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MINIMUM INCOME FOR APP DRIVERS: THE GUARANTEE OF A FUNDAMENTAL SOCIAL RIGHT TO THE "SELF-EMPLOYED WORKER BY PLATFORM"

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ABSTRACT

The objective of this article is to demonstrate that the self-employed worker through a digital platform is entitled to the fundamental right to a minimum income, proportional to the minimum wage. To this end, initially, the historical evolution of the minimum wage in the world and in Brazil is described, for the proper understanding of its destination in guaranteeing life with dignity. The current definition of the minimum wage in the Federal Constitution of 1988 is addressed, emphasizing all current aspects such as national uniform value, definition by law, periodic readjustment and prohibition of binding for other purposes. The Complementary Bill (PLP) No. 12/2024 of the Chamber of Deputies is presented, which provides for the condition of the app driver as a "self-employed worker by platform", without an employment relationship, but with the right to a minimum income proportional to the minimum wage. It discusses the possibility of the "self-employed platform worker" being entitled to a minimum income compatible with the minimum wage, based on constitutional principles and foundations, especially the "existential minimum". It is pointed out the treatment given in some other countries to app drivers, regarding the right to the minimum wage, as well as the guidance of international organizations.

Keywords: Driver by app. Minimum income. Minimum wage. Fundamental social right. Existential minimum.

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INITIAL CONSIDERATIONS

The right of the worker to receive a minimum income has historical roots, dating back to antiquity, long before labor law was structured, as well as discussing the employment relationship. This is due to the fact that the minimum wage, as the best representation of this minimum wage, has been configured, in history, as an important instrument for the respect of human dignity, but the existence of totalitarian and democratic regimes, at different times and places in the world, brought alternation to this institute. It is important to understand its historical evolution, in order to understand its current conception as a fundamental social right.

Currently, technology has brought new forms of service provision, which are not in line with the traditional parameters of employment relations, such as app drivers, involving millions of Brazilian workers. Therefore, it is worth questioning whether such workers would have the right to receive a minimum income along the lines of the minimum wage, even if they are considered self-employed, as proposed by Complementary Bill (PLP) No. 12/2024 in progress in the Chamber of Deputies.

Such questioning is necessary to the extent that, worldwide, the numbers of this type of worker exceed hundreds of millions of people, in addition to the fact that not recognizing the right to receive a minimum income can put these service providers in a complete situation of precariousness, making them socially vulnerable, alongside their respective families. Other aspects to consider are the social impact and the increased overload of public social assistance services aimed at this segment of society.

The provision of services through digital platforms is a worldwide phenomenon, due to the advancement of technology and the globalization process, a phenomenology that has earned the name of "uberization", a neologism that refers to "the company that popularized the broader phenomenon, consisting of a specific process of transformation of workforce management" (Souza, 2023, p.61). This electronic platform was started in 2010, in the United States, in the city of San Francisco, in the State of California, and today it is present in more than 70 countries, with more than 20 thousand employees and more than a hundred million users, according to Souza (2003, p. 65), intermediating between the needs of customers and the offer of service by drivers, enabling the organization, the provision of the service and even the commercial transaction, as well as other platforms that exist today in several countries.

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Therefore, the study of "uberization", in any of its aspects, is relevant and justified for the construction of a scientific-legal content. Therefore, the article aims to analyze whether the app driver, as a "self-employed platform worker", as PLP No. 12/2024 calls it, will have the right to realize the fundamental social right to a minimum wage, proportional to the minimum wage. To this end, it is intended to describe the historical evolution of the minimum wage in the world and in Brazil; address the current definition of the minimum wage in the Federal Constitution of 1988 (CF), present PLP No. 12/2024 of the Chamber of Deputies, with regard to the remuneration of app drivers; discuss the possibility of the "platform self-employed worker" being entitled to this minimum income proportional to the minimum wage, in addition to presenting the treatment given by some other countries to app drivers, regarding the perception of the minimum income.

From the problem presented, a possible solution is sought, through a bibliographic research, from national sources and countries whose legal systems have already dealt with the subject, as well as the documentary survey of the bills in progress in the Chamber of Deputies. The hypothetical-deductive method is used as a method of approach, based on the hypothesis that a minimum remuneration is due to the app driver. As a method of procedure, the historical and monographic methods will be used, for the respective approach to the evolution of the institute of the minimum wage as a parameter for the minimum income and the study of the discussions on article 7, item IV, of the FC. The systematic and teleological methods will be used for the interpretation, since a reading will be made integrating several constitutional provisions and taking into account the purpose of the institute studied.

Finally, it is hoped that this study will reach a clear understanding that the minimum wage can serve as a parameter for the construction of the idea of a minimum wage for the "platform self-employed", taking into account the best constitutional hermeneutics, as well as the principle of the "existential minimum" and elements of international law.

ASPECTS OF THE EVOLUTION OF THE MINIMUM WAGE

The scope of this article is to analyze the right of the app worker to have a minimum income, as provided for in Complementary Bill No. 12/2024 of the Chamber of Deputies, which, in its article 9, provides for a *minimum remuneration of the worker, proportional to the national minimum wage*, which is why it is relevant to study the evolution of this institute,

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since it is serving as a valid and acceptable parameter from a systematic point of view, and as an existential minimum, when it comes to remuneration for work.

HISTORICAL ROOTS OF THE MINIMUM WAGE

The Code of Hammurabi establishes forms of professional salary, however, it can be said that the notion of the existence of a dignified life for the worker is found in Plato's work The Republic, when he argues that the city should be neither poor nor rich, however, if the worker "is indigent and cannot acquire tools and other things necessary for his art, nor will he himself work well, nor will he teach his children and apprentices to be good craftsmen" (Plato, 2014, p. 121), concluding that both indigence and wealth can degenerate the product of his activity and consequently destabilize the city. However, the Greek philosopher's concern was with the stability of the city and not necessarily a feeling of justice towards the craftsman, something that, historically, could only be observed in the Middle Ages, according to the teaching of St. Thomas Aquinas, in the sense that "an act of justice is also to give the reward due to a work or work" (Aquinas, 1936, p. 1722).

