# CORPORATE GROUPS IN PLATFORM COMPANIES[1]

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"*We speak, teach, litigate and legislate about "company law". But predominant reality is not today the company. It is the corporate group* ".

**Lord Wedderburn**[2]

Abstract
The article analyses the structure of groups of platform companies and, based on three cases, tries to demonstrate the inadequacy of their treatment in Labour and Social Security Law.

Keywords
Platform companies, corporate group, collective redundancies, temporary employment agencies

**Contents:**



[1]I would like to thank, first of all, Guillem Bernat Pérez-Tormo for the seed planted when he passed me several Comisiones Obreras (Workers' Commission, CCOO) union lawsuits against groups of platform companies. And, secondly, I want to thank the organisation of the Asociación Española de Derecho del Trabajo y de la Seguridad Social (Spanish Association for Labour Law and Social Security, AEDTSS) for the award for this talk at the 2022 national congress held at the University of Alicante. Thirdly, it should be specified that the work will be included within the Research Project GVA CIGE/*2021/111, La precariedad laboral: los efectos de la descentralización productiva 4.0 y el crowdsourcing online en el trabajo (Labour precariousness: the effects of productive decentralization 4.0 and online crowdsourcing at work*).

[2]Multinational and the Antiquities of Company Law, Mod. Lr (1983), p. 320.

## 1. WHY IS IT IMPORTANT TO CONSIDER GROUP STRUCTURE IN WORKING RELATIONSHIPS FOR PLATFORM COMPANIES?

It is a fact that platform companies have become a habitual and natural phenomenon in the socioeconomic reality of our times. In the contemporary world of digital networks, Internet intermediation is dominated by a few companies of global dimensions that centralise almost all operations, such as Amazon, Google, Airbnb, etc. Apart from their dominant position in the market in which they operate and the use of powerful algorithms, it is worth highlighting another common characteristic of these platform companies. **They all have a business structure characterised by a puzzle of subsidiaries and groupings of these that are located in several countries.** Along with this vertical structure, platform companies have another overlapping horizontal structure of networks of contractors that are dependent on the different subsidiaries.

This complex business organisation does not fit comfortably into the classical understanding of the company from a legal and labour perspective. Let us say at the outset that the answers offered by our sector of the legal system are incomplete and limited.

Incomplete because work on platform companies has usually been focused on the figure of the worker, but to a much lesser extent, on the companies. Those of us in labour law have disregarded business structure.

It is limited because labour legislation practically ignores the phenomenon of platform companies and the productive decentralisation that is generated around them, and which, at present, constitutes a business framework in which more and more labour relations take place. In this way, practically all labour law is designed for a "single company" and does not take into account the scope of business connections, especially if they are not accompanied by the hiring of employees. In practice, this context has led to an imbalance between the business model contemplated in labour regulations as the sphere for workers provide services and the complex and unstoppable economic reality that characterises the most powerful companies on the planet[3]. The organisation of a company, including platform companies, as a group is

[3]The profits of these companies have followed an exponential pace (they have increased by around 20% every year), but with the pandemic, their profits have grown by 31.5%, for example, in the third quarter of 2020, they earned 38,097 million dollars (32,645 million euros). The mammoth *big tech* companies rival Saudi Aramco, Saudi Arabia's state-owned oil company, considered the world's most valuable company on the stock exchanges.
Source: elperiodico.com/en/economia/20201030/google-apple-facebook-y-amazon-mejoran-sus-resultados-pese-a-la-pandemia-8182509

not bad in itself, the central issue is whether this should be taken into account for the interpretation of labour standards and how to do so.

We must start by asking why it is necessary to take the business structure of platform business groups into account. The answer is both simple and complex. From the outset, it can easily be deduced that **the choice to organise a company as a group is made for tax and commercial reasons, but this does not prevent it from having an impact on labour rights.** Thus, this organisation alters many of the traditional postulates and concepts in the sphere where a judicial body in labour law is used to operating.

## 2. THE TYPICAL ORGANISATIONAL MODEL OF A PLATFORM COMPANY

Platform companies are characterised by their organisation as a group of companies (ap. 2.1), a growth strategy based on the division of business into smaller units (ap. 2.2) and the reduction of physical business and resources to external companies and suppliers, where most of the workforce essential to develop their activity is concentrated (ap. 2.3).

### 2.1. Platform companies organize subsidiaries in the countries where they operate

A platform company seeks a business organisation that is fiscally orientated to paying as little tax as possible. **The choice of a group of companies as a business structure is not risky because it allows these algorithm-based businesses to achieve three intertwined objectives**.

