship. The employment relationship, therefore, is a species resulting from the work relationship genre, and its legal basis is inserted in the Consolidation of Labor Laws. The employment relationship is due to the evolution of labor legislation. Labor Law has its origins in the unfriendly relationship between the entrepreneurial capitalist and the worker, seller of his workforce. It emerged as an instrument to normalize and regulate this necessary interaction between employer and employee, between capital and labor (CISNEIROS, 2016, p.40; DELGADO, 2016, p.87; OLIVEIRA, 2016, p.4).

The General Objective of this work is to demonstrate having a solid research on the so-called pejotization institute . Pejotizar is the concept of hiring legal entities instead of natural persons, under the pretext of facilitating the employer to get rid of labor and/or tax actions, through a contract for the provision of autonomous services, so that, as a cause of the worker, according to the employer , earn to work, without any insurance basis. This article will demonstrate how this understanding is seen by the courts and how the doctrine ensures this false security or imposition of the employer on the employee, the weakest part of this agreement. In this way, the importance of this research for science and society is to be able to understand in a solid and founded way the elements that are so harmful to the worker that in an almost coercive way the employer forces him to change, based on jurisprudence and doctrinal will be listed the view on the respective theme.

Since the so-called development of the manufacturing environment, the formation of unions and improvements in workers' living conditions, it has enabled the materialization of gradual improvements in workers' employment and salary relations. With the passage of time, legislations emerged establishing assuring relations between the capital and the workforce. The employment relationship is a consequence of this change in the relationship between capital and work. The employment relationship is based on a contract of wills between the employee and the employer, from which the former has an obligatory, employment relationship with the employer, defined by the legal subordination to the personality of the individual employee, non-contingency and onerousness the employee the natural person who provides services of a continuous nature to the employer; the employee is the subject of the employment relationship and not the object. For it to be listed, the need for all requirements or elements is mandatory: natural person who, with personality and employment intent, works submissively and in a non-casual manner for others, from whom he receives remuneration (CISNEIROS, 2016, p.42 ; MARTINS, 2012, p.144; NASCIMENTO, 2011, p.645).

The Specific Objectives of this work are: To present the employment relationship, its legal basis, requirements and characteristics as well as the dualistic relationship between subordination and autonomy, based on doctrine and jurisprudence regarding the employment relationship. The self-employment relationship, its legal basis, characteristics and differentiation in relation to the employment relationship, presenting some numbers of the self-employment market in Brazil and its evolution after the implementation of micro entrepreneurship in 2008. At the end, some judgments will be presented with the position of the Courts regarding the characterization of the autonomous work relationship. Finally, the phenomenon of pejotization in the Brazilian labor market, its definition, origins, how it was constituted in the labor market and its practical consequences for the worker and reflections in the

legal world will be presented, based on the demonstration from judgments of the Labor Courts on the subject, showing the already consolidated position regarding this type of hiring.

The main elements of the employment relationship generated by the employment contract are: a) Personhood, the employee has a legal duty to personally provide services for the benefit of others; b) The non-continuous character of the service, that is, it must be necessary for the normal activity of the employer; c) Remuneration for the work to be performed by the employee; d) The legal subordination of the provision of services to the employer; e) The need for the contract to be signed between the employer (BARROS, 2016, p.147; DELGADO, 2016, p.299).

Already raising the issue of non-eventuality, the work must be of a continuous nature, provided daily, with the regular days off provided for by law. It cannot be a one-time job, a single installment. The financial consideration is another characterizing item, as the burden is the counterpart of the work delivered to the employer. With regard to the personal provision of services, it refers to the fact that the employee cannot be represented by third parties, subcontract, under penalty of the latter being configured as an employee. Subordination is the main feature of the employment relationship. It is so important that it deserves to be studied in its own topic. However, the employment relationship will remain configured only if all the characterizing elements are present (LEITE. 2019. p.114).

For the elaboration of this article, the type of research used was the descriptive bibliographical one, having as a research method the treatment of qualitative data of a secondary nature, using as a research instrument books, doctrine and jurisprudence, articles and theses defended from the keywords: Work; Labor Law; Work process; Pejotization ; Right. Being made the analysis regarding the Labor Rights; the understanding defended by the Labor Courts, Regional Courts and Superior Labor Court. The point of view of who defends what results from this obligation of the employer on the employee and the claims defended by the employee towards the employer. This literature review research has an estimated time of five months. In the first and second month, a survey of the theoretical framework was carried out; in the third and fourth month, the literature review; in the fifth month, the elaboration of the pre-textual and post-textual elements that make up the entire work.

As stated by Gonçalves (2019a), the literature review consists of the perspective of bringing public bibliographic data as an instrument of reflection on a subject that is intended to be debated or dialogued. A qualitative research treats the information collected with analysis of all the nuances allowed in it (GONÇALVES, 2019b).