The Catholic Church, in the Middle Ages, was a defender of the minimum wage, however, with a different scope from Christian justice, the objective was to relieve the Church of the burden of social assistance that it employed to exercise real and spiritual control of the faithful, and also to expand the area of alms collection. It is important to mention, however, that in the Medieval Period there was the stipulation of maximum wage rates, due to the monopoly of corporations, the absolutist spirit that reigned, in addition to the plague that occurred in 1348, which raised the price of labor, due to the high number of deaths. As examples, the following can be cited: the Ordinance of John the Good, in France, "the English ordinances of 1350; the edict of 1348, issued by Edward III of England; Prussian laws of 1358 and the acts of Peter the Cruel of Castile" (Catharino, 1994, p. 189).

It is also worth highlighting two significant moments: one in the Renaissance, when the conception of man as the central point of history was present, with the consequent valorization of human work, based on the fact that the importance of man is based on the communion of human nature with that of God himself, which reinforces the idea that they are not consistent with the *status* quo of the human being the vile remunerations. And, later, when the liberal doctrine defended that, by nature, all men are equal in dignity, having the natural right to property, which has as its "ultimate foundation human labor, because it is through this that nature is assimilated" (Silva, 2024, p. 11).

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With the French Revolution, the recognition of the minimum wage was already sought, and in the French Assembly, of September 17, 1790, "it was the object of its deliberations to ensure workers a minimum wage" (Catharino, 1994, p. 188). Meanwhile, in England, food prices were rising and the situation of landless peasants was a pauper, which gave rise, in 1795, to "the *Speenhamland System*, which consisted of a wage supplement for workers with remuneration below subsistence level," according to Silva (2024, p.13). However, once farmers were allowed to deduct the taxes paid, such a system generated more impoverishment for the workers, on the other hand, it distanced rural England from the industrial revolution.

From the bowels of feudal society emerged the bourgeoisie, both exploiters of the wage-earner, which emerged from the same entrails (Abeledo, 2015, p. 198). The bourgeoisie achieved the "original capitalist accumulation" for the subsequent development of the mode of production after the revolutions that took place in the sixteenth to eighteenth centuries, when it came to political power after the revolutions of the sixteenth, seventeenth and eighteenth centuries, especially in the Netherlands, England and France.

In this context, the German philosopher and economist Karl Marx stands out, who, in 1867, published the work "Capital - Critique of Economics", "Book I – The process of production of capital", which, in section VI, entitled "The wage", deals in chapters 17 to 20 with "Transformation of the value (or price) of labor power into wages", "The wage by time", "Piece-rate wages" and "National diversity of wages" (Marx, 2013).

As recorded by Silva (2009), it can be said that, concomitant with capitalism, salaried labor emerged, however, in the logic of the free market, without any regulation both in access to raw materials and, mainly, in the exploitation of labor. It was not by chance that the great thinkers of the time, the Hungarian economist, Karl Polanyi, the German activist, Ferdinand Lassale, and the French politician, Leon Bourgeois, respectively, preached a self-regulating market, the stipulation of a minimum living wage, condemning the subjection of the worker to the free market, in addition to the creation of an existential minimum wage, at the Geneva Conference, in 1889, to guarantee minimum conditions of dignified survival to all workers.

In 1891, Pope Leo XIII launched the encyclical *Rerum Novarum*, in view of the degrading social situation that existed, resulting from the confrontation between capital and labor, with an imminent risk of radicalization, and the Catholic Church began to present itself as a counterpoint to the liberal political regime, especially to communist thought, which

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defended the seizure of power by the revolution of the working class, as commented by Adorno Júnior (2010). This Encyclical proposed the humanization of the market, with the institution of the minimum wage being one of the instruments for this, emphasizing, textually, that the wage should not be insufficient to ensure the subsistence of the sober and honorable worker.

One of the causes of the First World War was the unbridled struggle for new markets and corporate advantages, resulting from exaggerated economic liberalism. For this reason, the Treaty of Versailles, a document that pacified the world conflict, signed in 1919, brought rules on labor, one of the most important aspects impacted by the free market. According to Catharino (1994), the aforementioned treaty brought as recommendations that work should not be considered as a commodity or article of commerce, as well as that wages should ensure the worker a convenient standard of living, in addition to the creation of the International Labor Organization (ILO), as a decisive instrument for the protection of the dignity of the worker, worldwide.

However, it should be noted that, prior to the Treaty of Versailles, there was the creation, in some countries, of the first laws that instituted the minimum wage, such as: New Zealand and Australia (1894), England (1909), United States (1912), France (1915) and Norway (1918). The Constitution of Mexico of 1917 and the Weimar Constitution of 1919 were the first constitutional texts to regulate the minimum wage, providing that the general minimum wage should be sufficient to satisfy the normal material, social, and cultural needs of a head of the family and to provide compulsory education for his children, while the German norm granted the working class "a general minimum of social rights." among which the minimum wage.

However, the universalization of the minimum wage policy only occurred with ILO Convention 26, adopted in 1928, which instituted methods for setting the minimum wage for its member countries, including Brazil.

HISTORICAL NOTES ON THE MINIMUM WAGE IN BRAZIL UNTIL THE 1988 CONSTITUTION

The first Brazilian Magna Carta, granted on March 25, 1824, did not deal with the minimum wage, since there was only "a simple mention of work, in article 179, which was housed in the title of civil rights" (Silva; Stürmer, 2015, p. 67), maintaining a direct relationship with the government of Portugal.