First, the creation of one or more subsidiary companies is able to justify invoicing between the companies of the group, which implies a reduction in taxes, because the subsidiary companies have to pay the parent company or companies that manage the algorithm for intellectual property rights. With these payments, the profits of the subsidiaries operating in each country decrease dramatically because every time the algorithm is used, the platform company, if I may be allowed to simplify, pays itself. These are the so-called intra-group transactions, in which the companies of the corporations carry out transactions of goods and services between each other[4]. These types of operations, common in any multinational corporation, are increased in platform companies through intellectual property rights in the use of algorithms. One

[4]*See* the reference to intra-group operations in the General Tax Control Plan. Retrieved from: https://www.boe.es/buscar/act.php?id=BOE-A-2021-1379

part of the business of platform companies has no physical movement and is produced by algorithms. Thus, transactions for the use of these become an essential element. In addition, since algorithms have an unfixed market price, their valuation is very difficult. Spanish tax authorities, like the tax authorities of other countries, have targeted transfers between the companies of corporations, because although they can sometimes be to real operations, in other cases, they can lead to tax avoidance activities. This intercompany billing can lead to illegal conduct if it does not correspond to a market value. The problem with technology companies is that the market value of elements of intellectual property is difficult to measure, so the payments made to the parent company by subsidiary companies for the use of technology are, in reality, an uncontrollable element. This allows the parent company to make profits where it is less taxed and subsidiary companies are allowed to exploit the tangible and intangible assets in the country "paying" for this to the parent companies. Although these intra-corporate transactions allow tax authorities some control if there is a tangible value, in the case of technology companies, where the most important assets are intangible, this is extraordinarily complex.

In many cases, they can only agree with the figures that the multinational company itself provides regarding its intra-group operations. This explains why, despite the fact that many companies claim to pay taxes, and this is the case if we look at reality simply, but not if we look at some facts in more detail. **The taxation of these companies in corporation tax can be ridiculous compared to their turnover figures in Spain, to the point that their corporation tax disappears or is reduced to the maximum[5]. In this way, any middle class citizen would be amazed to see how he/she pays more taxes than some of the most profitable companies in our country**[6].

[5] To avoid qualifying this description as bias, two specific examples of platform company taxation should be used as an illustration. In the first, the North American e-commerce multinational Amazon did not pay any type of corporate tax in 2020 in eight European states, including Spain, despite accumulating sales of 43.84 billion euros, its historic record. Source: Ara newspaper 4-5-21. Something similar happened with Netflix, which in 2019 paid a total of 3,146 euros in corporate tax in Spain. Source: González (2019).

[6]This is also explained by the fact that many platform companies offer services without charges or use prices below cost in exchange for holding a dominant position in a market and displacing competitors. Although the strategy of predatory pricing and selling at a loss is irrational from the perspective of economic liberalism, it is perfectly rational for companies like Amazon or Uber, interested in displacing competitors and dominating one line of business, which in turn can fuel others. These strategies are rewarded on the stock exchange by investors, who consider that, although companies lose money for a while, they can recoup it. More broadly on these strategies, V. Khan, L. M. (2017). On predatory prices and the wide possibilities that the financialisation of the economy favors and the enormous access to capital for the stock market value of these companies, Gallaway (2018).

Second, the creation of several subsidiaries makes it possible to locate the parent companies or branches of the platform group of companies, which is generally organized into geographical areas, such as European, Asian, etc., in countries where taxes on profits are lower. The registered office of the parent companies, as with many multinational corporations, is selected à la carte from the many tax havens on the planet, and if this were not enough, in Europe, there is a grouping of subsidiaries under the umbrella of parent companies in countries that carry out social dumping in corporate tax, such as Luxembourg, Ireland or the Netherlands[7]. In contrast, losses or expenses arising from the use of the algorithm in platform companies are maintained through their subsidiaries in the countries where they operate. Although there is growing action from the tax agencies of these countries[8] and an OECD agreement has been reached to set a common rate on corporate tax and put the focus of taxation, not on where companies have their tax residence, but on where they carry out their business activity. Hopefully this will be effective, but as long as the fiction of paying to use intellectual property rights for the use of the algorithms of a subsidiary by its parent company exists, in addition to the corporate sanctuaries or Gardens of Eden of tax havens, the taxation of these companies will be like religion and it will be necessary to take a leap of faith to believe it. These companies move their growing capital into the offshore world and manage to pay taxes neither in the producing countries, which try to attract them with low costs, nor in the countries where sales take place. This multiplies their profits, weakens competing companies, especially if they are local or national and cannot resort to the corruption of tax havens,[9] and feeds the vicious circle of market control in companies of global dimensions.

Third, group organisation gives platform companies other advantages, as it enables them to enter different markets, limits their responsibilities and allows them to create a network of contractors, generally of a smaller size, which are under strong competition to stay in the network and are heavily dependent on the business created by the company platform.

### 2.2. The "divide and conquer" strategy

[7]On this issue, *see* Pocketty T. (2014).

[8]Detailing the increase in sanctioning actions of the tax authorities against multinationals, *see* Article. Giménez, O. (2021). Hacienda dispara las multas a grandes empresas para frenar la elusión fiscal. https://www.elconfidencial.com/empresas/2021-09-05/hacienda-aeat-presion-multinacionales-elusion-fiscal_3256154/

[9]Saez and Zucman (2020), p. 10, who point out that, "L *'UE s'est montrée d'une grande faiblesse dans la lutte contre la dissimulation des fortunes dans les paradis fiscaux, tolerant des décennies durante el evasion fiscal offshore*".