PEJOTIZATION: TRANSFORMATION OF THE EMPLOYEE INTO A LEGAL ENTITY

Labor Law is a product of capitalism, linked to the historical development of this capital process, certifying economic, social and civilizational distortions to the essential binding of authority that its economic dynamics generates in the sphere of civil society, especially in the establishment and in the company . The evolution of the mode of production, the creation of unions and improvements in workers' living conditions, made it possible to incorporate gradual improvements in working conditions and workers' remuneration. Gradually, legislation emerged establishing safer and more lasting relationships between capital and the workforce. The employment relationship is a result of this evolution of the relationship between capital and labor (DELGADO, 2019, p.104; OLIVEIRA, 2016, p.6).

Since the development of the mode of production, the creation of unions and improvements in the living conditions of workers, it has enabled the incorporation of gradual improvements in the deplorable working conditions and wages of workers. Gradually, legislations emerged establishing safer and more lasting relationships through capital and work. The linkage of employment is a result of this evolution of relations through capital and work (BARROS, 2020 p.618).

The employee is the natural person who provides continuous services to the employer; under his subordination, upon payment of salary and on a personal basis. The employee is the subject of the employment relationship and not the object. For the employment relationship to be set up, all the requirements or characterizing elements will need to be present. The employee is defined as the natural person who, with personality and employment spirit, works in a subordinate manner and not casually for others, from whom he receives a salary. (MARTINS, 2012, p.144; NASCIMENTO, 2011, p.645).

The Consolidation of Labor Laws - CLT (BRASIL, 1943), provides in its second and third articles that the contractual employment relationship will be between the employee, individual and employer. It is responsible for the main elements of the employment relationship generated by the employment contract. According to a note by Alice Monteiro Barros (2016, p.147), the form of remuneration in cash is essential as a counter-proposal to the services provided to the worker towards the employer; in a subordinate way; in its personality, not allowing it to be provided in the form of another; this provision of services is non-continuous, that is, it continues.

Maurício Godinho Delgado (2016, p.299) adds the need for the contract to be signed between the employer, individual or legal entity, it is necessarily an employee, individual. There are necessarily five components of the legal relationship, the provision of services must be provided from a counterpart, paid in cash; from this provision of services offered, obeying the hierarchy of subordination of the worker before the employer in a personal and not occasional way.

Regarding the employee necessarily being an individual, Martins (2012, p.139) justifies this based on labor legislation, where there is no provision in the employment contract with a legal entity or with animals. As for non-eventuality, the work must be of a continuous nature, provided daily, with the regular breaks provided for by law. It cannot be a one-time job, a single installment. The financial consideration is another characterizing item, as the burden is the counterpart of the work delivered to the employer. With regard to the personal provision of services, it refers to the fact that the employee cannot be represented by third parties to subcontract, due to the possibility of the latter being configured as an employee.

Subordination is the main feature of the employment relationship. It is so important that it deserves to be studied in its own topic. However, the employment relationship will remain configured only if all characterizing elements are present. The employment relationship is a kind of form of employment relationship and, to be characterized, it must, indispensably, be constant and personally provided by an individual subject to subordination, existence burdensome to the employer, who will repay the work together with a decent salary to the agreed employee . . (DELGADO, 2019, p.106)

Entering the idea of subordination, it takes us directly to the idea of a relationship of obedience, hierarchy and command. In the employment relationship, regulated by the Consolidation of Labor Laws, it is probably the most important characteristic for the purposes of this study. Subordination as a criterion for distinguishing different employment contracts emerged in the middle of the 20th century. XIX and can be

analyzed in different aspects, of which, technical, economic, social and legal. The criterion of technical subordination of the employee to the employer, or to the legal agent, is attributed to the Society of Legislative Studies of France and this same criterion is decisive in the characterization of the employment relationship (BARROS, 2016, p.176).

In the lessons of the philosopher of Labor Law Amauri Mascaro Nascimento (2011, p.657.), subordination is not conceptualized by Brazilian legislation, and the interpreter must resort to comparative law, doctrine and jurisprudence. The author indicates Italian civil law as being the forerunner of the concept of subordination, through the works of Lodovico Barassi (1901), Vicenzo Cassi (1947) and Domenico Napoletano (1955) who, according to him, contributed decisively to the insertion of this concept in the body of the Peninsular Civil Code. Furthermore, the author warns of the importance of characterizing subordination for the purposes to which Law is of interest, as it can present several facets.