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In turn, the Proclamation of the Republic in Brazil did not undo the system of oligarchic power of the Empire, despite having occurred in 1889, when there was already a concern in the world with the limitation of the excesses of the free market resulting from economic liberalism, since the strong influences of slavery remained. There was no transformation of the archaic social structure of the Imperial Period, because this was not the intention of the new regime, despite the attempt to give the country a more modern face in the face of the world order. This is because, even valuing progress and liberal constitutionalism, the Brazilian Republic made use of a model of liberalism that was already being considered outdated in Europe, with the force of capital and the superiority of the rights of the bourgeoisie at the cost of social oppression.

Two examples of this were the Constitution of 1891, which dealt nothing with labor law, as well as the fact that, although Brazil had ratified ILO Convention No. 26 of 1928, in force since 1930 and which instituted methods for setting minimum wages, only the Constitution of 1934 created the Minimum Wage Commissions. However, the minimum wage was only instituted in 1936 by Law 185, regulated by Decree-Law No. 399, of 1938, and the first of the minimum wage table came into force only in 1940 by Decree-Law No. 2,162.

It is worth remembering that the minimum wage was part of the theme of valuing work defended by the Liberal Alliance, formed in 1929, to face the candidate of the São Paulo Republican Party (PRP) Júlio Prestes, in the 1930 presidential elections, which consisted of dissidents from Minas Gerais and Rio Grande do Sul from the agrarian oligarchy, as well as sectors of the urban middle classes, such as the lieutenants. The Alliance resulted in the coming to power of Getúlio Vargas after the Revolution of 1930, who also inspired by the premises of the Encyclical *Rerum Novarum*, created the Ministry of Labor, Industry and Commerce, as one of the priority portfolios of his government, to which Lindolfo Collor was appointed, who presented a project to create the minimum wage as early as 1931, based on the Treaty of Versailles and French, German, British, North American and Soviet legislation, as highlighted by Silva (2009).

It is important to mention that, according to Zangrando (1994, p. 9), in the period from the beginning of the twentieth century to the 1930s, there was a seething of strikes and labor movements (fueled, above all, by anarchist and Marxist ideologies), which caused a strong influence on the later union movements. The most industrialized sector at the time was weaving and spinning – and it is precisely in these that the main workers' strikes of the

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century broke out (in 1901, started at the Sant'Anna textile factory, and, in 1917, started at the Cotonifício Rodolfo Crespi). The demands postulated several rights, but especially the limitation of the working day and the guarantee of a minimum wage.

According to Souto Maior (2000, p. 67-68), with Getúlio Vargas the same story experienced in Europe and other countries is repeated in Brazil: the creation of several labor laws. However, it is important to emphasize that its material source preexisted the Vargas period. Some authors claim that labor laws were created by Getúlio Vargas, not having been preceded by movements, strikes, struggles of body and ideas, as had occurred in Western Europe – as if demands for rights had not emerged from Brazilian society. On the contrary, working conditions in the pre-Vargas period were degrading and there were several strikes for better working conditions.

Thus, although Brazilian labor law is often portrayed as a mere work of a "paternalistic" State, especially from 1930 onwards, history unveils a long process of claims and the consequent social pressure that culminated in the creation of protective rights.

The 1937 Constitution, granted by the Estado Novo, "in the field of individual labor rights, practically repeated the list of the previous Constitution" (Sussekind, 2002, p. 40), changing, however, in the definition of the minimum wage, the expression "normal needs of the worker" to "normal needs of work", certainly the result of the corporatism that was the hallmark of that Magna Carta. In the explanatory memorandum, it is worth mentioning the provision that the minimum wage levels would be established in each locality or region by representatives of the workers themselves and the employers, in order to remove the discretion of the State.

The first process of defining the minimum wage has already indicated the trend that has prevailed over time, that the original value and subsequent values do indeed have some correspondence with economic reality, but respond much more to the political variable. The minimum wage, in some Brazilian regions, was below the averages calculated. In others, it was above. This variability was due to the clash between workers and employers in the regional commissions and external political factors.

The Consolidation of Labor Laws (CLT), instituted on May 1, 1943, Decree-Law No. 5,452, brought the provision of a minimum wage in its article 76[3] (Brasil, 1943). The CLT

[3] "Article 76 - Minimum wage is the minimum consideration due and paid directly by the employer to all workers, including rural workers, without distinction of sex, per normal day of service, and capable of satisfying, at a given time and region of the country, their normal needs for food, housing, clothing, hygiene and transportation".

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represented the compilation of "individual worker protection standards with minor changes, adaptations, and legislative adjustments, copied or inspired by the Encyclical *Rerum Novarum and ILO conventions" (Bonfim, 2021, p. 20), as well as legislative decrees, laws, and decrees published from 1930 to 1942.*

The Magna Carta of 1946, which was promulgated by a democratic Constituent Assembly, that is, elected by the people, in the year following the end of the Estado Novo, as well as the Second World War, defined the minimum wage as consideration for work "capable of satisfying, according to the conditions of each region, the normal needs of the worker and his family" (Brasil, 1946), as provided for in item I of its article 157.

Another historical milestone of the Brazilian minimum wage was the effective extension of this guarantee to rural workers, through the enactment of the Statute of Rural Workers (Law No. 4214/63), by the João Goulart government, equalizing the rights of employees in rural and urban areas in several points. Although this right had been guaranteed by the CLT since 1943, the minimum wage was one of the CLT provisions that applied to rural workers, "but in practice the rule was not observed, nor did the government make an effort to apply it" (Silva, 2009, p. 78). With this conquest of rural workers, their average remuneration rose, but so did the discontent of rural landowners with the government of João Goulart, who swelled the ranks of the opposition to the then President, who trumpeted the need for agrarian reform, in addition to resisting compliance with the Statute of Rural Workers, with the expulsion of workers who inhabited their lands and the replacement by workers hired temporarily.