Brilliantly applying the concept of "divide and conquer", which comes from the Greek and was widely used by Julius Caesar and Napoleon, all multinational companies use the structure of creating several subsidiaries, and dependent on these, a puzzle of several contractor companies. It is about maintaining power, about winning by breaking larger concentrations into pieces, which individually have less responsibility, but can be more flexible. Business organisation in large companies with a Fordist vertical structure is dysfunctional from the perspective of taxation, competition authorities, and labour law, which, for example, organizes worker representation systems according to the workforce itself, among other things. In this sense, platform companies have adapted to the context by maintaining the economies of scale of large companies, but with external expansion through subsidiaries and contractors.

The creation of subsidiaries requires the use of a well-known concept, the administration of one legal entity by another legal entity. In our legal and economic system, it is a fact that the separate legal entities and limitation of responsibilities of capitalist societies are core concepts. As a matter of fact, the groups of platform companies directly fall into these concepts, with a business strategy based on the implementation of dogmas such as the financial autonomy of the legal entity. Although this is lawful, it cannot be naively ignored that this organisation complicates control procedures, because, although our laws establish systems of responsibility for which de jure or de facto administrators of a legal entity can respond, they are not always easy to activate. Furthermore, there are difficulties for the Spanish tax authorities to derive tax responsibilities for the administrators of a legal entity. This is because Art. 43 of the General Tax Law must be in accordance with 236.6 of the Corporate Enterprises Act.

However, fragmented organisation also has labour implications. Network organisation would weaken, without a frontal attack, the power to act of the old nation states and the negotiating opportunities of unions and workers.

In labour law itself, we find examples of how it is very complex to hold a platform company responsible if a labour group of companies is not declared. This concept, conceived for pathological or fraudulent groups, is very difficult to judicially transfer to a declaration of responsibility of the subsidiaries of a platform company, except in crude cases. In our legal system, rights to information in collective redundancies are recognised, or it is possible to negotiate agreements for groups of companies, but on many other occasions, labour law treats groups of companies as if the group did not exist or had no impact on labour relations. Thus, **if the network of contractors is not considered to be a labour group, jurisprudence does not take into account the**

**network of companies as a functional area of labour relations, even if it is companies at the end of the network that make the most important decisions with an impact on labour**. This weakens the position of workers, leaving them alone faced with several companies, and at the same time, strengthens the position of companies, even more so if they have no physical base. The group structure has advantages in the labour sector, since the courts have an excessive taste for simplistic models for the treatment of companies and resort to the doctrine of the labour group versus the commercial group, so with good advice and avoiding the coarsest outward actions, it is easy to configure a platform company under the veil of a commercial group of companies and avoid controls.

### 2.3. Reduction of physical business and extensive use of contractors and suppliers

Many platform companies do not have a physical business or reduce it to the maximum, outsourcing the production of goods and services and extensively resorting to contractors. **Outsourcing has been an important resource of business organisation in all types of companies, but with platform companies an additional step is taken, so that in some platform companies there is not even a physical workplace in the country despite a spectacular turnover.** In addition, there are many platform companies that allow access to goods and services without intermediaries. These are perfect companies without employees or as we have seen in the case of Meta (formerly named Facebook) with very few in our country[10]. In companies such as Google, Netflix or companies dedicated to renting tourist apartments, staff structures are even more reduced. As anyone can see, *"the centre of the system is no longer a factory, but software, an application or app based on algorithms that puts producers and consumers in contact with each other, consumers in contact with each other and producers in contact with each other[11]."*

Platform companies are not providers of numerous permanent and stable jobs. Often the Internet has made not only producers, but sales staff unnecessary. With very similar creative strategies, worker must be kept to a minimum and moved abroad to reduce costs. Many workers in these companies already teleworked before the pandemic and among these self-employed workers predominate. When workers are employed in the

[10]Facebook Spain tripled its workforce between 2014 and 2018, going from 12 to 36 employees. Source https://en.statista.com/estadisticas/869425/numero-de-trabajadores-de-facebook-spain/
[11]Pessi and Zumbo (2021), p. 9

employment system, they are concentrated in contracting companies and temporary employment agencies. Delivery companies do not employ full-time workers for delivery, because there would be too much down time. Nevertheless, the company, in a continuous process of improvement, is required to equip itself with an even more flexible system, using drones for delivery[12] and robotics for logistics. Thus, a platform company necessarily has a tendency to reduce Social Security contributions to zero.

In this way, platform companies do not organise a conventional group of companies, with companies with physical workplaces dependant on a parent company, but in many cases divisions are established, so algorithmic management may be carried out in one place, commercial management in another, there may be virtual companies, without workers etc. In contrast, labour relations for the platform company usually focus not on its subsidiaries, but on the companies in the network, on the contractors. This leaves **the platform company in a comfortable position, since it can tell its contractors how to manage labour relations with their workers, and even "force layoffs"[13], with a perspective similar to that of user companies with respect to temporary employment companies, but with a means to indirect employment that allows capital and labour to be obtained without its own workforce**.

