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Pro-immigrant Digital Platforms in Portugal: An Overview

Monique de Souza Arruda*

Abstract: The present study analyses work through digital platforms in Portugal, focusing on immigrant workers, and assesses the existence of initiatives guaranteeing decent work for this category of workers, given their social vulnerability. Consideration was given to Law n. 45/2018, of August 10, the law TVDE (Individual and Paid Transport of Passengers in Disabled Vehicles from an Electronic Platform); the Green Book of the Future of Work (2021), which analyses digital work in Portugal for the creation of efficient public policies capable of providing decent work, even in the face of the challenges created by work in the digital age; subsequent actions of the Portuguese government regarding work on digital platforms and, particularly, those directed at immigrants, constituents of the majority of the workforce in this economic activity.

Keywords: Digital platforms; decent digital work; platform economy; immigrants; Portugal.

Introduction

The issue of work on digital platforms has been identified as a major challenge to labour law in the context of digital transformation. This state of affairs introduced a new technological paradigm, which firstly affected the industrial sector, bringing in a latest production model, that was made possible by the technologies of the 4th Industrial Revolution, triggering, at first contact, concerns regarding the replacement of labour by machines and raising the question about how such “coexistence” would take place.

* Researcher and PhD Student, Faculty of Law, Universidade Católica Portuguesa, (Portugal). Email address: s-msarruda@ucp.pt.

However, at the present time, after the dissemination of this current model of life to all fields of life in society (cultural, social, educational, political), fresh questions, much deeper than the influence of this revolution on the economy, have been shaking the structures of a rigid labor law, shaped by automated Fordist production lines.

In Portugal similarly to other countries in Europe and in the world, human work through digital platforms gained not only more robust structure, but also followers, initially in the field of passenger transport, through applications such as Uber. Today there are many active platforms in Portugal, including Bolt, Free Now, It's My Ride, Glovo, Uber Eats, Bolt Food, Take Away. There is a very relevant common feature regarding these platforms: they are predominantly made up of immigrants¹ - Brazilians, Pakistanis, Indians, Venezuelans, Bangladeshis, people who arrived in Portugal to seek better living conditions for themselves and their families.

It so happens that, when they land in this country, these workers face enormous difficulties in getting legalized with the State, either because they entered without having proper visas that could grant them for authorization to stay, or because of the existing discrimination in the "restricted" labour market – even though they are legalized and have the corresponding technical and academic training for employment. Therefore, due to lack of opportunities in their adopted country, they resort to platforms to provide their livelihood, due to the ease of entry, as well as few and viable requirements of the activity. However, for this, they find themselves framed, in most cases, as independent workers, that is, self-employed, as evidenced worldwide in this process of "uberization" of the economy.

In order to alleviate competition and tax problems, the government created in Law no. 45/2018, of August 10, the "4th person" in the relationship (client, platform, service provider), which is the TVDE operator, which makes it difficult for these people to be legalized as typical workers by presumption of the existence of the employment contract, pursuant to art. 12 of the CT, considering that, in order to carry out the activity of passenger transport, the constitution of a legal person is required, which is not always consistent with reality, since, in many cases, TVDE operators consist of a self-employed person who constitutes this

¹ As defined by the European Union "in the global context, a non-resident (both national or alien) arriving in a State with the intention to remain for a period exceeding a year", https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/immigrant_en (accessed April 10, 2023).

institute only with the aim of complying with the legal formalities to obtain the necessary licenses to carry out the activity.

At the Portuguese court level, like in Spain, France, the United Kingdom, we had one case appreciated by the Constitutional Court², but the case does not consider the material classification's question of the legal relationship or the working conditions to which the workers are submitted. Nonetheless, the government has discussed new policies, to reflect them on their agenda regarding dignifying work and inclusive social protection internally. With this scope, a joint effort was made on the theme of work in the digital age, carried out by experts from the national territory (academy, unions, legislators), which originated the preliminary version of the Green Book of the Future of Work (2021)³, to create lines of reflection to guide future public policies regarding work on digital platforms.

To better understand the current panorama of work on digital platforms performed by immigrants and to understand which initiatives have been adopted to improve the living conditions of these workers, given the current precariousness of the activity, first, we will analyse the reality of immigrants' work on digital platforms in Portugal; then, we will check the legal framework involving working on digital platforms there; and, finally, we will examine the public policies studied by Portuguese experts towards the guaranteed of decent work for workers in gig economy.

² Judgment No. 180/2022 of the Portugal's Constitutional Court, referring to Case No. 227/2022, Rapporteur: Counselor António José da Ascensão Ramos, regarding the unconstitutionality's pronouncement of the rules contained in paragraphs b) and f) of paragraph 2 of article 4 ° and article 13 of Decree n.º 1/2022 of the Legislative Assembly, of the Autonomous Region of the Açores, which establishes the Legal Regime of the Activity of Individual and Remunerated Transport of Passengers in Uncharacterized Vehicles Using an Electronic Platform in the Autonomous Region of the Açores (TVDERAA), approved by the Legislative Assembly of the Autonomous Region of the Açores on January 11, 2022. Such pronouncement was given due to the law enacted by the Açores, which is an invasion of the parliamentary reserve on rights, freedoms and guarantees (and fundamental rights analogous to them), guaranteed exclusively to the constitution.