What is important is the character of subordination relative to the way activities are carried out, to what he describes from the objective point of view of subordination. As for subjection, in the sense of dependence, it is believed that the Law has long since surpassed this understanding, and is no longer used for purposes of characterizing the employment relationship. In Labor Law, subordination must be interpreted in its objective sense, under the mode of carrying out the work and not on the person of the worker. Thus, the author points out three dimensions that must be compared and analyzed together, as they complement each other, they are: classic dimension, regarding the power of business management regarding the way of carrying out its labor provision; objective, integration of the worker in the purposes and objectives of the undertaking of the service taker and the structural dimension, which is the acceptance of the organization and functioning dynamics imposed by the employer (DELGADO, 2016, p.304; NASCIMENTO, 2016, p.614) .

However, the practical verification of this characterization is not so simple. Labor relations are dynamic and involve several factors that, sometimes, easily confuse even judges, due to more and more ramification guidelines of these legal subordinations. What must be imposed is the so-called legal subordination, that is, subordination imposed by the Law, since rare is not the superior qualification of the employee compared to the employer, nor the patrimony of one being superior to the other. What unites them is the legal contract, subordination is the key element of the employment relationship, an indispensable characteristic for the correct framing of the employment situation that may arise in court (CISNEIROS, 2016, p.40).

Dichotomy concerns the two sides of the same situation, it is represented by a division of a concept into two that, although complementary, is unequal to each other, since they extend and complement the meaning of the first. According to the teachings of Martins (2012, p.140), in both situations, with subordination or with autonomy, the worker is subject to an employment relationship, subordination is the responsibility acquired by the employee at the behest of the employer, as this first contracted before the second, firmly acting the legal transaction, which is the object of the employment contract.

Subordination is a characteristic resulting from the relationship between employee and employer, an indispensable requirement for the characterization of the employment relationship in employment contracts, the importance of this bond is so great that there have been jurists in Italy who characterize the contractual employment relationship only with this factual element, regardless of the type of labor pact or prior contract. As a result of this dichotomy between subordination and autonomy; the so-

called self-employment, which is characterized by carrying out the job without the subordination of the employer. Autonomy is the antithetical concept to that of subordination, as a result of subordination, the central direction of the daily way of providing services is transferred to the borrower (DELGADO, 2016, p.310).

As a result of this impasse between freedom and subordination, Italian doctrine has already created a type of work relationship: parasubordinate workers , this type represents those who, although not directly subordinated, result from continuous and coordinated collaboration with the company and, for factual and economic reasons, they contract their services with it in conditions of inferiority, under the modality of civil contracts (BARROS, 2016, p.190).

The cases disposed in court for the characterization of the employment relationship, as the most important authors have shown us with regard to the various facets of subordination; A self-employed person is someone who works for himself and earns profits for himself, making this activity his profession, he can be a dentist, lawyer, doctor, etc. anyone who provides a service within a company, meeting its purpose and creating the means to obtain profit in favor of the company, is employed, under the terms of art. 3 of the CLT (BRASIL, 2000, TRT/SP).

The characteristics that make up the founding element for the recognition of the employment relationship, when autonomy in the provision of the service is not verified in the records, coming to be considered the activity that was within the dynamic structure of the company, emerging what was conventionally called in the doctrine of structural subordination, there is no way to recognize the existence of autonomous work (BRASIL, 2011, TRT/DF-TO).

A fundamental part of all judgments is the analysis of characterization requirements. The doctrine, as a founding part of article 3 of the CLT, establishes, for proof of employment relationship, the following requirements: personhood, habituality, onerousness and legal subordination, and the absence of any of these requirements implies in the mischaracterization of the employment relationship, when non-founders result in non-recognition; Absence of the characterizing requirements of the employment relationship, in the fateful case presented to a cooperative (BRASIL, 2015a, TRT/SP).

Not all work relationships constitute an employment relationship. This is a special relationship, in which subordination is the main feature, but it is not the only one. The employee is necessarily an individual, irreplaceable, on time, regular and must contribute to the benefit of the employer. A fundamental part of the income arising from the employment relationship, which remains proven are the various benefits, such as unemployment insurance, maternity leave, paternity leave, 13th salary, vacation, remuneration plus 1/3 of vacation, Severance Indemnity Fund - FGTS among other benefits that may be agreed with employers, such as doctors and assistance (DELGADO, 2019, p.435; PEREIRA, 2019a, p.65; SUSSEKIND, 2009, p.2) The world has changed and the relationships of work too. Factories no longer demand hundreds, thousands of employees in different shifts and in almost unhealthy conditions like those faced by workers at the end of the century. XIX and beginning of the XX century. They also no longer provide the stability and benefits of the 60s and 70s of the last century, the heyday of social rights. Some crafts no longer exist in our times and new ones are about to emerge for the next generations.

In this sense, the performance of the self-employed worker in the legal world is based on a few extracts from paragraphs of the social security legislation, articles on service provision and contract work active in the civil code (BRASIL, 2002) and on the always necessary conceptualizations of doctrinaires. The classic self-employed

worker, referenced in Labor Law manuals, is increasingly rare. It is not always easy to legally characterize the employment relationship. For these cases, the conceptualizations of the indoctrinators are valuable and important resources. Through them, Labor Law operators subsidize numerous decisions, sentences and rulings throughout the country, clearly distinguishing the different types of employment relationships presented to the dispute.