## III. THE INADEQUACY OF LABOUR LAW FOR CHANGES IN BUSINESS ORGANISATION

The platform company structure is perfectly logical in the market sense. The problem is that, at the moment, we have few institutions and work standards that allow us to counteract its effects. Moreover, unfortunately, it is likely that the answers that are being given from labour law social security will be ineffective. At the core of the discipline, labour law has had a contractualist vision constituted by the employment relationship established between a

[12] Sobre los lobbies de las empresas de plataforma como Amazon, para la lograr cambiar las regulaciones gubernamentales sobre el uso de drones en los Estados norteamericanos, *vid*. Gallaway, 2018, p. 29.

[13]I use the expression used in a press article showing that Amazon forced the dismissal of an employee of a distribution warehouse who was employed by a contractor company for taking four masks. The dismissal was declared inadmissible in the Social Court No. 2 of Oviedo closing with the payment of compensation, the contractor company Cobra Instalaciones y Servicios SA taking resposibility. This multi-service company, subsidiary of the ACS group, was the only defendant in the lawsuit and the dismissal was justified by the loss of trust of the client, that is, of the platform company. See article: "Amazon forzó el despido de un trabajador de un almacén de Asturias por coger 4 mascarillas". Retrieved from: https://www.elconfidencial.com/espana/2021-10-11/amazon-empleado-asturias-coger-4-mascarillas-para-protegerse_3304574/

worker and an employer. However, in many cases, failing to analyse business links is a mistake. This blinkered view, which has disregarded the area of business links and, even more so if these require knowledge on applicable law and internationally competent jurisdiction, leads to inadequate interpretations because simply neither the subsidiaries nor the network of contractors of platform companies are autonomous companies. This lack of autonomy leads to the filing of lawsuits in which the lack of attention to business links is prejudicial to workers. This is evident at a collective and individual level. In the first, there are effects on rights of representation, negotiation and conflict.

Building representation structures is difficult in platform companies because of our outdated representation system that is linked to the workplace[14] and because of the difficulty of identifying the workplace in digital companies without a physical base[15].

In many cases, true collective interlocution is not possible, and if there is, it is never directly with the parent of the platform company. **Thus, in many cases, collective negotiation with them is impossible because the existence of a puzzle of shell companies and divisions prevents having a social dialogue *de facto* with the company that really sets the working conditions, since the contracting company of the workforce is absolutely restricted by the conditions of the commercial contract.**

Strikes and industrial action are also almost non-existent, as shown by the fact that in some strikes a platform company considers that the spokesperson to talk to end the strike is not the workers' representatives, nor the traditional unions, but the company that groups together or manages the external companies[16]. Another indication of inadequacy is that workers often protest in front of an embassy or a government agency, as they are not very sure where the platform company is located. In a virtuous vicious circle, union action is hugely hampered in the context of each worker's almost individual relationship to an algorithm or to one of the multiple contractors working for them.

[14]On this question, this work is compulsory reading AA.VV. (dir. X. Solà Monells and R. Esteban Legarreta) (2021).

[15]For example, in a work inspection report against a subsidiary of the platform company Cabify in Valencia, the workplaces that were listed as registered offices had curious locations, such as an office building, houses or offices rented for hours in coworking. This could be normal, if it were not for the fact that they were passenger transport companies.

[16]See https://www.elperiodico.com/es/internacional/20210323/huelga-masiva-trabajadores-amazon-italia-11604924. The strike was announced after, according to unions, Amazon interrupted the negotiations claiming to be carrying them out with AssoExpressi, an entity that represents 90% of the subcontracted companies and that the multinational considers the "correct spokesperson".

But the inadequacies also occur on the level of individual relationships, and even with regard to recent laws that regulate platform work. To illustrate this, I will select the following hypothetical cases:
1.- In the area of restructuring measures, I will examine the case resolved in the High Court of Justice of Catalonia (STSJ Catalonia) 11-12-20, rec. 50/20 and confirmed by the ruling of the Supreme Court on 20-4-22, rec. 241/22, concerning the Airbnb platform company[17].
2.- In the area of hiring in platform companies, I will analyse some responses made by the Uber Eats company to the Riders' Law.
3.- In the sphere of subcontracting and illegal transfer in platform companies, I will address some infringement proceedings initiated by the Labour Inspectorate against Amazon subsidiaries and contractors.

### 3.1.- The case of Airbnb redundancies during the pandemic

In the case resolved in the High Court of Justice of Catalonia 11-12-20, rec. 50/20, the platform company Airbnb had outsourced the contact-centre service for incoming and outgoing communications, to support hosts and guests by telephone, email, chat, and other means, to Spain. During the first months of the lockdown caused by the emergence of the pandemic, during which the situation prevented tourist operations, the platform company decided to end its commercial contract with the contact centre company located in Spain, which in turn proceeded to collectively dismiss the almost 1,000 workers who provided this service. However, Spanish regulations had opted for temporary employment regulation files (furlough scheme, ERTE) to maintain jobs during the health crisis.