³ *Livro verde sobre o futuro do trabalho*. Lisboa, Portugal: Ministério do Trabalho, Solidariedade e Segurança Social, 2022.

1. Contextualizing the Platform Economy Phenomenon and the Paradigm Shift in Labour Relations

After the year 2000, with the massification of the population's use of applications that involve intermediation by "independent" human work – uberization of work, there has been a concern at European and global level to continue to protect workers from the on-demand economy in the context of the gig economy, initially understood as sharing economy, but whose business practices are now perceived as an ultramodern tool of capitalist exploitation⁴.

According to what we know, this is an international phenomenon which uses platforms as "(re-)programmable digital infrastructures that facilitate and shape personalized interactions among end-users and complementors, organized through the systematic collection, algorithmic processing, monetization, and circulation of data"; and platformization as "the penetration of platform infrastructure, economic processes and government structures into different economic sectors and spheres of life". And, from the tradition of cultural studies, we conceive this process as the reorganization of cultural practices and imaginations around platforms", as defended Poell et al.⁵ in an innovative way.

At the labour law level, however, the problem with this phenomenon is not in the field of innovation, which in fact has its beneficial aspect at the business level, but is in those involved in this process, namely a workforce

⁴ In that regard: Information Technology & Innovation Foundation, "What are Digital Platforms?", *ITIF*, pp. 1–2, 2018, <https://www2.itif.org/2018-tech-explainer-digital-platforms.pdf>; X. Fu, P. Ghauri, N. Ogbonna, and X. Xing, "Platform-based business model and entrepreneurs from Base of the Pyramid", *Technovation*, p. 102451, Jan. 2022, <https://doi.org/10.1016/j.technovation.2021.102451>; A. Aloisi & V. de Stefano, *European Legal Framework for Digital Labour Platforms*, 2018, doi: 10.2760/78590; M. Kenney and J. Zysman, "The rise of the platform economy", *Issues Sci Technol*, vol. 32, no. 3, pp. 61–69, 2016; M. Kenney and J. Zysman, "Intelligent Tools and Digital Platforms: Implications for Work and Employment", *Intereconomics*, vol. 52, no. 6, pp. 329–334, 2017, doi: 10.1007/s10272-017-0699-y; S. Vallas and J. B. Schor, "What do platforms do? Understanding the gig economy," *Annu Rev Sociol*, vol. 46, pp. 273–294, 2020, doi: 10.1146/annurev-soc-121919-054857; L. Mella Méndez, *Regulating the platform economy*, Oxon, Routledge, 2020; Publications Office of the European Union, *Platform Workers in Europe Evidence from the COLLEEM Survey*, 2018, doi: 10.2760/742789.

⁵ T. Poell, D. Nieborg, and J. Van Dijck, "Platformisation", *Internet Policy Review*, vol. 8, no. 4, 2019, doi: 10.14763/2019.4.1425, p. 3.

called collaborator or partner, but which, in practice, is one more production tool of a new business model⁶.

They are called gig-workers⁷, freelancers⁸, crowd-workers⁹, riders and they all have jobs with common characteristics: they have to register and be admitted to digital platforms; they can work whenever and however they want; they don't have a fixed place of work; they are paid according to the amount of tasks they perform to the satisfaction of the digital platform;

⁶ A. Aloisi, “Demystifying flexibility, exposing the algorithmic boss: a note on the first Italian case classifying a (food-delivery) platform worker as an employee”, *Comparative Labor Law & Policy Journal*, 2021, <https://cadmus.eui.eu/handle/1814/74937#.Y259Tf5XoFs.mendeley> (Accessed: Nov. 11, 2022); A. Aloisi and V. de Stefano, *Il tuo capo è un algoritmo: contro il lavoro disumano*. Bari, GLF Laterza, 2020; J. AMADO & T. MOREIRA, “A Glovo, os riders/estafetas e o Supremo Tribunal de Espanha: another brick in the wall?”, *Prontuário de Direito do Trabalho*, vol. 2, pp. 121–151, 2020; T. Moreira, “A discriminação algorítmica”, *Questões Laborais*, n. 58, Coimbra, pp. 85–103, Jan. 2021; T. Moreira, *Direito do Trabalho na era digital*, Coimbra, Almedina, 2021; A. GINÈS Y FABRELLAS, *El trabajo en plataformas digitales: nuevas formas de precariedad laboral*, Cizur Menor, Thomson Reuters, 2021; J. Prassl, *Humans as a service*, UK, Oxford University Press, 2018; J. Prassl, “What if your boss was an algorithm? Economic Incentives, Legal Challenges, and the Rise of Artificial Intelligence at Work”, *Comparative Labor Law and Policy Journal*, vol. 41, no. 1, pp. 1–30, 2019.

⁷ M. Wiener, W. Cram and A. Benlian, “Algorithmic control and gig workers: a legitimacy perspective of Uber drivers”, *European Journal of Information Systems*, pp. 1–23, 2021, doi: 10.1080/0960085X.2021.1977729; M. Graham, I. Hjorth and V. Lehdonvirta, “Digital labour and development: impacts of global digital labour platforms and the gig economy on worker livelihoods”, *Transfer*, vol. 23, no. 2, pp. 135–162, 2017, doi: 10.1177/1024258916687250.