The self-employed worker, does not find shelter in the Consolidation of Labor Laws, corresponds to one of the modalities of the relationship contemplated by art. 114, I, of the Constitution (BRASIL, 1988). In this sense, the self-employed worker is necessarily a natural person, and cannot constitute a legal entity. The self-employment contract provides for regularity, continuity, exercising their work for more than one contractor and not having a subordinate link, assuming the risks arising from their activity on their own. The relevant thing is that the work is carried out by an individual and practiced without the characteristics of the employment relationship, whose elements are set out in arts . 2nd and 3rd of the CLT (MARTINS, 2012, p.159; SUSSEKIND, 2009, p.2).

What comes to be consubstantially is the issue of subordination and the autonomous personality of the employee, since the self-employed worker is that natural person, provider of professional services who does not have a bond of subordination. He continues his statement by comparing the semantics of the autonomous word, which has a diametrically opposite meaning to subordination. The self-employed acts as his own boss, without submission to the employer's command powers and, therefore, is not subject to hierarchical subordination. According to which the self-employed worker retains the freedom of initiative, being responsible for managing his own activity and, consequently, bearing the risks arising from his activity at his own risk, by means of a contract and receipt, not being subject to the workload or subordination (DELGADO, 2016, p.318; BARROS, 2016, p.148; NASCIMENTO, 2011, p.1032).

It should be noted that it is important to emphasize that the self-employed worker, for the purposes of labor legislation, is an individual, and cannot under any circumstances constitute a company, since – in this way – it excludes the incidence of protective norms and the competence of the Specialized Justice. Even because, its legal status still exists and is recognized in social security legislation and in the Civil Code.

In Brazil, there is no unified legislation predicting and regulating the activity of the self-employed, as it already exists in Spain. However, its activity is supported by civil legislation and social security legislation, with which it is an individual taxpayer. The self-employed finds refuge in articles 593 to 609, which regulate the service provision contract. Also in the following articles 610 to 626, referring to the work contract. It is the wording of art. 593:

> Art. 593. The provision of services, which are not subject to labor laws or special laws, will be governed by the provisions of this Chapter.

In the social security legislation, the self-employed person is considered an individual contributor, being supported by Laws nº 8.212/91 and 8.213/91, whose regulations and new classification were recently published, in the following terms:

> Entrepreneurs, self-employed workers and the like are called individual contributors for social security purposes, while those who do not perform paid work are called optionally insured. Interministerial

Ordinance MF/MPS No. 1/2016 - Federal Official Gazette 1.11.2016. With deletions.

The self-employed, by its nature, is a natural person. However, it is important to remember, despite these enshrined legislations, that a new modality of service providers in general remains, equally supported by the social security legislation and free to claim their rights in the Labor Court: they are the individual micro-entrepreneurs. With the publication of Complementary Law nº 123 (BRASIL, 2006), the individual microentrepreneur was created. It is a joint effort of several government agencies, supported by its own legislation, whose objective is to legalize the activity of various services and sources of income: on their own, such as: street vendors, street vendors, artisans, caregivers of the elderly, painters , gardeners, manicurists, masseuses, IT technicians, cell phone maintenance technicians, among many others. It is the worker who, on his own or with a maximum of one employee, can manage his own company and enjoy tax and social security benefits, being limited to a profit of R$60,000 per year.

This law also facilitated access to the creation of the National Register of Legal Entities - CNPJ, that is, it facilitated the constitution of a legal entity. In the explanatory memorandum EM No. 13 /MF/MDIC/MPS (BRASIL, 2008) of the inclusion of the Individual Microentrepreneur as a contributor and insured of the INSS. According to data available on the Micro and Small Business Support Service Portal, SEBRAE portal (BRASIL. 2015), there are currently around 5.5 million registered individual micro-entrepreneurs in Brazil. For the year 2022, the estimate is that this number will reach 8.8 million. It is a way of legalizing thousands of activities that, in practice, exist, but which were abandoned by Social Security and, in a certain way, illegal. They are popularly called self-employed, being able to contribute to social security and be entitled to old-age retirement, disability retirement and maternity salary. In addition, the family of this insured person will be entitled to a pension for death and reclusion aid.

Abroad, some countries already know a new type of self-employed worker, Spanish legislation provides for the figure of the self-employed in the labor market, more than 10% of the Spanish workforce is made up of self-employed people. With the entry into force of Spanish Law No. 20 of 2007, these self-employed persons were separated into classic self-employed persons and economically dependent self-employed persons. For these, the law does not prevent subordination and requires personhood. It is an innovation that reflects a regulation of pre-existing practical activities and that can become a reality in more countries around the world (NASCIMENTO, 2011, p.1027).