The union challenging this considered that the collective dismissal carried out was caused by the state of alarm due to COVID-19 and the restrictions of all kinds derived from the health crisis, and that, given the labour regulations approved to face the consequences, the telephone service company

[17]This assumption is interesting because an existing assumption in labor doctrine that platforms *"that are limited to offering the temporary enjoyment of a property (Airbnb, for example, contacts millions of people around the world for the rental of accommodation), do not usually pose problems at the legal and labour level, since the personal services that can be provided in order to guarantee the enjoyment of the property are marginal and, in any case, are easily allocated to employed workers (cleaning, maintenance or customer service), unlike on-demand work provided through apps/Internet)*". In this sense, Serrano Olivares (2017), p. 23, and previously Calvo Gallego (2017), p. 372. Likewise, the proposal for an EU directive on working conditions in platform companies excludes these (art. 2.2). In that regard, it should be kept in mind that the CJEU (EU Supreme Court) (ruling in Grand Chamber 19-12-19, C-390-18) has placed that platform within the scope of the Information Society Services Directive (Directive 2006/123/EC).

was required to address the situation through an ERTE and the prohibition to dismiss contained in article 2.2. of Royal Decree Law 9/2020 had been violated.

For its part, the contractor argued that the client platform company had definitively terminated the contract and that given the situation it was not possible to honour the guarantee provided for in art. 18 of the telephone service sector agreement to try to ensure remedies for the same workers by a new contractor.

The Catalan High Court of Justice ruled in favour of the contractor, considering that the "direct" cause, using the adjective in the ruling itself to limit its inquiry, of collective redundancies was the termination of the contract for the provision of commercial services for Airbnb, not the loss of activity as a result of COVID-19. The verdict had one dissenting vote. The dissenting vote, by Judge Joan Agustí Maragall, emphasised the self-imposed blindness of not contemplating the causes as a whole:

> *"The position I maintained in my presentation proposal, and which I still maintain, is that, given that the cause of Airbnb's termination of the contract was COVID-19 (which the ruling of the majority admits is not as a "final and intermediate cause" in its third legal basis), and that said termination is the basis of the productive and organisational causes invoked by CPM to justify the collective dismissal, it is obvious and evident to conclude that said causes are "related to COVID-19" (...), a conclusion that - consequently - determined the application of temporary flexibility measures".*

In my opinion, the dissenting vote was more correct than the majority decision. However, the Supreme Court in the ruling of 20-4-22, rec. 241/22, without any dissenting vote, did not see it that way and insisted on not looking beyond the termination of the contract[18]. However, the issue should not be discussed with the just a simple criticism of the aforementioned ruling, but rather deserves some reflection on the failure to evaluate the decision made by the platform company and the way in which the employment was produced for it.

It does not seem reasonable to avoid the prohibition to dismiss, placing platform companies, which like Airbnb have no physical base for their tourist

[18]The core point of the ruling is that "*... having ascertained the termination of the contract, and being those affected by the termination of the contract, 924 workers, of whom 908 are staff assigned to the contract and 16 "structure" staff (of support to said contract or considered "surplus" for the loss of the same); it is clear that art. 2 of Royal Decree-Law 9/2020 , while the cause that supports the collective dismissal decision, does not have as a direct cause the loss of activity as a result of COVID-19, but the direct cause being the termination of the contract for the provision of commercial services to Airbnb that led to the collective dismissal operated with effect from 12 June 2020* "(Foundation of third law, *in fine*).

apartment business and resort to outsourcing the workers they need for its management, in a more advantageous position than companies in the hospitality sector that opt for directly hiring the employees in their service. **If the essential activity of the platform company is to act as an intermediary in the rental of tourist apartments, it must be bound by the same rules of play as the companies in the sector.** Otherwise, there is a risk of favouring companies (platform companies acting as intermediaries) over companies with physical structures (hotels) that compete in the same space. Note that it was not a question of competing on the basis of the best offer, nor of some companies being more creative than others in their hosting services, but of some companies having been subject to institutional controls, which have not governed those that have been organised as a business without a physical base and resorting to outsourcing when it was essential to have staff in their service, who are then dismissed with without greater responsibilities.

An obvious idea, but as we see, one that did not appear in the majority vote in the initial ruling or in the one that resolved the appeal, is that companies must be subject to the same institutional controls, whether they are organised as a network or as self-sustaining businesses. Otherwise, **state supervision is circumvented through a network structure, which allows different rules to be applied, with fewer employment guarantees for workers in the network workers, because only the emerging company is taken into account, that which hires workers and not the one that benefits from the work, in particular if this company is a platform company with a diffuse structure.**

### 3.2.- The case of Uber *Eats riders* under law 12/2021

The second case that is relevant for analysis is linked to the effects of Law 12/2021 which, as is well known, has established the presumption of employment for delivery platform workers and is as a model for a future EU directive. This case is useful to analyse the reaction of most delivery platform companies to the introduction of employment contracts[19], which has not been to increase their workforce, but to resort to external companies. In many cases these companies are multi-service companies that deal with the management of staff with actions that border on, or cross into illegal transfer. It is no coincidence that many platform companies are turning to multi-service companies, which operate like a pound shop or bazaar in the large niche of the