With the military coup in 1964, President Castelo Branco strictly summoned the National Congress to draft a new Magna Carta that would ensure the continuity of the coup, in accordance with the dictates of national security developed by the War College. Then, the first Constitution of the military regime was promulgated on January 24, 1967, and this text underwent a strong change on October 17, 1969, with Constitutional Amendment No. 1. In formal terms, the Military Regime and its "constitutions" did not change the minimum wage, but, materially, the value of the minimum wage had a downward curve, which even reached the period from 1968 to 1973, the time of the so-called Brazilian economic miracle. Silva (2009) points out that the minimum wage had a very restrictive policy by the military regime, mainly due to its dependence on the annual readjustments instituted by the government.

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The control of the military even fell on the collective bargaining judged by the labor courts, since the normative sentences of the disputes of an economic nature should observe the formula instituted by the government for the minimum wage, every time it was to set a salary adjustment for a certain category, according to Law No. 4,725, of June 1965, causing the flattening practiced in the minimum wage to extend to practically all wages, as emphasized by Silva (2009). But the appreciation of the minimum wage began to occur with a relative opening in the economy, in 1974, as well as as as a result of pressure from workers.

Law 6708/79 determined that there should be a gradual reduction in the number of regions in which the national territory was subdivided for the purpose of minimum wage, aiming to achieve the national unification of its value, which in fact only occurred in 1986, through Decree-Law No. 2,284/86. Silva (2009) and Bonfim (2021) contribute to understanding that the most important point of Law No. 6,70879 was the indexation of the minimum wage to other remunerations, respecting the limit of three minimum wages, through cascade readjustment, in addition to establishing that practically all salaries would be readjusted every six months by the National Consumer Price Index. The deindexation only ceased to occur with Decree-Law No. 2351/87, which instituted the National Wage Floor (PNS), considered the lowest legal salary due to the worker, and the Minimum Reference Wage, which would continue to be the indexer.

THE MINIMUM WAGE IN THE FEDERAL CONSTITUTION OF 1988

The Federal Constitution of 1988 provided for the minimum wage in item IV of its article 7, establishing it as a fundamental right of the worker, fixed by law, nationally unified, to meet his basic vital needs and those of his family and prohibited from serving as a binding for any purpose (Brasil, 1988).

Compared to the provisions of article 165 of Constitutional Amendment No. 1 of 1969 and, mainly, in article 76 of the CLT, the current Charter considerably expanded the list of basic needs to be met by the minimum wage, since the previous constitutional text spoke only of the normal needs of the worker and his family, while the consolidated rule only provided for the exclusive normal needs of the worker. Emphasizing that most of the needs listed in item IV of article 7 of the Magna Law are also considered as fundamental social rights, according to its article 6.

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The current constitutional text adopted the same technique as Decree-Law No. 399 of April 30, 1938, listing the normal needs that should be covered by the minimum wage, with the objective that each expense pointed out could serve as a reference for the periodic setting of the minimum wage, "the constituents imagined that it would be possible to assess whether the defined value was adequate from a constitutional point of view" (Silva, 2009, p. 123).

Since the minimum wage values practiced since 1988 have always been far from effectively meeting all the basic vital needs of the worker and his family established in item IV of article 7 of the current Magna Carta, the unconstitutionality was raised due to the legislator's omission, due to the non-adoption of the necessary measures to implement such constitutional provision, as analyzed by Freire and Freire Júnior (1999), giving rise to ADI No. 1458, whose decision recognized the unconstitutionality by omission as was well treated in its summary (Brasil, 1996).

An important rule brought in the Federal Constitution of 1988 was the establishment of the minimum wage mandatorily by law, removing from the President of the Republic the presidential prerogative to define the floor by decree, although, in practice, through the instrument of the provisional measure, the Chief Executive continued to have the leading role in defining the value of the minimum wage and not only the National Congress. Added to this fact is the subsequent emergence of Law No. 12,382 of February 25, 2011, which authorized the Executive Branch to define, by decree, the readjustments and increases, annually, for the purpose of preserving the purchasing power of the minimum wage, according to the guidelines established in the law itself, which was considered constitutional by the Federal Supreme Court (STF), "as long as there is no margin of discretion for the calculation of the quantum, the regulatory act is restricted to the application of legally established objective criteria" (Novelino, 2016, p. 471), according to the ruling that there is no innovation in the legal order, as the decree was exclusively for the disclosure of the readjustment index (Brasil, 2012).

The nationalization of the value of the minimum wage was guaranteed by the 1988 Constituent Assembly, seeking to avoid the increase of regional differences, which had already been attempted since 1979 with the enactment of Law 6708. Sussekind (2002) warned of the risk of the state wage floors provided for in Complementary Law No. 103/2000 becoming "regional minimum wages", violating the provisions of item IV of article 7 of the Federal Constitution – a case that occurred in the State of Rio de Janeiro, which

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led to the filing of ADI No. 2,358-6, which was not judged, because the aforementioned federative entity established several wage floors for different groups of workers, differentiating from the nationally uniform minimum wage under the competence of the Federal Union, according to what Bonfim (2021) records.

It was an achievement of the working class to provide for mandatory periodic readjustments of the minimum wage to maintain its purchasing power, seeking to avoid the discretion of the legislator to grant readjustments far from the recomposition of the value of the salary, with readjustments below inflation, as occurred during the military regime, and mentioned by Silva (2009).

