

REGULATING UNACCEPTABLE FORMS OF WORK: THE LEGAL PROTECTION OF WASTE PICKERS IN BRAZIL

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Abstract

Labour law has been designed and systematized to regulate and protect subordinate labour in an employment relationship (ER). When labour law was originated, most workers would fit in the description of an employee at such a relationship; therefore turning the ER into the standard relationship that attracted all the protection guaranteed by labour law seemed the best strategy to secure social justice. The ER option was relatively successful through the twentieth century, until globalization turned the whole world of work much more complex. On one hand, workers in standard ERs started experiencing extreme forms of precariousness

in their working conditions; on the other, it has becoming more evident that workers working in autonomous relationships or even in relationships that do not fit completely into the ER model can be trapped in situations of extreme vulnerability. This paper focuses on this second group of workers (vulnerable workers not in a traditional ER or self-employed). In order to continue to be effective in guaranteeing social justice, labour law has to reconsider its ER option and contemplate on different regulatory models that can be effective in protecting workers who are not employees (or typical employees), but need the coverage of labour law. In this context, this paper examines the case of waste pickers in Brazil. The study aims first, to discuss how labor law ignores these workers and does not offer institutional responses to their needs, and second, to propose policies to address the challenges they face.

Keywords: Self-employment; Vulnerable Work; Precarious Work; Waste Pickers; Legal Protection.

Introduction

In Brazil, there is a work that should not exist: the work of the waste pickers.¹ This work is inevitably painful, dangerous, unhealthy, a target of social prejudice and harmful to workers' self-esteem. It is a result of the absence and weak enforcement of legislation and public policies on labor and environmental fields. Society itself is silent on the matter, ignoring and taking advantage of waste pickers' work. This study focuses on the limits and potential of the labor law system in protecting these workers, even though also identifying the intrinsic relationship between the vulnerability of waste pickers and the environmental law system.

¹ In Brazil, as we will see ahead, there is a legal difference between waste pickers, which are informal workers who collect recycle materials from garbage, and solid residue collectors, who would be formal workers part of the waste recycling process. We will use the difference to analyze the necessary transition from waster pickers to solid residue collectors.

Labor law was designed and systematized to regulate and protect subordinate labour in an employment relationship. Since the work of most workers fell within the description of such relationship, transforming the employment relationship in the target of all protection guaranteed by labor law seemed the best strategy to ensure social justice. Self-employed workers were excluded from labor law protection and their work relationship, in most cases, viewed with suspicion for the fear of frauds to avoid labor costs. The choice to focus on the employment relationship was relatively well succeeded throughout most of the twentieth century until globalization turned the world of work much more complex. Employees started to experience extreme forms of precarious working conditions (such as contracts for "zero hour", outsourcing, temporary contracts); and self-employed workers or workers in relationships that are not completely defined by the model of a typical employment relationship - for example, domestic workers - are often the most vulnerable parcel of workers in the labour market and in need of legal protection. This study focuses on this second group of workers (vulnerable self-employed workers).

In order to continue to be effective in ensuring social justice, labor law should reconsider its choice of making the employment relationship the main attraction point for its protection and consider different regulatory models that can in an effective way protect workers on the other side of the fence of subordinate work (Freedland, 2006 p.6). In this respect, the most recent ILO initiative to put in focus, analyze and discuss unacceptable forms of work, as one of the eight areas of critical importance for its regulatory and promotional strategies, could have the

potential to generate significant changes in debate and practice of labour law concerning the protection of vulnerable and precarious work.²

This paper analyzes the case of waste pickers in Brazil, a type of work that easily fits in the ILO concept of unacceptable forms of work.³ The study is intended, first, to discuss and demonstrate how labor law ignores these workers and offers no institutional responses to their needs, and second, to propose policies to address the challenges faced by the workers. The study proposes that self-employed workers in extreme vulnerability should be central in the regulation and reflections of labor law - along with the typical subordinate work.

Focusing on the work of waste pickers in Brazil, this paper explores three issues that we consider essential to improve the waste pickers' conditions of work: what immediate action should be taken to minimize their arduous, dangerous and unhealthy conditions of work; which instruments are effective to provide social guarantees to those workers; what measures are needed for the transition of this kind of unacceptable work to other forms of work.