⁸ STATISTA, “Amount of people freelancing U.S. 2020”, <https://www.statista.com/statistics/685468/amount-of-people-freelancing-us/> (accessed Dec. 06, 2022); OIT - Organização Internacional do Trabalho, *Perspetivas Sociais e de Emprego no Mundo 2021: O papel das plataformas digitais na transformação do mundo do trabalho*, Genebra, 2021.

⁹ J. Amado & T. Moreira (2020), *op. cit.*; E. Kluwer, *Observatorio temático de legislación Economía colaborativa y mercado de trabajo: Un repaso a propósito de la «Ley Rider»*, pp. 1–22, 2021; D. Howcroft and B. Bergvall-Kåreborn, “A Typology of Crowdwork Platforms” *Work, Employment and Society*, vol. 33, no. 1, pp. 21–38, 2019, doi: 10.1177/0950017018760136; V. de Stefano, “The rise of the «just-in-time workforce»: On-demand work, crowdwork and labour protection in the «gig-economy»”, *Conditions of Work and Employment Series*, no. 71, p. 43, 2016, www.ilo.org/publns%0Ahttp://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_443267.pdf; R. Heeks, “Decent Work and the Digital Gig Economy: A Developing Country Perspective on Employment Impacts and Standards in Online Outsourcing”, *Centre for Development Informatics Global Development Institute*, SEED University of Manchester, 2017.

they don't provide services for the platforms themselves, but for the clients they intermediate, they have all their work activities monitored in real time; they don't have any support from the platform regarding work equipment, assuming the risk of the activity and using their own means to perform the tasks; generally they perform non-complex micro-tasks (derived from the segregation of a complex activity that would be performed by a traditional worker with an employment contract) or work with a low level of skills, as the case of passengers' transport and home delivery services and, finally, they don't have employment relationship with the platform or with the client, being, according to the business model, compared to micro-entrepreneurs.

For example, in the case of a platform delivery man: he/she rents or has the vehicle; he/she is neither employed by the platform, nor the customer or the restaurant and, therefore, he/she has no labour rights. In other words, they do not take any vacations, they don't have mandatory breaks, social security or health insurance and their work doesn't count service time.

The heart of the matter at this point is not in the benefits that digital transformation and 4th generation technologies bring to society or in the profound alteration that it has carried out in the heart of life in society, from the family sphere to extreme cases such as the question of disinformation and cyber-attacks, but focuses on the way in which the offer of "typically digital jobs" directly affects the lives of workers and their rights in the face of the existing imbalance of power between the person offering the job and the person submitting to the terms of the first to provide for themselves and their families.

In work carried out through digital platforms, as well as in other sectors of the on-demand economy or the gig economy, in which both have the exercise of work activity by human beings in common, there are currently only two internal rules that grant rights at the adequate labour for this up-to-date class of workers in the State of California-USA and Spain.

There are also some judgments of extreme relevance in the United Kingdom, France, Italy, Spain, which lead to the perception of a tendency of the courts to perceive in the concrete case the necessary components for the disclosure of a typical employment relationship, despite the change made in the forms of worker control (GPS, full-time surveillance of the execution of the activity, algorithmic management), despite the relative "freedom" that the "partner" has, in terms of autonomy in the way of carrying out the activity and freedom in choosing working hours.

However, the power and flexibility they have, in terms of reformatting business strategy, constitute a complex reaction weapon for the law, as

every action or direction taken by legislators has a direct impact on workers' lives. What has been experienced, as seen in Spain, is that even the task of classifying the gig worker as an effective worker, granting them the respective rights and social guarantees due, it has as a consequence reaction from the digital platforms not a little cooperative or fraternal, on the contrary, what usually happens is that they point to an immediate restructuring of their business model, in order to make it impossible to classify their workers as employees, or, in an extreme situation, not verifying another viable solution, end their activities in that country. This time, we can see the extent of the complexity of the issue and the great multidisciplinary effort it demands, so that it can be tackled in the wisest and most efficient way possible.

2. Portugal and Migratory Currents: Obstacles to a Better Life

A common phenomenon can also be noticed regarding the workers of these platforms, the fact that they are usually integrated by immigrants¹⁰ (foreigners who are not citizens of the European Union-EU) or newly arrived European citizens, that is, people of different nationalities from the national territory, who “chose” to move to other country to obtain better living conditions and opportunities; security, economic and political stability; better education; healthcare; among others.

In Portugal, according to the annual statistical report on the integration of immigrants by the Migration Observatory and the Foreigners and Borders Service (SEF)¹¹ the predominant immigration flows come from the Community of Portuguese Speaking Countries (CPLP), EU member countries and Eastern countries, with the most representative nationalities in 2021 coming from Brazil, the United Kingdom, Cape Verde, Italy, India, Romania, Ukraine, France, Angola and China, which have chosen

¹⁰ According to the Migration Observatory in Lisbon: “Immigrants would be associated with a voluntary movement and would be characterized by initiative, taking decisions through they intend to maximize the benefits of their location, whether for economic reasons, study, retirement, health, among others. While refugees would be involved in an involuntary or forced movement, conditioned by structural factors that would determine their movements” in C. Oliveira, *Relatório Estatístico do Asilo 2022. Requerentes e Beneficiários de Proteção Internacional em Portugal*, Lisboa, 2022. (Free translation by the author).