The final part of item IV of article 7 of the Federal Constitution, when it prohibits the linking of the minimum wage for any purpose, prohibits the use of its value as an index, seeking not to compromise its purchasing power, ensuring its real appreciation, and may, however, be used as an initial benefit value, as provided for in ADI No. 4726, which is "constitutional reference to the minimum wage contained in a rule governing assistance benefits as setting the value unitary on the date of the enactment of the law, future binding as an indexing mechanism is prohibited" (Brasil, 2020, p. 1).

Deindexation had already been in force in the country since the creation of the National Wage Floor, in August 1987, seeking to avoid the inflationary effects that this brought. According to Sussekind (2002), the rule of not being linked to the minimum wage also generated discussion about those remuneration floors set at a certain number of minimum wages, as well as the possibility of it serving as a basis for the unhealthy bonus, however, the prohibition concerns any other legal act other than the employment contract, nothing preventing the professional salary or base salary of the category, as well as the additional unhealthy salary, from being levied on it, as the STF has already decided[4].

The non-incidence of the prohibition of the link to the minimum wage for the hypothesis of a wage floor with multiple salaries, as established for the category of engineers and architects in Law 4,950-A, results from a systematic and teleological interpretation, respectively, due to what is provided for in article 54[5] of the ADCT of the

[4] Binding Precedent 4 of the STF that says: "Except in the cases provided for in the Constitution, the minimum wage cannot be used as an index of the basis for calculating the advantage of a public servant or employee, nor be replaced by a judicial decision. And constitutional complaint 6.266 concluded that: "(...)I uphold this complaint to revoke Precedent 228 of the TST, only and only in the part in which it stipulated the worker's basic salary as the basis for calculating the unhealthy allowance due"

[5] Article 54 of the ADCT: "Rubber tappers recruited under the terms of Decree-Law No. 5,813, of September 14, 1943, and supported by Decree-Law No. 9,882, of September 16, 1946, shall receive, when needy, a monthly pension for life in the amount of two minimum wages".

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Federal Constitution of 1988 itself, and the purpose of food for which the wages are intended, as stated in the initial part of item IV of article 7 of the Magna Carta, also recalling the provisions of the caput of the same article, which ensures other rights aimed at improving the social condition of the worker, in addition to those already established in its items.

Another point of discussion that arose about the minimum wage was about the value of the monthly minimum wage being the minimum amount due to any worker, regardless of their working hours. Infra-constitutional legislation, especially article 64 of the CLT[6], as well as the wage policy rules that set the annual minimum wage values, allow the worker to perceive a value lower than a monthly minimum wage if the minimum hourly wage was respected

MINIMUM INCOME FOR APP DRIVERS

The app driver is the holder of fundamental rights, as well as the worker with an employment relationship, therefore, the guarantee of a minimum income (just as the employee is entitled to a minimum wage) has been the subject of legislative proposals and judicial discussions in Brazil and in other countries, regardless of what legal nature is attributed to his relationship with the electronic platform company.

PROPOSAL TO GRANT A MINIMUM INCOME TO APP DRIVERS

On March 5, 2024, the President of the Republic forwarded the Complementary Bill (PLP) No. 12/2024 (Brasil, 2024) to the Chamber of Deputies, which provides for the employment relationship of drivers of four-wheeled vehicles for digital platforms, as a result of discussions conducted in the Working Group established by Decree No. 11,513, of 2023, which had as its primary objective to prepare a proposal for the regulation of the activities of provision of services, transportation of goods, transportation of people and other activities carried out through technological platforms.

There were several motivations given by the Head of the Executive Branch to the aforementioned project, such as: the significant transformations suffered by the labor

6 The CLT says in its Article 64: "The normal hourly wage, in the case of a monthly employee, will be obtained by dividing the monthly salary corresponding to the duration of work, referred to in Article 58, by 30 (thirty) times the number of hours of that duration.
Sole Paragraph - If the number of days is less than thirty (30), the number of working days per month shall be adopted for the calculation instead of this number."

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market with technological advancement; the popularization of paid individual passenger transport applications, which has been presenting itself as a convenient and accessible alternative for urban locomotion, with efficiency and agility; the debate that has been raised by the working relationship between drivers and the companies that operate the apps; concerns about the guarantee of labor rights and social security of the professionals involved, which makes it necessary to create a law that clarifies the aforementioned legal nature.

The guarantee of minimum rights for a dignified existence for app workers, in accordance with the fundamental principles of the Federal Constitution of 1988, is also a motivation for PLP No. 12/2024, along with the search for harmony between technological innovation and labor rights, in a dignified and fair work environment, with clear and transparent guidelines for the relationship between workers and app operating companies, with the maintenance of social protection and without prejudice to the efficiency and dynamics of the sector.

Based on the principles of ILO Convention 144, the Head of the Executive Branch called for dialogue between the government, employers and workers in the formulation of labor policies and legislation, as well as their strengthening and the extension of social protection, based on the essential pillars aimed at dignity at work of the Decent Work agenda, promoting labor rights and the creation of productive employment.

In the Explanatory Memorandum, the author of the complementary bill has already highlighted the guarantee of labor rights, starting with the "salary floor readjusted in accordance with the National Policy for the Readjustment of the Minimum Wage", based on the clear establishment of the employment relationship between drivers and the companies operating applications for paid private individual passenger transport.

The complementary bill proposes the new figure of the self-employed worker by platform for those who provide the service of paid private individual passenger transport in a four-wheeled motor vehicle, not including workers who use another form of locomotion, with the intermediation of an application operating company, under the terms of its article 3, for labor purposes; and that the provision of service takes place with full freedom to choose days, times and periods of connection to the application, and there must not yet be any exclusive relationship between the worker and an application operating company and no requirement of minimum time available and habituality (items I and II of paragraph 1 of

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article 3). The provision of minimum remuneration proportionally equivalent to the national minimum wage is in the caput of article 9 of the PLP[7].