The importance of the Italian doctrine in these cases to which the self-employed person is subordinated are those intellectual workers or not, who eventually submit to work that is not necessarily subordinated without the employment relationship of the peninsular legislation, however with some important rights duly recognized, proposing a third genre, parasubordinate work (BARROS, 2016, p.198).

Regarding self-employment, its characterization basically occurs in relation to flexible hours, non-subordination in the execution of the activity, and in obtaining profit for itself, performing its services at its own risk, being able to perform its services to several contractors, conceptualization it is in transition and the threshold is quite flexible, and it is up to the magistrate to decide on the basis of the concrete case. If the claimant worked autonomously, directing his own activity and assuming the risk of the business, he cannot be considered a full-time employee (BRASIL, 2015, TRT/RJ). The probative set evidences self-employment, with no obligation to comply with schedules

or frequency, nor production, without a fixed salary. Such conditions are not consistent with the employment relationship, due to the absence of legal subordination. (BRASIL, 2015b, TRT/SP).

Thus, autonomous work is considered in its essence. The Courts observe the characterizing elements prescribed in the doctrine, because there is no specific law for each type of self-employment. It is a differentiated activity, for which subordination does not exist and the worker assumes the risk of his own business. Nowadays, little is questioned about the issue of individuals or legal entities when analyzing facts. By the general principles of Labor Law, when the employment relationship is verified in any labor relationship filed, the magistrates terminate the contract and enforce the labor law, regardless of the terms or contractual form adopted. (LEITE, 2019, p.21; DELGADO, 2019, p.435).

This is the case of the Decision in which Judge Miriam Pacheco, of the Regional Labor Court of the 1st Region, during the analysis of the concrete case, verified the unequivocal presence of the qualifying elements of the employment relationship, imposing the deconstitution of the pre-existing contract: the treatments given to those hired under the CLT regime and the plaintiff, hired through a legal entity, with regard to the working day, the non-eventuality, the subordination, present the onerousness, the personality, the difference in the means of hiring. What is verified is a distortion of the purposes of the contract signed with the author, serving only as a mask to hide the real employment relationship (BRASIL, 2013, TRT/RJ).

The simple allegation in court of a service provision contract, even if attached to the file, does not remove the special rule imposed by the content of article 9 of the Consolidation of Labor Laws. Therefore, the self-employed is that service provider who does not submit to the contractor's orders and control, nor does he contribute to the contractor's profit. Specifically performs the work for which he was hired. He is responsible for his own service, earning a profit for himself, therefore not falling under schedule control, time card, subordination and monthly salary, characteristics, as seen earlier, typical of the employment relationship.

For the CLT, as provided for in Article 3, every employee is, necessarily, an individual. However, a new type of illegal hiring of labor has been frequently verified in our Courts. It's called pejotization . Comes the term pejotization , being one of the most frequent types of contemporary fraud in the labor field, representing an affront to the labor rights listed in the Federal Constitution and in the CLT, since many of them are not complied with (BRASIL, 2016, TRT/GO) .

The origin of the term is not known for sure, however it is a very well-known expression by operators of law. The term pejoização is a neologism originated from the acronym PJ, which is used to designate the expression legal entity. The use of this term by law operators has become popular and the expression is generally used to define and characterize the illegal form that the service provision contract can assume. this is an artifice used in practice, where the labor market selects people with the desired profile for the available vacancy and, at the time of signing the contract, the employer requires the worker to set up a sole proprietorship. Thus, the candidate ends up facing a relatively attractive payment and agrees to open a sole proprietorship in his name and formalize a service provision contract with the employer, even issuing invoices to receive the contracted amount (STANDER; SANTOS, 2008, p.69; CARVALHO, 2010, p.153).

It is important to emphasize that it is not a question of understanding as illegal any and all hiring of legal entities. In principle, there is no irregularity in hiring a legal entity to provide services. This is relatively common in technology areas,

communication vehicles or offices that provide accounting services. , which may be challenged in court. In view of this, it is important to know the characterization of illegal hiring, its consequences and the current position of Magistrates and Courts. The phenomenon of subcontracting a legal entity constitutes true procedural fraud, distorting the very essence of labor law, which is worker protection (CISNEIROS, 2016, p.42; DELGADO, 2016, p.303).

The characterization is not that easy, as there are categories of self-employed professionals who can be freely hired by employers, and may even maintain the employment relationship with only one contractor, as the classic case of self-employed commercial representatives. In this sense, it is important to pay attention to the characterizing requirements of the employment relationship, as these assumptions will guide the magistrate and other operators of law if the employment relationship is discussed in court. The main characteristics are those previously studied, which distinguish the CLT employee from other labor actors: A) Obligation of the individual; B) Personality; C) non-eventuality; D) Onerosity and E) Subordination (DELGADO, 2016, p.299).