The paper starts by discussing the current theoretical and practical limitations of labor law in the regulation and protection of work outside the typical employment relationship model in the context of economic globalization and increasing complexity of the world of work. In this topic, the paper analyzes the ILO concept of unacceptable forms of work. Second, it examines the economic and social profile of waste pickers in Brazil; and next, it explores the three issues mentioned above. Finally, the paper proposes labor policies in order to restore the

² The other seven areas are: Promoting more and better jobs for inclusive growth, Jobs and skills for youth, creating and extending social protection floors, Productivity and working conditions in SMEs, Decent work in the rural economy, Formalization of the informal economy and Strengthening workplace compliance through labour inspection (ILO, 2013, para. 49).

³ The paper is restricted to the analysis of the work of waste pickers in the streets, which is different from the work of waste pickers in landfills.

dignity of these workers, ensuring fair and decent working conditions. It concludes that labor law needs to offer a more comprehensive regulation to effectively achieve its primary objective, namely, to ensure social justice.

I. Theoretical Limitations of labor law in the protection of atypical employment relationships

The collection of solid residue is classified as a "green job", that is, a job that "helps reduce negative environmental impact ultimately leading to environmentally, economically and socially sustainable enterprises and economies" (ILO, 2013(a)). However, the lack of recognition and legal protection creates what Mantouvalou (2013, p. 133) calls legal precariousness, i.e. "the special vulnerability created by the explicit exclusion or lower degree of protection of certain categories of workers from protective laws". Labor law faces difficulties in regulating and protecting any type of work outside the paradigm of an employment relationship. Self-employment relationships that do not fit precisely in a typical employment relationship, no matter how vulnerable, are not protected by labour law. Thus, the solid residue picker remains the waste picker, target of social prejudice and subject to various risks to their health and dignity, rather than being a valued and important professional in the environmental policy of the country.

Conditions of work that should not exist, as it happens in the case of the waste pickers, fit perfectly on the idea of unacceptable forms of work being proposed by the ILO.

Unacceptable forms of work "comprise conditions that deny fundamental principles and rights at work, put at risk the lives, health, freedom, human dignity and security of workers or

keep households in conditions of extreme poverty” (ILO, 2013, para.49). These conditions of work are not exclusive of employment relationships; on the contrary, due to the legal precariousness, they are often present in autonomous work relationships. Recognizing this reality, force the limits of labour law to expand and include the issues and challenges of regulating autonomous labor relations. Moreover, this inclusion should not be done in a marginal way: these issues and challenges must occupy a central position beside subordinate relationships in labour law systems.

Unacceptable forms lead us to situations that require immediate and firm action for their extinction. An important example is the ILO Convention 182 on the worst forms of child labor. The argument made by Convention 182 is that, regardless of the country's level of development, those forms of child labor should not be accepted at all, requiring “immediate and comprehensive action” (ILO Convention 182, Preamble and Article 1). In Brazil, another example of such situation is the work in the harvest of sugar cane. Sugar cane cutters are subjected to inhuman working conditions. Only workers with greater physical strength support a "repetitive and strenuous physical activity performed in the open, under the sun, in the presence of soot, dust and smoke for a period of between 8 and 12 hours" (Alves, 2006, p. 94). Policies that promote mechanization and aim the end of the manual harvest are justified exactly by the argument that this type of work is unacceptable. The work of waste pickers, as other types of work in vulnerable conditions, carries the legal precariousness additional burden: since there is no employment relationship, there is no labour law protection.

Brazilian law follows the dichotomy model based on the legal subordination and divides workers into employees and self-employed workers for the purposes of inclusion in the scope

of labor law protection. The consequences of this inadequacy are reflected in the lack of knowledge about the working conditions of these professionals, their needs regarding the development of specific public policies, their form of collective representation, etc. Self-employment is then usually associated with informal work due to the lack of policies for their integration into the labor market. Labour law's omission becomes especially serious in the case of self-employment in extremely vulnerable conditions – workers who face high risk of violation of their rights - and precariousness - relationships characterized by a high level of insecurity.⁴