PLP No. 12/2024 is awaiting an opinion from the Committee on Industry, Commerce and Services of the Chamber of Deputies and, through research carried out for the purposes of this study on the Chamber of Deputies Portal website, among the 20 bills that deal with workers for digital platforms, it is understood to be the most complete, in addition to establishing this new type of worker ("self-employed by platform"), Defining the remuneration based on the national minimum wage policy, although the relationship is not classified as subordinate, nor is it mentioned that this remuneration will be a "salary". The other bills present varied forms for the legal nature of the employment relationship, some as an employment relationship, others as an intermittent employment contract, with emphasis on Bill No. 3748/2020 (Brasil, 2020), authored by Deputy Tabata Amaral (PSB/SP), which establishes a minimum remuneration for app drivers, based on the minimum wage, even if characterizing the relationship as a "worker on demand".

THE RIGHT OF THE SELF-EMPLOYED PLATFORM WORKER TO A MINIMUM INCOME

The provision inserted in PLP No. 12/2024 that the app driver is entitled to a minimum wage, proportional to the minimum wage, even if his employment relationship is not recognized, but which is configured as the "new species" of "platform self-employed" worker, since, in principle, the right embodied in article 7, item IV, of the Federal Constitution should be restricted only to employed workers.

As Fincato and Wünsch (2020) discuss, first of all, it is important to reflect on why the Executive Branch sought to give this new labor law configuration to the app driver, which, most likely, stems from the fact that the provision of services by digital platform distances its providers from the classic concept of legal subordination, without the effective exercise of directive power, because it is a freer service execution.

To answer the main question, it is possible to start with a systematic and teleological interpretation, taking into account the provisions of article 5, paragraph 1 of the Magna Carta, which strives for an immediate application of social rights, integrating them with the fundamental principles of human dignity, the social value of work and other fundamental

[7] "Article 9 - The minimum remuneration of the worker referred to in the caput of article 3 shall be proportionally equivalent to the national minimum wage, plus the reimbursement of the costs incurred by the worker in the provision of the paid private individual passenger transport service, under the terms of the provisions of the regulation."

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rights, because "the different fundamental rights coexist and, by the fact that they are present in the same legal system, they influence and condition each other" (Rothenburg, 2014, n. p.)element.

From another perspective, fundamental social rights are subjective rights, that is, rights that attribute "to their holder the power to demand compliance with the prescribed commandment even against the will of their recipient" (Olsen, 2014, n. p.)element. And the provision of this right is always related to the right to life and to the principle of the dignity of the human person, since the preservation of human life, as a condition for dignified survival, is the basis for the guarantee of rights such as the minimum wage (Sarlet, 2005).

Social rights are not only fundamental rights, but they are also authentic human rights, which, in their condition as subjective rights, serve "to give the notion of citizenship a new contour and content", with a more inclusive and solidary potential, which already justifies all the effort to defend social rights (Sarlet, 2014, p. 279) and also to defend their extension to as many people as possible. In the "close relationship with dignity, the existential minimum cannot be linked only to the satisfaction of basic material needs, but must aim at the development of the person as a citizen" (Weber, 2021, p. 827), that is, as an agent individual, bearer of autonomy for his choices, with free decision-making about his life.

In this line, the fundamental social rights that are based on the defense of life, the social value of work and human dignity, in theory, must also be guaranteed and recognized in non-employment labor relations, as they are a right of all. According to Wandelli (2014), not only employed workers are holders of the right to work, as the fundamental protection of work and dignity cannot be excluded in non-employment forms of work.

Recognizing the right to a minimum income proportional to the minimum wage to a worker without an employment relationship is the realization of human dignity, based on the interaction of fundamental social rights, as well as taking into account the minimum threshold of enforceability of these rights, the so-called "existential minimum" (Olsen, 2014). The existential minimum corresponds to "an essential constitutional element, by which a set of basic needs of the individual must be guaranteed" (Barcellos, 2002, p.23), "also known as the minimum for a dignified existence" (Sarlet; Rosa, 2015, p. 218). And stemming from the principle of human dignity, there is justification for the imposition of restrictions on other fundamental rights, such as the free initiative of the service taker, for example, as alluded to by Sarlet (2006).

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In Brazil, social rights specified in its current Magna Carta, such as the right to the minimum wage, health, education and others, have brought the dimensions of the guarantee to the existential minimum to employed workers, since there is no express constitutional provision about it, although the recognition of the right to an existential minimum does not require a constitutional text, as mentioned by Sarlet and Zockun (2016), since it stems from the protection of life and dignity of the human person.

The right to the existential minimum is considered a subjective public right with erga *omnes validity*, including between private individuals, as the STF has already defined that the norms that define fundamental rights and guarantees affect any legal relationship, "whether public, mixed or private, where the fundamental rights guaranteed by the Political Charter bind not only the public powers, also reaching private relations" (Brasil, 2017), therefore, it should lead to the effectiveness of constitutional norms, with the concern of carrying out the projects established in the Constitution in force, in addition to constituting a "kind of 'last barrier', for example, in the context of the application of a prohibition of retrogression" (Sarlet, 2014, p. 14). And in addition to being a private relationship, it would not even be appropriate to allege the existence of the objection of the reservation of the possible to guarantee the existential minimum in the granting of minimum remuneration to drivers by app, since such a limit to the social right goes through an eminently political discussion that depends on the position of the current Executive Branch, which in the case of the Brazilian government is quite clear with the terms of the proposal of PLP No. 12/2024.