Regarding the typical professions of self-employed persons and service providers, individuals or companies, the recognition of the employment relationship may also be present. In this regard, I quote Appeal from the Superior Labor Court No. 650-80.2010.5.03.0004, by the Rapporteur of the Summoned Judge Flavio Siringela , whose summary has the following content:

> MAGAZINE FEATURE. CONTRACTING OF PROVISION OF SERVICES. COMPUTING AREA. CONSTITUTION OF LEGAL ENTITY. NULLITY. CHARACTERIZATION OF THE EMPLOYMENT RELATIONSHIP. The constitution of a legal entity by the claimant does not, by itself, rule out the characterization of the employment relationship, once the assumptions contained in art. 3 of the CLT. For this reason, in such a case, in light of the principle of the primacy of reality, the nullity of the contract for the provision of services art. 9 of the CLT and, therefore, the recognition of the employment relationship with the alleged service taker. No violation of arts . 110, 113 and 114 of the Brazilian Civil Code. Precedent. DJe 02/24/2012

Along the same lines, a recent ruling by the Regional Labor Court of the 3rd Region/MG, in the records of Ordinary Appeal No. 10218-41.2013.5.03.0061, reported by the Summoned Judge Antônio Vasconcellos, whose summary reads as follows:

> AUTONOMOUS COMMERCIAL REPRESENTATIVE NULLITY. RECOGNIZED EMPLOYMENT RELATIONSHIP. The termination of the employment relationship with continuity of service provision, through the formation of a legal entity, suggests fraud, a circumstance that adds to the proven and decisive factual elements in the configuration of the employment contract. Proven the provision of services in the same manner as those performed by the employed sellers, subject to the fulfillment of goals and also justifications for non-compliance with them, attendance at meetings, issuance of reports, it is necessary to recognize the nullity of the autonomous commercial representation contract, under the terms of art. 9 of the CLT. DJe 09/09/2015 .

The pejotization has been triggered an invention that is still recent in the legal world, it is important to emphasize that not even so new it ends up being assimilated with the outsourcing institute since it has no similarities with outsourcing. In pejotization the contract is bilateral, in outsourcing it is trilateral. In outsourcing, the worker is subordinated to the representative of the outsourced company, never to the contractor, as in pejotization . Through outsourcing, the worker maintains an employment relationship with the labor supply company, working on the premises of another borrowing company (CISNEIROS, 2016, p.56, JORGE NETO, 2019 p.41).

Outsourcing in the private sector emerged in our legislation with Law nº 6.019/74 Temporary Work Law, enabling indirect hiring, through a specialized company, to replace workers and for some extraordinary services. Subsequently, Law No. 7,102/83 was published to enable the hiring of a service provider in the area of property surveillance, to meet the demand of the banking sector. However, the impossibility of subordination or personality between the contractor's employee and the borrower, under the conduct of configuring an employment relationship, except in cases of hiring by the direct or foundational public administration, since the Federal Constitution of 1988 prevents hiring without a public tender, the that would prevent the bond. The beginning of Outsourcing was in the Public Sector, with Decree-Law nº 200/67 and later Law nº 5.645/70, which provided for outsourcing as a form of decentralization and bureaucratization of the Government. However, in the private sector, he cites the same two legal diplomas Laws nº 6.019/74 and 7.102/83 (DELGADO, 2016, p.491; STANDER; SANTOS, 2008, p.104).

Precedent No. 331 of the Superior Labor Court, published in 1993, regulated the limitations of outsourcing in Brazil. Currently, only asset surveillance, conservation and cleaning services and functions not related to the core activities of the companies can be outsourced. However, the House of Representatives Bill No. 4,330/04 is pending before the National Congress, which gives legislative force to the text of Precedent No. 331 of the Superior Labor Court and expands the areas of outsourcing in the private sphere, making it possible to hire outsourced company in any technical area of the company. Outsourcing is a neologism strange to Law, whose origins date back to scholars of business administration sciences, aiming to emphasize decentralized relationships in the organizational sphere. It is a phenomenon whereby the economic work relationship is dissociated from the just-labor relationship that would correspond to it (DELGADO, 2016, p.487; PEREIRA, 2019a, p.67; SILVA, 2019, p.22).

The authors classify outsourcing as a type of subcontracting, through an outsourced interposed company, as they are configuring a trilateral relationship. It is important to know the limits that characterize the employment relationship, as the contracting company cannot impose subordination to the employees of the interposed company (NASCIMENTO, 2011, p.632; RALIN, 2019. p.26.).

Therefore, the significant difference between pejotization and outsourcing is the bilateral relationship of pejotization , which is designated as a service provision contract with the trilateral relationship characteristic of the outsourced company. In terms of the employment relationship, in none of the modalities can there be subordination of the contractor to the contractor.