[19]Although some delivery platform companies such as Glovo, have opted for an attitude of rebellion, keeping the relationship of riders as self-employed. Noting this situation, *see* https://www.elconfidencial.com/tecnologia/2021-08-09/denuncia-ccoo-glovo-riders-asalariados_3223567/

outsourcing market. They offer any service that the main entrepreneur or client may need and have grown greatly, in such a way that many traditional companies have been converted into a multi-service company (Acciona, Ferrovial or ACS have one). Many investment funds have caught on to the business and multinational groups such as Randstad or Manpower (temporary employment agencies on a global level) have created their multi-service branches in addition to a special employment centres (due to their privileged agreement and the favourable criteria established in the Law on Public Sector Contracts and corporate social responsibility policies).

In this way, **platform companies have gone from resorting to fake freelancers directly, and, instead, have adopted the strategy of outsourcing. And with whom? With companies specialised in outsourcing, with multi-service providers.**

However, let us look at a specific worker, has his or her condition as a *rider* improved significantly after Law 12/2021? In many cases workers have 3-hour contracts, for 3 days on weekends (Friday, Saturday and Sunday) and they earn the minimum wage per hour and small, or very small, compensation for mobile and mileage expenses, of ridiculous amounts: 5 euros per month for mobile data and 4 cents per kilometre[20].

The improvement in conditions takes place because the signs of illegal transfer adapt to the algorithmic management of the work, as has been done with evidence of employment. It is illogical that our Supreme Court held that a delivery platform company is the employer of a *rider*, and now it is enough for a company to stand in the way like a parapet. There will be a new battle, but the platform companies are already preparing, and in a stroke of genius they talk about equipping supplier companies with their own algorithm. It will be necessary to analyse whether this algorithm is not a mere mirror algorithm of the platform company.

On the other hand, the technical autonomy of contracts in a platform company must be carefully analysed. Platform companies base their assets on the brand and intangible elements, they keep the management of the algorithm, but outsource the physical business, transport or delivery. Contractors can therefore provide some infrastructure, but this should not exclude the assessment of an interposition in the employment contract. The issue should not be settled by pointing out that as long as contractors are not limited to assigning labour and have minimal infrastructure, everything will be legal.

[20]Data extracted from an interview with a Randstad manager. The data provided were prior to the labour reform of Royal Decree Law 32/2021.

However, another element that should not be forgotten to show that labour regulations are outdated, is that even if illegal transfer is declared, the sanctions in our laws are ridiculous, even with the increase established in art. 40.1.c) of the Law on Infractions and Sanctions in the Social Order (LISOS), which can reach 225,018 euros. A sanction of 60,000 euros can be significant for a small or medium-sized company, but it is a drop in the ocean for a company such as the Spanish subsidiary of Cabify, which in our country alone had a turnover of 187 million euros, or when the sanction imposed on Amazon Spain fulfilment in an illegal transfer case was 150,000 euros, but the turnover of this single subsidiary in 2019 was 365 million euros. The sanction imposed on this subsidiary by the Work Inspectorate in Catalonia was 0.00041% of its turnover. It would be necessary to adapt the sanctions to amounts that are proportional to the business of the platform company and its subsidiaries in our country, in the same way as other infractions and administrative sanctions, in matters of competition, which use parameters such as the percentage of the value of the sales or turnover of a company[21]. With regard to these, even the doctrine of commercial law alludes to their ineffectiveness, given the economic power of the fined companies[22]. This is beginning to change, as in August 2022, multi-million fines have been announced for Amazon and 17 contractors for illegal transfer, although the case is still being processed and the total figure comes from the large number of workers affected.

### 3.3.- Double use of temporary employment agencies and contractors for Amazon subsidiaries

Another thought-provoking case is that of the aforementioned inspection report against two Spanish subsidiaries of Amazon, which has consolidated a powerful network of external delivery contractors. However, let us now look at the way in which the supply of work necessary to develop the platform company's activity is organised.

The case stems from an infraction notice initiated in Barcelona. An interesting part of the notice describes the working process of Amazon in Spain through various subsidiaries.

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[21]On this issue, it is useful to consult the following document: https://ec.europa.eu/competition/cartels/overview/factsheet_fines_en.pdf

[22]For example, in relation to the proposed EU sanctions on Facebook and Google, of 122 million dollars for the fact that Facebook and WhatsApp shared data and 2.7 billion dollars on Google, for anticompetitive practices, Gallaway, 2018, points out: "*This was a good start, but it's worth noting that those fines are mere mosquito bites on the backs of elephants. The Facebook fine represented 0.6 percent of the acquisition price of WhatsApp, and Google's amounted to just 3 percent of its cash*".

1. There were large logistics warehouses in main cities stocked by Amazon suppliers.

2. Packages would then be moved to sorting centres (and after sorting, they would be moved to logistics centres).

3. In these centres, the algorithm would again classify packages according to destination, postal codes or geographical areas, establish delivery routes, determine the number of drivers necessary and the duration of their working day according to routes of 6, 8, 9 and 10 hours.