¹¹ J. Estrela, S. Lopes, A. Menezes, P. Sousa and R. Machado, *Relatório de Imigração, Fronteiras e Asilo*, Lisboa, May 2022, <https://sefstat.sef.pt/Docs/Rifa2021.pdf> (accessed October 27, 2022).

regions such as Lisbon, Sintra, Cascais, Albufeira and Porto to set up an address.

When immigrating legally¹², for work, study, business investment, international reception or, in an undeclared way (in the case of people who enter as tourists but intend to stay in the country, as well as foreign asylum seekers who remained in Portugal after the expiry of their temporary visa, without completing their registration that formalizes the right of residence), these people hope to achieve access to capital, financial, human and social, such as security, stability, economic predictability and education stand out.

Nonetheless the reality they must face when they get here is very different. Some immediate barriers are placed in front of immigrants:

- The non-acceptance of qualifications that are not Portuguese without equivalence;
- The need for fluency in Portuguese and English languages to access employment;
- Discrimination against nationalities¹³;
- Requirement of national documentation such as Tax, Social Security Identification Number and other bureaucratic barriers to access employment.

Given these difficulties in entering the labour market, a large number of immigrants, especially those who do not yet reside legally, due to the fact

¹² For a detailed overview, in case of immigrants see “Trabalhar em Portugal – Portal de Informação Ao Imigrante”, <https://imigrante.sef.pt/solicitar/trabalhar/>, (accessed February 6, 2022). For migrant European citizens: “Alto Comissariado para as Migrações”, <https://www.acm.gov.pt/trabalhar>, (accessed April 10, 2022).

¹³ As explained by the Migration Observatory (Oliveira, 2022, p. 310, *op. cit.*), as of 2017, the identified complaints made by immigrants regarding discrimination based on nationality were: “gypsy ethnicity” (32.4% of complaints in 2017, 21.4% in 2018 and 19, 3% in 2019) and “black skin colour/black/black/black race” (19.6% in 2017, 17.6% in 2018 and 17.7% in 2019) stand out as the main factors of discrimination. Among the identified nationalities, Brazilian nationality continues to stand out (10.1% of the complaints in 2017, 13% in 2018 and 17% in 2019) as the basis of discrimination, with other nationalities also appearing in a residual way (e.g., Ukrainian nationality with 1.7% of complaints in 2017 and 1.4% in 2019). The last year thus appears again as an atypical year in the main expression used as a basis for discrimination: “gypsy ethnicity” (11.9%) and “black skin colour/black/black/black race” (11, 9%) lose relative importance compared to previous years, with the expression “white skin color” (16%) and “foreigners/immigrants in general” (14.5%) standing out in the complaints received by the CICDR in 2020. (Free translation by the author).

that they do not have access to institutions that support immigrants or jobseekers, such as the IEFP (Institute of Employment and Vocational Training) and Social Security, they join the unemployment figures. So, in order to provide for themselves and their families, they are forced to work under precarious, degrading and often informal conditions, reaffirming the connection of immigrant workers to these 3 D's: demanding, dangerous and dirty jobs¹⁴.

The consequence of these difficulties is the increasing risk of poverty or social exclusion, that combines three indicators, according to the Europe 2020 Strategy¹⁵:

- (1) The risk of relative poverty, which reports not the measure of wealth or poverty of individuals, but the comparison, between nationals and foreigners, of annual net monetary income by reference to 60% of the country's average income, after social deductions;
- (2) The situation of severe material deprivation; and
- (3) The very low per capita work intensity that measures all people under 60 years of age who, in the income reference period, lived in households where the adult population aged between 18 and 59 years (excluding students) worked on average less than 20% of possible working time.

3. Links between Platform Work and Most of the Immigrant-Made Workforce in Portugal

Due to the easy access to platforms' work, and without alternatives, immigrants choose to enter this work activity because thus, as they are qualified to drive motorcycles or vehicles, obtaining their own means of transport (which they can even rent monthly), by registering with the TVDE operator and on the digital platform, they can quickly start the activity and provide their livelihood.

¹⁴ Cooke & Brown (2015, p. 12), footnote 6 *apud* Connell (1993) explain that these 3 D's were originated from the Japanese expression 3K: *kitanai, kiken, kitsui* and has subsequently gained widespread use, regarding labour done by migrant workers. J. Connell, "Kitanai, kitsui and kiken: The rise of labour migration to Japan", *Economic & Regional Restructuring Research Unit*, University of Sydney, 1993; F. Cooke & R. Brown, *The regulation of non-standard forms of employment in China, Japan and the Republic of Korea*, Geneva, ILO, 2015.

¹⁵ European Commission, *Europe 2020: a European strategy for smart, sustainable and inclusive growth*.

<https://ec.europa.eu/eu2020/pdf/COMPLET%20EN%20BARROSO%20%20%20007%20-%20Europe%202020%20-%20EN%20version.pdf>, (accessed April 10, 2023).

As we said, apparently it would be easy to "solve" the issue of lack of work, using the opportunity to work for pay through digital platforms. It so happens that, in Portugal, there is a specific internal law for those who intend to carry out the transport of passengers in the national territory, the Law No. 45/2018, of August 10, which arises due to the concern at European and world level with the mass use by the population of applications that involve intermediation by "independent" human work (uberization of work), having been, at European level, a pioneer in dealing with the issue of transportation of passengers intermediated by digital platforms, mainly because it shows an active role of the Portuguese state in solving problems resulting from such activity, such as taxation, license to carry out the activity, possibility of inspection by the Authority for Working Conditions (ACT), access to information about business activity (which platforms, how many people work, working hours, etc.).