Still a recent phenomenon in the Brazilian labor market, pejotization has been the subject of studies for at least a decade. It is believed that its popularization is due to the legal provision contained in article 129 of Law nº 11,196 of 2005, which emerged embedded in a bill to encourage exports, covering various sectors of the economy, authorizing the hiring of intellectual professionals through people legal. Result of an

alternative that avoided informality and unemployment, with the aim of promoting some sectors of the economy. However, for the author, this law made possible countless dissimulations and frauds with the use of shell companies in hiring employees (NASCIMENTO, 2011, p.693).

Contracting companies began to encourage the renewal of contracts for old and new employees through this expedient, as if they were employees, exempting themselves from labor charges, circumventing the legislation and making the employment relationship precarious. In order to resolve these cases of hiring employees via a simulating instrument of the false legal entity, the Labor Court, upon becoming aware of it, declares the employment relationship based on art. 9 of the Consolidation of Labor Laws (DELGADO, 2019, p.439; PEREIRA, 2019a, p.68).

However, when the characteristics of the employment relationship take shape and stand out, the old employment relationship loses its validity and the employment relationship becomes mandatory. As a result, the contracting company will have to bear all the legal charges arising from this covert contracting, to be calculated based on the amounts presented in the contractor's invoice books (Žižek , 2017, p.42) .

The term precariousness has been used to define the loss of labor rights by the working class in recent decades. The expression has variants such as precarious work and precarious work, all equally accepted. Social science scholars believe that technological management associated with the relaxation of labor laws may have contributed to this loss of working class rights over the last 40 years (MENIN JUNIOR. 2020, p.3; Žižek , 2013, p.24) .

For Maurício Godinho Delgado (2016, p.534), this precariousness is more evident with the subcontracting or outsourcing process, where workers are often subjected to perform the same tasks with different rights and guarantees. According to the author, it is important for society to create mechanisms and add improvements to avoid distortions in this field of labor relations.

Among the mechanisms, Delgado (2016, p.535) suggests the following: a) increase the concept of isonomy, providing the outsourced worker with the same transport services, cafeterias, medical and outpatient services as the contracting company; b) set minimum capital limits for outsourcing companies, seeking effective economic suitability; c) efficient guarantees of compliance with labor and social security legislation, establishing periodic inspections of legal payments and payments of salaries and other rights; d) attributing full effectiveness to the Clearance Certificate of Labor Debts, refuting companies that renew contracts based on the need for capitalization to settle previous debts.

Researcher Maria Amélia Lira de Carvalho (2010. p.153), in her master's thesis, identified the practice of pejotization in the medical area in the city of Salvador in 2009 and 2010, making a deep study of the professional's working condition doctor in the state of Bahia. In her results, the researcher demonstrated the evident financial loss in the pejotization modality . Some labor calculations were presented that proved that despite the contracted values being inviting, it actually represents a huge financial disadvantage for the contractors. However, the vast majority of hospitals and clinics surveyed hired medical professionals in this modality, thus making work relationships precarious and overloading health professionals.

With regard to the precariousness of labor relations, this is an increasingly frequent finding throughout the world. In Brazil, researchers José Dari Klein and Marcelo Weishaupt Proni , from the International Labor Organization – ILO (2010, p.9), believe that informality and precarious work are associated with two main factors: a) low economic environment and unstable growth; b) transformations of capitalism,

changes in the role of the State and flexibilization of labor relations. The misuse of public resources can make important investments, internal and external, unfeasible. It greatly harms the private initiative, as it ends up pushing away the possibilities of more and better jobs, preventing the maintenance of the social conquests acquired in the past. Finally, they warn about the importance of the Government establishing a benchmark that guarantees dignified working conditions and social security for informal workers. They claim that what is at stake is more than simple labor protection, it is the guarantee of the rights that underlie citizenship, and this non-compliance on the part of rulers can lead to the compromise of the republican spirit and the democratic regime.

As previously studied, the Consolidation of Labor Laws was implemented in Brazil during the government of Getúlio Vargas, known as the father of the poor. With the country experiencing rapid growth and development, it was common for the employment relationship to last for twenty, thirty years, as the company needed the experience and dedication of the employee and he felt honored by the employer. However, this reality changed diametrically in the 1980s and 1990s, forcing workers to look for new ways to survive and support their families.

According to researchers Krein and Proni (2010, p.11), the informal market is the answer to the lack of placement in the formal market. Several figures and forms of atypical contracting arise, such as: autonomous, cooperative, outsourced, pejotization , among others. The worker, when choosing to be hired as a legal entity, may be being deceived by the false idea of the financial advantage, however, he will be deprived of his labor rights, among them: formal contract, Guarantee Fund for Length of Service - FGTS, Social Security, 13th salary, vacation, overtime, unemployment insurance, among others.

pejotization does not represent a viable alternative for employers trying to circumvent labor legislation . There is already consolidated jurisprudence in this regard. When the employment relationship is recognized, due to the principle of the primacy of reality, the legal entity is deconstituted and labor legislation prevails from the initial contract. The consequences for the service taker, employer, are not always financially compensated.