4. There were transport companies that would take care of delivery. For example, in one Amazon centre, a single one of these companies, called Tipsa Delivery, used 196 workers. However, the workers did not come from Amazon, nor from Tipsa, but from several temporary employment agencies, to which Tipsa regularly and continuously resorted. The workers made available had specific contract for work or services, the purpose of which was to cover the "new Amazon Next Day service" project. The company's representation argued that this was justified by the constant change in the number of routes communicated by Amazon subsidiaries, causing a constant fluctuation in the number of carriers needed on each occasion.

However, regardless of whether the sanctions for illegal transfer of workers are imposed, as would be desirable for the adequate protection of workers and the regularisation of the social security obligations of the employees of platform companies, it is interesting to focus on the business organisation and how this can deactivate employment standards.

Note that **the principle of the omniequivalence of working conditions provided for in art. 11 Law on Temporary Employment Agencies (LETT) was rendered useless against the platform company.** The delivery workers of the temporary employment agencies were made available to Amazon contractors. This implied that the workers were not paid as Amazon workers, because there was a parapet company, if I may use the expression. These workers, made available by three different temporary employment agencies, were only protected by the principle of omniequivalence of conditions with the workers of the contractor, which incidentally applied the Courier Agreement and not the Agreement for the Transport of Goods by Road and Logistics of the province of Barcelona, which obviously had superior conditions.

The main weapon for the protection of workers made available was deactivated through the use of a contractor. With this, the agreement of reference is that of the user company, which, in turn, works for a subsidiary of the platform company. In turn, the contractor user company of the network makes a biased selection of the sector agreement according to the activity.

Note that with the labour reform of 2021, the issue of the sector agreement in subcontracting will be strategic and the use of temporary employment

companies for permanent seasonal contracts will be key. In platform companies, but also in other companies, there are usually jobs with unpredictable working days and schedules, which will probably be channelled through the permanent seasonal mode, and contracting and temporary employment agencies. Thus, the improvement of the labour regulations introduced in art. 42.6 of the Workers' Statute (ET) and art. 84.2 of the ET, which prevents salary conditions in subcontracting from falling below the sector agreement, must be monitored to stop this from being only complied with in appearance. The battlefield moves to the sector agreement. There are work inspections or claims made by unions such as *Comisiones Obreras* de Cataluña (Workers' Commission of Catalonia, CCOO) against platform companies and contractor companies that claim, for example, that in the sector agreement is being selected to the detriment of workers (Courier Agreement versus Transport Agreement). **Deciding on the sector activity for the purposes of the collective agreement must look not only to the contractor company, but also to the productive process into which it is integrated.**

On the other hand, the use of temporary employment agencies as the mode of permanent seasonal work from the reform in art. 16 of the ET by Royal Decree Law 32/2021 must be examined to avoid cases of casual on-call employment for contractors of the subsidiary companies of the platform company group. We have experience of how logistics activities function in platform companies in the Randstad area, where the working conditions of workers supplied *just in time* by logistics contractors in the Netherlands are extraordinarily precarious[23].

[23]Interesting analysis by sociologist, López Calle, P. (2018), on work through logistics platforms with temporary workers displaced in the cradle territory of capitalism. The Dutch Randstad is the territory of influence of the port of Rotterdam, in the great maritime-fluvial Delta in which the rivers Meuse and Rhine converge, both navigable several hundred kilometers towards the interior of the continent, crossing different countries of Central Europe, such as France, Germany, Belgium or Switzerland. As the author points out: "*The triangular relationships between temporary employment agencies and workers, and between these and the user companies, also make it possible to combine two managerial objectives that until now were difficult to combine: high contractual flexibility with high working availability. Under this model, the virtual bargaining power of workers, which in other cases derives from the specific labour force needs of Just in Time production and distribution systems, is neutralized when these employees do not negotiate their work directly with the employer but with an intermediary who occupies that place (negotiating their employment, …). The intermediary, on the other hand, acts as a lung, as it is called in the jargon of production systems in tense flow: it provides just in time labor to the final customers and keeps labor force in stock in those kinds of human warehouses that constitute the residential spaces provided by the temporary employment agencies. Flexibility does not interfere with the regularity with which it can send precise amounts of work to each node of the system in real time, but on the other hand, what the temporary employment agency contracts, albeit flexibly, is availability*."

## 4. CONCLUSIONS

Labour relations that are developed directly in a platform company, or more frequently, because platform companies tend to avoid direct hiring, with a contractor must take into account the business structure. The existence of a complex business organisation to obtain tax advantages will have consequences on the individual and collective rights of workers, since their working conditions will often be marked by the demands of the platform company, but if the business organisation is not taken into account, some protections established in employment standards may be avoided.