On the other hand, the legislator created a fourth legal entity in the relationship between passenger transport platforms, customers and service providers: the TVDE operator, a legal entity to which the license to operate the activity is granted and also the duty to comply with all legal and regulatory obligations, including those arising from the legislation on work, safety and health at work and social security. That is, the driver can only drive legally in Portugal if he/she has a contract with the TVDE operator and not with the platform operator.

This "innovation" of creating a 4th person in the relationship named TVDE operator¹⁶, to a certain extent, as stated above; however, it left a pole of the relationship extremely vulnerable to economic activity, the working people who personally carry out the service provision, platform workers.

This is because it complicates the issue of the legal framework for workers who are factually dependent, on the presumption of the existence of the employment contract, under the terms of art. 12 of the Labour Code, which have constituted legal people solely for the purpose of obtaining the necessary internal licenses for the exercise of the activity, thus privileging digital platforms. How Amado & Moreira¹⁷ explain and denounce:

¹⁶ Article 2º, Law No. 45/2018, August 10th, *Regime jurídico da atividade de transporte individual e remunerado de passageiros em veículos descaracterizados a partir de plataforma eletrónica*, <https://dre.pt/dre/detalhe/lei/45-2018-115991688>, (accessed April 10, 2022).

¹⁷ J. Amado & T. Moreira, "La loi sur les plateformes de transport et le contrat de travail au Portugal: sujets, relations et présomption de salariat", *Les travailleurs des plateformes numériques*, Teseo, Buenos Aires, 59–82, 2022, p. 75.

La loi indique donc que le contrat signé entre le chauffeur et l'opérateur TVDE peut, mais pas nécessairement, être un contrat de travail. En fait, elle prévoit les deux cas, celui du chauffeur lié par un contrat de travail et celui du chauffeur indépendant (c'est ce qui ressort clairement de l'article 10, § 12 concernant l'aménagement du temps de travail). Toutefois, à l'article 10, § 10, il est précisé que « les dispositions de l'article 12 du Code du travail sont applicables au lien juridique établi entre l'opérateur TVDE et le chauffeur affecté à l'activité, fixé par un contrat signé par les parties, et ce quelle que soit la dénomination que celles-ci ont adoptée dans le contrat ». En d'autres termes, la loi fait expressément référence à la présomption de salariat instituée par le Code du travail et confirme, en ce cas, son application. Mais attention! – et c'est un point décisif pour comprendre la portée de cette règle: la loi ne fait référence qu'au lien contractuel existant entre l'opérateur TVDE et le chauffeur; elle ne fait pas référence à un tel lien entre l'opérateur de la plateforme numérique et le chauffeur, car elle suppose qu'il n'y en a pas.

Ainsi, selon la loi portugaise, des sociétés telle Uber seront considérées comme des opérateurs de plateforme numériques types, offrant des services d'intermédiation entre les utilisateurs/passagers et les opérateurs TVDE. Et ces derniers, en tant que personnes morales dont la mission est de fournir un service de transport individuel payant, auront recours à des chauffeurs dédiés à cette tâche dans le cadre, ou non, d'un contrat de travail. Le chauffeur, quant à lui, ne passera aucun contrat avec l'opérateur de la plateforme, même s'il doit être enregistré auprès de celui-ci pour pouvoir exercer son activité. Pourtant, la loi impose à l'opérateur de la plateforme des obligations comparables à celles d'un employeur, notamment en ce qui concerne le contrôle du temps de travail du chauffeur et le respect des limites fixées. Il suffit, pour s'en convaincre, d'examiner les dispositions de l'article 13, intitulé «Durée de l'activité»: «Les chauffeurs TVDE ne peuvent être en service plus de 10 heures sur une période de 24 heures, quel que soit le nombre de plateformes qu'ils utilisent pour exercer leur activité, sans préjudice de l'application des règles obligatoires édictées par le Code du travail à la période de référence fixée est plus courte » (§ 1); « Les opérateurs de plateformes numériques doivent mettre en place des mécanismes garantissant le respect des limites visées au paragraphe précédent » (§ 2); « Les plateformes numériques doivent conserver pendant deux ans les registres d'activité des opérateurs, des chauffeurs et des véhicules TVDE établis à partir du numéro d'enregistrement individuel des chauffeurs TVDE » (§ 3). En outre, en vertu de l'article 20, § 3 sur les obligations générales des opérateurs de plateformes, «le système informatique doit enregistrer le temps de travail du chauffeur et le respect des temps de conduite et de repos».

Thus, the mechanism of inserting the TVDE Operator in the relationship between the digital platform, the service provider and the customer can be another way of escaping the configuration of a subordinate work relationship between the driver and the digital platform, since the legal entity can be opened by an individual solely with the intention of obtaining an operating license. In addition, it does not promote the minimum working conditions for the performance of decent work by the service provider since the option of signing the employment contract or

the contract for the provision of services with a driver is at the discretion of the TVDE operator.