Pejotization is conceptualized by some doctrinaires and operators of Labor Law as an illicit and precarious modality of outsourcing, which can cause immense damage to both sides . Represents the byproduct of the subcategory. In this sense, as the legal responsible for the contract, the financial burden will be on the service taker, considered the direct beneficiary of this type of illicit contract. In the eyes of the Superior Labor Court, this type of modality is also an illicit variant of outsourcing. It will be up to the magistrate of the Labor Court, at first, to declare the nullity of the contract signed between the parties and to attribute the existence of the employment relationship, with the severance pay and other legal amounts being calculated based on the amounts received by the worker. (BARROS, 2020 p.619).

Hiring a legal entity to provide services, as seen in this study, is not illegal. However, when coated with an illusory, fraudulent effect, with the sole purpose of covering up labor rights, it is illegal and must be fought (BRASIL, 2016, TRT/MG). Following this the understanding adopted with primacy by the courts in related decisions, in cases questioned the pejotization , as a kind of fraud to the employment relationships; pejotization as the relationship in which the use of legal entities is fostered by the service taker, with the purpose of evading labor obligations and charges, and denominated in many jurisprudence as illicit outsourcing (BRASIL, 2015c, TRT/SP; 2009, TRT/BA; 2011, TRT/SP).

FINAL CONSIDERATIONS

Relations between capital and labor have never been smooth. Over the centuries, human society has moved between slavery, servitude, craft corporations, free workers, associated workers, contract workers, contracted employees and, modernly, the precarious. As demonstrated in the article, Labor Law emerged precisely in favor of the reason for this disparity of forces where, on the one hand, there is the worker, seller of his labor, and on the other the capitalist. Nowadays, it is known that the capitalist entrepreneur is also at a disadvantage in the face of a hidden, lazy and demanding partner, who, through excessive taxation, demands from the capitalist an ever-increasing productivity gain.

This permanent requirement, on all sides, makes working relationships a shifting environment. The work currently does not represent the model of twenty years ago, let alone more than seventy years ago, when the Consolidation of Labor Laws was approved. However, human needs are identical, perhaps amplified. In this sense, labor legislation, despite the changes, cannot escape its protective genesis. The worker will always be the least protected part of the relationship and, for this unique reason, deserves special attention.

Outsourcing, hiring a self-employed worker and hiring a company that provides individual or corporate services are legal modalities provided for in labor legislation. However, as seen in this study, the contractor cannot demand compensation from the contractor as if he were an employee. In legal cases, it is the contracting of an individual company to provide services, without subordination and regular habituality divided into hours and scales. On the opposite side, as a result of necessity or dishonesty, the incidence of labor and social security legislation is removed, in order to hire more advantageous labor, opting to withdraw the rights of its collaborators and employees. It is pejotization and its illegal side, disguised as an employment relationship.

When these work relationships do not reach the expected objectives or one of the parties feels harmed, they may appeal to the Labor Court. According to the competence expanded with the publication of Constitutional Amendment nº 45, once the employment relationship has been configured, it is the competence of the Labor Court to assess the fact.

Labor Law, as the worker's *ultima ratio* , emerges to analyze and impose protective legislation. In his jurisdictional activity, the Magistrate becomes aware of the contractual dimension, verifying factual inconsistencies, distortions and various simulations. If, during the examination of the facts, evidence is not provided to convince the magistrate of the legality of the service provision contract, it will be mischaracterized. Then, the general principles of Labor Law will be applied, converting the provision of service into an employment relationship, with the employer having to bear the financial strain arising from this relationship. Fraudulent simulation is an illegal, immoral and reprehensible attitude, which, in addition to harming the worker, turns out to be very costly for the employer.

It is concluded that the institute of pejotization as a fraudulent means of hiring work is not an intelligent solution on the part of the employer, since, in addition to a practice considered illegal, it will subject the borrower to recognition of the employment relationship and financial expenses arising from the whole process. Also, for the professional, it is not interesting to remain in this modality, because as a legal entity it does not have social security rights, health, social security and social assistance. This is a type of employment contract, which in the irregular version, in addition to

constituting labor and social security fraud, constitutes a precarious type of work that does not offer substantial gains for either side and, for these reasons, should be avoided.

It concludes by attesting that the initial objectives proposed for this research were successfully achieved. It was possible to understand pejotization in Brazil and its legal implications. Finally, it is intended that this study motivate new research in the area, aiming to clarify and warn about the subject and, in a way, to foment the debate and the constant improvement of Labor Law.

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