Companies in platform company networks are subject to frequent restructuring operations to be more competitive, and often these are not due to economic causes, but to organisational and productive measures. A restrictive interpretation of the relevance of groups of companies, if there is no labour group of companies, the lack of responsibility for dismissals in labour regulations on contractors and interpretative flexibility in relation to the organisational and productive causes linked to outsourcing decisions leads to an interpretation that clearly favours platform companies, which in many cases, take no responsibility for the decisions in labour organisation that they adopt and lawsuits are not even brought against them. Faced with the situations that have illustrated the (unsatisfactory) treatment of labour relations in platform companies, it is a question of guaranteeing a very simple issue, which I link with the *cui prodest* principle that **platform companies must be responsible for the working conditions of their network of contractors in Spain, so their organisation does not make working conditions precarious. If a company is able to maximise technology to locate workers from minute to minute, it must not only benefit from these possibilities[24], but also face the responsibilities that derive from its activity.**

There is nothing new about this question. A classic principle of the Supreme Court, cited to the point of exhaustion, has been that subcontracting and using subsidiaries is not prohibited in our legal system. Nevertheless, it should be added, and this addition should never be forgotten, that this is "*independent of the legal and interpretative precautions necessary to prevent workers' rights from being violated in this way"*[25]. However, the first part of the sentence is usually

[24] *See*. Mendiola Zuriarrain, J. (2018).

[25]For all, the ruling of the Supreme Court 27 October 1994, appeal for the unification of doctrine. 3724/1993, regarding the application of art. 44 of the Workers' Statute (ET) in a case of organisational decentralisation through the creation of a subsidiary company, rejected union objections to the outsourcing operation for responding to "*a rigid and self-sufficient concept of company, by virtue of which the employer must be the owner of all the assets involved in the production process"*, admitting the legality of productive decentralisation "*regardless of the legal and interpretative precautions necessary to stop workers' rights possibly being violated in this way"*.

remembered more often, that is, the legitimate nature of outsourcing linked to free enterprise, than the second -which refers to legal and interpretative precautions to stop outsourcing from being a way to circumvent workers' rights.

In addition, I believe it is appropriate to analyse whether it is sometimes necessary to adopt interpretative precautions to prevent outsourcing in platform companies from being a way to adversely affect workers' rights. **It is not a question of hindering the business organisation of platform companies, but rather with certain interpretations it is possible to contribute to or curb precarious employment.** There will be those who think that this is not the role of a judge, but of a legislator. A Spanish proverb says that a bad scribe blames the pen and like the god Juno, who has two faces, any legal interpretation can be analysed according to the opinion of each person, but it is reasonable is to seek, if I may say so, a neutral interpretation of business organisation[26], from the point of view of workers' rights, so that an interpretation in which a business organisation that does not adversely affect labour rights will always have to be explored. **It is about trying to assess the functional scope of the business organisation, so as to assess the impact it has on the application of employment standards.** The fact that the regulations are designed, in most cases, for single individual companies strongly conflicts with a practical reality in which business structures linked to productive decentralisation, business concentration and the creation of business networks prevail, and where, ultimately, business links have a direct impact on labour relations.

Instead, an interpretive principle of "neutrality" should be applied in business organisation, so that the group structure and networks do not adversely affect labour rights. This is not a new principle but an attempt to consider the functional scope of labour relationships developed within a network of companies and whether the legal standards require an interpretation or adaptation to stop them from being avoided to the detriment of workers. A functional theory is applied, since it is a question of seeking the

[26] This idea, under names such as the functional concept of employer, also appears in international jurisprudence and doctrine. They also point out *"They also considered that the ban could make it easy for employers to exploit the law to their advantage through resort to various legal stratagems, such as delocalising work centres, outsourcing work to other companies and adopting complex corporate structures in order to transfer work to separate legal entities or to hive off companies. In short, trade unions could find themselves severely hampered in the performance of their legitimate, normal activities in protecting their members' interests". In National Union of Rail Maritime and Transport Workers V. United Kingdom* (Application No 31045/10) (2014). European Court of Human Rights 8 April 2014. Retrieved from: https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-142192%22]}. As for doctrine, see Prassi, J. (2015), pp. 98 et seq.

legal interest of each standard applicable to the network of companies and specifying whether the factual basis is affected by the fact that the provision of services is carried out in the network. In some important rulings in 2020, such as that of the Supreme Court of 29 December 2020, referring to contracts for work or services in subcontracted, but regular, activities, readdressed and alluded to exactly the need to avoid unfair competition through subcontracting and to focus on the reality of the business organisation, without outsourcing automatically justifying a temporary contract.

I believe that, regardless of the highly improvable labour regulations on platform companies, this must be analysed beyond the contracting company to understand business relationships and their influence on labour relations. Labour law cannot be unconnected to business realities, and in certain cases, it must consider the unity underlying business links between platform companies and their subsidiaries and between platform companies and their contractors. **The key is to consider in which cases the group of platform companies should be valued as an individual area of labour relations, and the answer is when in the legal interest of the rule there is a one single consideration for the companies for which the worker directly or indirectly provides services.** This will oblige those who interpret the legislation to identify the legal interest of each rule applicable to platform companies or companies in the network of contractors working for them in each case and specify whether the rule is affected by the fact that the provision of services is carried out for a group. Thus, in some cases this will mean that the decisions of the group of platform companies become a single functional area where conduct is assessed and certain rules are applied.

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