Considering these specificities and returning to the reality of an immigrant worker who needed to provide the minimum for his food, housing, clothing, health and social expenses, he will have the immediate obstacle of lack of money solved, because digital platforms effectively provide this opportunity to access to the job market and actually comply with the payment of the consideration for the service performed, that is, as long as the worker meets the minimum requirements demanded by the platform, regardless of his nationality, they will have access to the job.

The misfortune lies in the problems inherent in carrying out the daily work activity and in the conditions of health, hygiene and safety at work, since, when entering this type of work, the service provider is obliged to provide all the tools, environment, breaks and other duties, which would be the responsibility of the employer, resulting in the minimum material and immaterial conditions (related to physical and mental health, balance between family and professional life).

In this way, in the day-to-day execution of the activity, the platform worker finds himself without material support and doomed to working conditions that directly affect his physical and mental health, without any effective protection in relation to work if he has not signed an employment contract with the TVDE Operator, which is in fact rare, as in general, in order not to incur the expenses related to hiring employees, they choose to hire service providers.

The reality is that Portugal has been chosen by many immigrants, as it is a relatively safe country, with attractive places to live as a family and with a quality education system; however, given the internal inflationary crisis, they are using platforms as a means of livelihoods due to the lack of job opportunities in the country. As shown in *Jornal de Notícias*¹⁸ the workforce in 2022 on digital platforms is made up of 80% of Brazilians and by Pakistani, Indian, Venezuelan, Bangladeshi people. The number of digital platforms involving human labour in Portugal grows

¹⁸ *Jornal de Notícias* (2022), <https://www.jn.pt/local/noticias/porto/porto/estafetas-das-plataformas-digitais-reclamam-melhores-condicoes--14737599.html>; *Jornal Expresso* (2022), https://expresso.pt/sociedade/2022-02-09-motoristas-e-parceiros-tvde-em-protesto-em-lisboa-e-no-porto-por-taxa-fixa-nos-servicos?utm_source=site&utm_medium=share&utm_campaign=mail; *Diário de Notícias*, “Seis estafetas contam como é trabalhar na Uber Eats: muitas horas a trabalhar e dependentes dos likes dos clientes” (2018), <https://www.dn.pt/portugal/uber-eats-sem-contrato-e-dependente-do-like-do-cliente-9408479.html>, (accessed April 10, 2022).

proportionally, showing a diversification in passenger transport platforms: Uber, Bolt, Free Now, It's My Ride, and in the transport of consumer goods: Glovo, Uber Eats, Bolt Food, Take away¹⁹.

It is important to point out that Portugal's internal regulations regarding platform workers only cover the context of passenger transport, so the other branches of work on platforms, including delivery, micro tasking and freelance platforms, do not have any type of restriction, except for those that are already “solved” by the platforms.

In the face of such circumstances, we have seen more and more protests by platform workers at national level, especially after the pandemic in Lisbon, Porto, Coimbra, where many of them are concentrated, which has intensified in the face of increases in fuel prices and a decrease in the tariff paid by workers on some platforms to increase competitiveness; meanwhile, above all, it is related to the precarious working conditions they experience on a daily basis. They ask for rights like:

- Minimum wage;
- Vacation;
- Access to pensions and contingency coverage (illness, accident, parenting);
- Limitation of working hours;
- Christmas subsidies;
- Right to collective representation, with the constitution of local representatives in cities;
- Rate readjustment - updating of amounts paid per Km – 0.70e/km, counted from the receipt of the order to the customer's home;
- Addition of value in the case of night service;
- Bonus of 10 euros in case of bad weather;
- Co-participation of platforms in vehicle acquisition and maintenance;
- Travel allowance – fuel.

After recent jurisprudential decisions²⁰ in the USA, the UK, France, Italy, legislative innovation in Spain²¹ (Rider Law) and the Proposal for a

¹⁹ *Livro verde sobre o futuro do trabalho, op. cit.*

²⁰ In which a tendency is perceived towards the recognition of the employment relationship due to the presumption of employment, analysing specific cases.

²¹ *Real Decreto-ley 9/2021*, in which a series of measures are established to protect the labour rights of people dedicated to the distribution through digital platforms or riders.

Directive of The European Parliament and the Council²², on improving working conditions in platform work, in December 2021, Portugal carried out a study of the context of work in the digital environment, called Green Paper on the Future of Work²³, in order to better understand the phenomenon of work transformation for the simultaneous monitoring of the national legal system, against the precariousness of work.

The Green Paper on the Future of Work brings us that Portugal highlights the need to protect workers, even though the employment relationship is being changed by new digital business models, recognizing that it is necessary to:

- Create a presumption of work adapted to work on digital platforms;
- Ensure access to adequate social protection for workers;
- Promote the access of these workers to the rights of representation and collective participation;
- Create a minimum body of rights applicable to all who work on digital platforms, even if they do so on a service provision basis and as self-employed workers;
- Combat the risks of discrimination and the most harmful effects of segmentation and polarization in the labour market, namely in the most vulnerable and exposed groups such as among migrant workers and in sectors with higher risks of precariousness²⁴.

Such lines of reflection raised by the Portuguese government in the Green Paper of Work positively signal a proportional political movement in response to the social phenomenon of the platforming of work and place Portugal ahead of other countries in the EU, which acted in the legislative sphere as a result of the existing normative vacuum internally, denounced by the supreme jurisdictional entities, after the analysis of specific cases brought to the Court, as the example of Spain and France.