THE RIGHT TO THE MINIMUM WAGE FOR APP WORKERS IN OTHER COUNTRIES

It is recognized that Uber is not the only digital platform in the world, however, the number of drivers who make their workforce available to it already justifies the existing discussion in all countries about the form of existing labor relationship, with a guarantee of social protection and better working conditions for service providers. And the trend of deregulation of the labour market that digital platforms have created is unequivocal, consisting of an increase in job insecurity and a threat to the social security system, leading to a greater fragmentation of social protection systems and inducing workers and their families to a state of social vulnerability. According to Costanzi and Santos (2023), the debates begin with the existence of independence or not of these workers from the

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platforms, thus removing legal subordination, which is a characteristic element of the employment relationship.

In the state of California, in the United States, where Uber was born, as of December 1, 2020, Law AB5 (*Assembly Bill* 5) came into force , the result of an employment relationship project signed and approved by Governor Nilson, on September 18, 2019 (*Labor Day*), which passed through the California Supreme Court, then in the Californian Assembly and Senate. The project was proposed under the name of "*Dynamex Case*", due to a decision by the Supreme Court of California that recognized the employment relationship of worker Timothy Kim with the company *Dynamex*, which similarly to Uber, operating through a digital platform, was responsible for delivering packages (Oliveira, 2021). The aforementioned Californian law created the ABC test "to identify whether app workers are employees and are entitled to labor protections" (Souza, 2023, p. 90). It is worth mentioning the episode of *Proposition* 22, which consisted of a plebiscitary consultation, approved in November 2020 by voters and financed by the Uber and Lyft platforms at a cost of 200 million dollars, to exempt them from compliance with Law AB5, but "recently, the Superior Court of Alameda County (California) ruled Proposition 22 unconstitutional" (Souza, 2023, p. 91).

In the United Kingdom, Uber had an appeal rejected by the Supreme Court, which, recognizing something close to parasubordination[8], decided that the employment relationship was similar to the employment relationship of drivers and the aforementioned company, rejecting arguments of autonomy and independence, "without the right to basic rights enjoyed by workers, which include the legally applicable minimum hourly wage" (Costanzi; Santos, 2023, p. 40). When dealing with subordination and independence, the highest Court of the United Kingdom redefined the main requirement of the employment relationship, giving it a broader meaning, purposely, to prevent workers from being excluded from protection, as alluded to by Perulli (2020).

In Europe, some countries have been choosing to assimilate the employment relationship of service providers to apps. In Spain, there was a national agreement that led to the creation of Royal Decree-Law No. 9/2021 (*Ley Rider*), which gave the legal presumption of an employment relationship for delivery platform workers, "also ensuring the

8 According to Italian scholars Giuseppe Ferrara and Giuseppe Tarzia, parasubordination is characterized by a bond of substantial dependence, however, with contractual distance between the service provider and the recipient of this provision, as there is no direct direction of the latter over this provision of services, despite it being part of its organization. (Pinto, 2002).

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right of workers to information in the workplace, being the first law that makes the expression 'algorithmic management' official" (Souza, 2003, p. 89). It was the result of the inspiration of the Supreme Court's decision, in September 2020, which gave an employment nature to the relationship between delivery workers and Glovo (another digital platform). For the other companies that manage work through algorithms or artificial intelligence, the provisions on algorithmic transparency were appropriate.

In Italy, the legislator also brought "'uberized' workers closer to employees in a subordinate relationship, adopting a law that included platform workers in the regime of occupational accidents and diseases" (Costanzi; Santos, 2023, p. 35). And in France, in 2020, the Court of Appeal of the French canton of Vaud recognized drivers operating on Uber's platform as its employees, with retroactive payment of wages, despite the fact that, on August 8, 2016, Law No. 2016-1088 had been approved, which recognized a differentiated legal regime for self-employed workers who carry out activities for digital platforms.

In Latin America, the Uruguayan Law of June 3, 2020 (Case 0002-003894/2019) framed the activity of digital workers as an employment relationship with the respective platform, based on the principle of the primacy of reality and inspired by a decision of the Court of Appeals that confirmed the employment relationship of an Uber driver. Countries such as Costa Rica and Peru have bills to regulate the employment relationship of digital platform professionals, as well as Brazil. In Argentina, according to Souza (2023, p. 89), a union entity was created that seeks to organize this type of workers and has already had a court decision recognizing the status of platform employees to app delivery workers.

Costanzi and Santos (2023, p. 38) mention the fact that, in Chile, Law 21,431 was approved, which came into force in September 2022, giving the possibility for workers on digital platforms to be classified as dependent or independent, with emphasis on the provision given to Article 152 Quadráter V. of the Chilean Labor Code that: "*In any case, the remuneration per hour effectively worked cannot be lower than the proportion of the minimum monthly income determined by law, incrementado en un veinte por ciento[...]*"[9]element. The aforementioned article demonstrates that even when considered as an independent employment relationship, the app driver is entitled to a minimum income, as provided for in the Brazilian bill and as he is defending himself in this article.

[9] "In any case, the remuneration per hour actually worked cannot be less than the proportion of the minimum monthly income determined by law, plus twenty percent."

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In England, where the Supreme Court gave an expansive interpretation, approaching the parasubordination of service providers for digital platforms, considering them "*workers* (workers, with a lower level of rights) and not true *employees*" (employees), the London Labour Court granted Uber drivers the status of workers and not employees, but guaranteed some rights such as the Minimum Wage, according to Souza (2023) and Perulli (2020). "Australia's most populous state, New South Wales, has ordered services that use self-employed drivers to deliver products, such as those in Amazon.com, to pay them minimum wage" (Legal Adviser, 2022, no. p.).

In France, article L7342-9 of its Labour Code literally speaks of the payment of a decent price for service providers of digital platforms[10], which is perfectly in line with the principle of the existential minimum already addressed here. The defense of decent work with decent remuneration, even if the employment relationship in the provision of services for a digital platform is not configured, is also the responsibility of international organizations. For example, we have the Inter-American Court of Human Rights, linked to the Organization of American States (OAS) when it stated in its Advisory Opinion 27, of May 5, 2021, that the emergence of digital platforms has brought changes to the world of work, as well as the challenge of maintaining workers' rights, including the minimum wage, This must be guaranteed through social dialogue[11].