This political study also denotes an alignment between Portugal's position and the responses that have emerged at an international (ILO, EU) and national level, mainly in the EU member countries, but also in the US and the UK, around the need to adapting labour law to the phenomenon of

²² Eur-Lex, Proposal for a Directive of the European Parliament and of the Council on improving working conditions in platform work, COM/2021/762, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2021%3A762%3AFIN>, (accessed April 10, 2022).

²³ *Livro verde sobre o futuro do trabalho*, *op. cit.*

²⁴ Freely translated by the author.

digital transformation, to reaffirm and consolidate the European Pillar of Social Rights.

The Green Book of the Future of Work also directs attention to workers on platforms and beyond, as well as other atypical workers produced by the on-demand economy and the digital revolution, taking them out of the shadows of flexibility, alienation and precariousness to protect appropriate social service to their needs, as stated in the same manual: "emphasizing that the fact that the service provider uses his own work tools, as well as such as the fact of being exempt from fulfilling duties of attendance, punctuality and non-competition, is not incompatible with the existence of a dependent employment relationship between the provider and the digital platform"²⁵; a pioneering political action at national level.

In the same vein, the Ministry of Labour, Solidarity and Social Security²⁶ has been discussing with partners the proposal to create a presumption of employment contract in relation to platform workers and it is presenting proposals to the social partners for materializing the decent work.

In October 2022, Portugal signed a letter rejecting the adoption of measures that "only perpetuate the existing imbalance" between electronic platforms and gig workers, that ensure digital and green transitions go hand in hand with workers' rights, with other countries like Spain, Luxembourg, Italy, Malta and the Netherlands²⁷.

In view of the above, great developments can be seen in dealing with the issue of work on platforms in Portugal, which, unlike other countries around the world, is not indifferent to changes in work and has implemented practical political measures²⁸ around the four strategic challenges raised in this sense, namely: the digital transition, demography, the fight against inequalities and the climate transition.

²⁵ *Livro verde sobre o futuro do trabalho, op. cit.*

²⁶ Secretaria-Geral do MTSSS, Agenda do Trabalho Digno - Notícias, 2022, https://www.sg.mtsss.gov.pt/noticias/-/asset_publisher/xBQpI7NGgI5Z/content/agenda-do-trabalho-digno?_101_INSTANCE_xBQpI7NGgI5Z_redirect=%2Fnoticias; Jornal Expresso, governo avança na agenda do trabalho digno, mas motoristas uber podem ficar de fora, 2022, <https://expresso.pt/economia/2021-07-21-Governo-avanca-na-agenda-do-trabalho-digno-mas-motoristas-Uber-podem-ficar-de-fora-5260c25a>, (accessed December 5, 2022).

²⁷ Luxembourg Public Relations in the European Union. https://twitter.com/RPUE_LU/status/1581962043800064001?ref_src=twsrc%5Etfw, (accessed December 5, 2022).

²⁸ República Portuguesa. Programa do XXII Governo Constitucional (2019). <https://www.portugal.gov.pt/pt/gc22/comunicacao/documento?i=programa-do-xxii-governo-constitucional>, (accessed December 5, 2022).

However, despite these advances, regarding the issue of specific protection for immigrant workers who carry out work activities on digital platforms, no direct government action could be found that would help them practically and effectively, only the concerns raised by the Green Book of the Future of Work²⁹ in the need of action regarding inclusion, equality and non-discrimination, as we see:

The lower, less predictable or more intermittent patterns of retribution that, if not infrequently, are associated with work on digital platforms, work on demand or crowdwork hinder to full access to social protection throughout working life and in retirement, which can aggravate exposure to the risk of poverty, with different impacts for men and women.

At the intersection of these factors, and often in situations of high vulnerability and exposure to risks in the labour market, are migrants and workers foreigners in the less qualified, more precarious professional groups, more exposed to instability in the employment relationship, with lower wages and with a greater incidence of work accidents.

4. Conclusion

This study sought to fill a gap regarding work on platforms: the perspective of the immigrant who performs a work activity in this branch of the on-demand economy in Portugal and to verify the public policies that the Portuguese State has implemented towards the concession of decent work for these workers.

It was found that Portugal has received many immigrants, who choose this country to obtain better life conditions, mainly from the Community of Portuguese-Speaking Countries (CPLP), European Union member countries and Eastern countries, with the most representative nationalities in 2021 coming from Brazil, United Kingdom, Cape Verde, Italy, India, Romania, Ukraine, France, Angola and China.

However, these immigrants, after arriving in the national territory, have great difficulty entering the labour market and, therefore, see digital platforms as a quick opportunity to solve the issue of social needs.

This facility, given the current pre-configuration of consisting mostly of self-employed workers, in practice, becomes a major problem for these workers, since they have little or no social protection, having to bear the risks of activity alone, working under precarious working conditions, using their own means to perform their functions and having no social bargaining power.

²⁹ *Livro verde sobre o futuro do trabalho*, *op. cit.*, p. 103-107.

Such burdens of this modern type of work, although, have been debated at an international level, legally and jurisprudentially, and in some countries some benefits and rights have already been conquered, given the difficulty of classifying these workers as employees or, as the case may be, granting a list of rights specific to their needs.

In Portugal, in this sense, great progress can be seen in dealing with the issue internally, either because the country was a pioneer in the enactment of Law No. 45/2018, of August 10, which regulates Individual and Paid Transport of Passengers in Disabled Vehicles from an Electronic Platform (TVDE), either by, according to the Terms of the 2030 Agenda and in the sense of situating the emergence of further ways of providing work associated with the so-called “future of work” in the economic context and the job market in Portugal, developed the Green Book on the future of work 2021, in which it deals with the issue of platform workers and points out a very assertive list of public policies that must be adopted to provide decent work to this modern class of workers.

Anyway, in spite of facing the difficulties encountered by immigrant workers in the Portuguese labour market, it does not show concrete mechanisms to provide them with decent work until now, protected in proportion to their social vulnerability, nor are there public programs in operation with this bias.

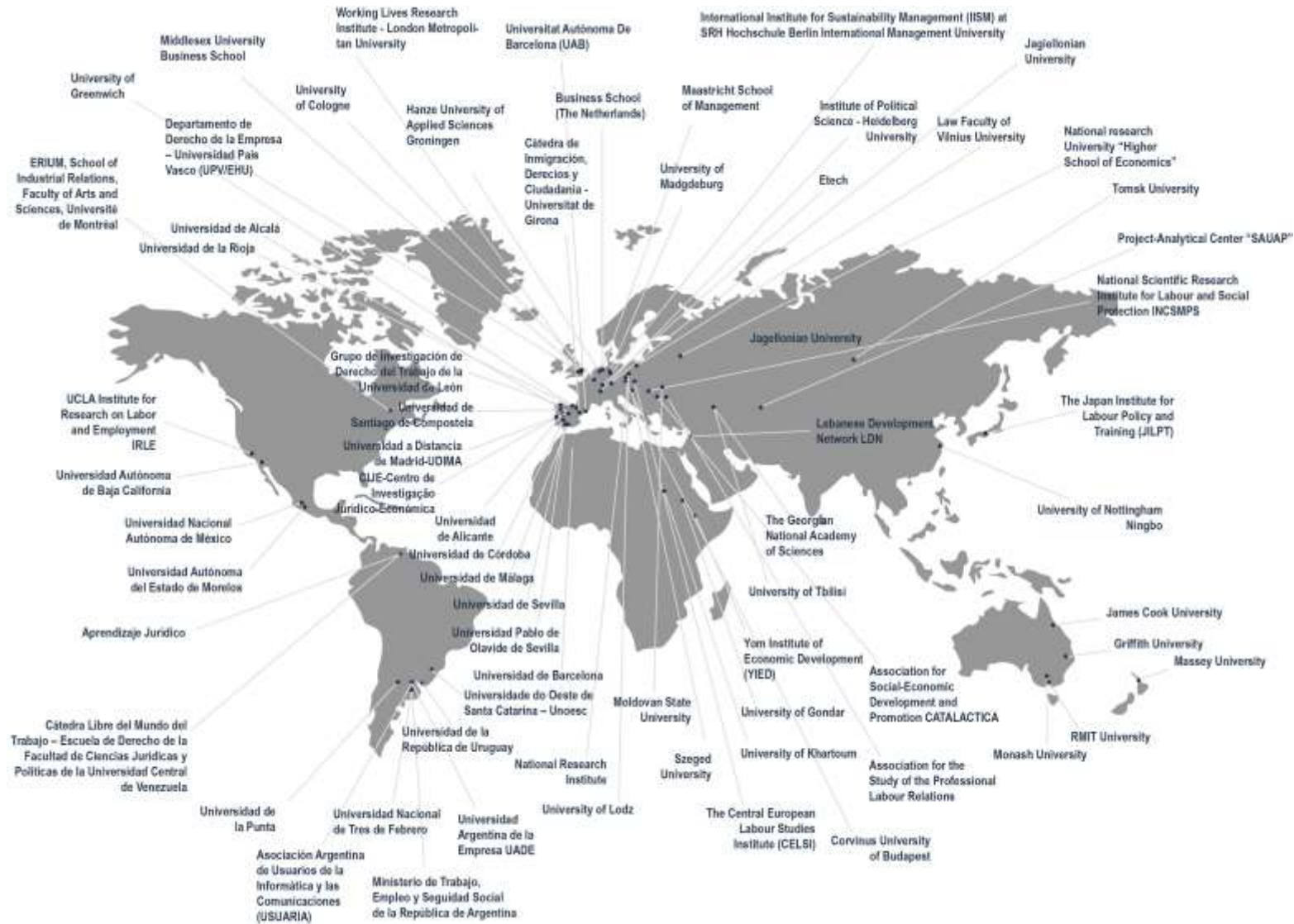
Despite this, it should be borne in mind that the issue of work on platforms is an extremely new issue for Labour Law and that, therefore, the minimum initiatives for these workers in general are gradually being articulated by the state and the expression of a concern aimed at protecting them, regardless of the apparent freedom they have, is not an obstacle to confirming the existence of a dependent employment relationship between the provider and the digital platform.

Relevant studies on the issue of immigrant workers on digital platforms could be carried out as case studies, in cities such as Lisbon, Braga, Porto, like interviews with immigrant workers, to better understand specific essential needs for them to have decent work in this specific sector, mainly to guide future public policies for this purpose.

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