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[10] "*Dans le cadre de sa responsabilité sociale à l'égard des travailleurs mentionnés à l'article L. 7342-8, la plateforme peut établir une charte déterminant les conditions et modalités d'exercice de sa responsabilité sociale, définissant ses droits et obligations ainsi que ceux des travailleurs avec lesquels elle est en relation. Cette charte, qui rappelle les dispositions du présent chapitre, précise notamment :*
[...]
2° Les modalités visant à permettre aux travailleurs d'obtenir un prix décent pour leur prestation de services;".
In free version: "As part of its social responsibility towards the workers mentioned in article L. 7342-8, the platform may establish a charter that determines the conditions and modalities for the exercise of its social responsibility, defining its rights and obligations, as well as those of the workers with whom it is in contact. That letter, which recalls the provisions of that chapter, specifies in particular:
[,,,]
2. the arrangements for enabling workers to obtain a decent price for their services."

[11] "*El Tribunal nota que la emergencia de las plataformas digitales de trabajo ha constituido un importante cambio en la modalidad de trabalho, which también conlleva importantes desdesafios para los derechos laborales de susuarios. The ILO ha señalado que el reto principal que arises from the work through platforms, particularly through the use of apps and through crowdwork, es que el work carried out by digital means in the recognition of the condition of the worker or the worker as a worker or as a worker, but as a worker or independent worker. This lack of recognition can exclude the worker or the worker from the labor benefits of the workers and the workers, including their labor stability, the minimum wage, and the access to conditions worthy of employment, making it difficult to exercise their union rights. In this sense, this Court emphasizes the importance of the tripartite dialogue, which allows public policy and labor legislation to promote stable and solid professional relations between employers, and workers, in the framework of respect and guarantee of human rights*". In a free version: "The Court observes that the emergence of digital labor platforms constituted an important change in the modality of work, which also entails significant challenges for the labor rights of its users. The ILO indicated that the main challenge arising from platform work, particularly through the use of apps and collaborative work, is that work carried out through digital means does not recognise the status of

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On its centenary, in 2019, the ILO launched a document in which it called on all Member States, taking into account the situation of each nation and with social dialogue, to continue to deal with the future of work, starting from the human being. It also stresses that all workers must be protected from the decent work agenda, which must include the following elements: respect for fundamental rights and an adequate minimum wage, as well as policies and measures that respond to the challenges and opportunities in the world of work arising from the digital transformation of work, including platform work" (ILO, 2019).

A social dialogue was also advocated by the document *Digital Platforms and the world of work in G20 countries: Status and Policy Action*, to ensure that all opportunities arising from digital platforms are taken advantage of and that challenges are addressed for them to offer decent work, because regardless of the category, fundamental principles and rights must be respected. Likewise, he defended the development of an international governance system that establishes minimum rights and protections to be respected by platforms, inspired by the ILO's Independent Global Commission on the Future of Work.

FINAL CONSIDERATIONS

As seen, throughout the history of human work, much has been discussed about the stipulation of a minimum level of remuneration, as a way to guarantee a dignified life for the worker, as defended by St. Thomas Aquinas and the Encyclical *Rerum Novarum*, by Pope Pius XIII (1891). Formally, it was in 1894 that the minimum wage appeared in Australia and New Zealand; and the first Constitution that dealt with the minimum wage was that of Mexico, in 1917. However, it became a right to be defended worldwide with the signing of the Treaty of Versailles in 1919, and with ILO Convention No. 26, adopted by Brazil in 1928.

In Brazil, in fact, the minimum wage only came into existence in 1940, with the CLT having instituted it in its article 76, in 1943. Currently, the minimum wage is elevated to the category of fundamental social right, provided for in article 7, item IV, of the CF/88, as being "fixed by law, uniform nationally, to meet the basic vital needs of the worker and his family, with periodic readjustments and forbidden to be linked to any other purpose". And PLP No. 12/2024 is being processed in the Chamber of Deputies, which configures the app driver as

the worker as an employee, but rather as a self-employed person. This lack of recognition can exclude the worker from workers' labour benefits, including their job stability, the minimum wage and access to decent working conditions, making it difficult for them to exercise their trade union rights. In this sense, this Court emphasizes the importance of tripartite dialogue, which allows public policy and labor legislation to promote stable and solid professional relations between employees and employers and workers, marked by respect for and guarantee of human rights."

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a "self-employed worker by platform", providing for the right to receive a minimum remuneration proportional to the minimum wage.

The guarantee of minimum wages for any worker, regardless of the legal nature of their relationship, can be based on its nature as a fundamental social right, which has immediate application and must be integrated with other fundamental rights, being a subjective right and a human right, above all, inclusive and solidary, providing citizenship. A minimum wage is a right of all, an instrument for the realization of human dignity, by virtue of the principle of the "existential minimum", which constitutes the set of basic needs of the individual, which corresponds to a subjective public right with *erga omnes effect* and which seeks to avoid social regression.

In the face of globalization and the advancement of technology, "uberization" is a worldwide phenomenon, as well as the discussion about the legal nature of the relationship between the worker and the digital platform, with various configurations adopted by legislation and courts in different countries, with an employment relationship or with autonomy, dependent or independent. It is important to highlight that the defense of the right to the perception of a minimum payment by digital platform workers is present even when the traditional employment relationship is not configured, as happened in the United Kingdom. And international organizations such as the ILO and the IACHR have been advising Member States to deal with the new reality of the digital labor market without forgetting respect for fundamental rights and the preservation of decent work with decent remuneration.

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