The case of waste pickers is one of the most important examples of self-employment exercised in extreme vulnerability and insecurity. Workers are located in the most underprivileged portion of the labor market, but their autonomous work is ignored by labor laws. In reaction to this theoretical limitation of labor law, Leighton and Wynn (2011, p.2), for example, argue that labor law should move away from the position that sees self-employment "as little more than the 'default' category of employee status. The integrity and worth of all work relationships should be recognised, each with its own characteristics ". Similarly, Freedland (2006, p.4) supports the transition of the employment contract for a broader notion of personal work contract that would cover all the relationships that are aimed at providing work in a personal basis. As the author explains, "This is a shift from unified analysis of the contract of employment to the recognition of the diverse though inter-linked family of personal work contracts" (Freedland, 2006, p.4). The author's argument is that on the other side of the fence of employment, where are the quasi-subordinate and self-employment relationships, there is a black hole when it comes to a system of principles and

⁴ Leah Vosko defines precarious work as "work for remuneration characterized by uncertainty, low income, and limited social benefits and statutory entitlements." (Vosko, p. 2).

rules that regulate these activities (Freedland, 2006 p.6). Finally, Freedland sums up the perspective of labor law (and its operators) about working relationship contracts that are the "other side of the fence" subordinate employment:

In this extended realm of personal work contracts, we find an enormous variety of factual patterns of work arrangements ... The employment lawyers, we seem to approach this diverse world entirely from the contract of employment outwards. That is to say, we analyze such arrangements by considering whether they constitute contracts of employment. If they do not, we consider whether they can be analogised to contracts of employment. If they can not, we tend to conclude that they are outside our province, some kind of business contract with which we are not really concern. We are prepared to recognise diversity within the contract of employment, and we are becoming more than we were accustomed to recognising diversity on the margins of the contract of employment; but I think we are still allowing ourselves to be rather tightly constrained by the contract of employment paradigm. (Freedland, 2006, p.6)

The need to reflect on the theoretical limits of labor law is stronger in relation to self-employed workers in vulnerable conditions. In Brazil, waste pickers appear to work in an empty space, a no man's land. On the one hand the weak enforcement of the environmental legislation does not impose any accountability from government and society for the collection of waste for recycling, taking advantage of the waste pickers' informal work; on the other, labor law ignores the activity of a self-employed worker in extreme vulnerability since the worker is outside a typical subordinate relationship. It is time to theoretically rethink these limits; consequently the complexity of the world of work would be perceived by the law in a way that the fundamental objectives of labor law would be met - social justice and the preservation of workers' dignity.

2. Socio-Economic Profile of Waste Pickers in Brazil

Waste pickers are workers that guarantee their survival from the recovery of urban waste materials collected and sold for recycling by the industry. (Chikarmane; Narayanan, 2012, p.49). Their activity can be defined as the collection, classification and disposal of municipal solid waste (MSW). Waste picker's are the workers who manually collect urban waste (of buildings, houses, construction sites, stores) material that can be recycled. The terms designating the worker varies: garbage collector, cartwright, bottles' man, man-horse. The latter explicitly reveals the cruelty of the working conditions experienced by these workers.

Waste pickers' presence is common in the streets of Brazilian cities. They work individually or with their family (including children), using as a means of cargo transportation a small cart that is pulled by the worker himself (or herself). The worker may have already started this activity as a child with his/her family or started as a waste picker for lack of opportunities in the formal labor market.

In a report published in 2008, a newspaper reporter from Folha de São Paulo spent four days living as a waste picker. In the article, the reporter recounts the physical (an iron cart weighs about 90 kg) and psychological ("dealing with other people's garbage affects in a very negative way our self-esteem") suffering supported by waste pickers (Fioratti, 2008). Pulling the cart, the worker faces uphill, downhill and congested urban roads carrying a weight not to be supported by humans. This work results in health problems related to the overweight cart, to the pollution from cars and buses, to the manual management of waste without proper protective equipment, to the stress resulting from the overall activity. Among the risks faced by these workers, the Brazilian Institute for Applied Economic Research (IPEA) emphasizes: "exposure to heat, moisture, noise, rain, risk of falls, pedestrian collisions, cuts and biting

animals, contact with rats and flies, the smell of gas and the smoke exhaled accumulated solid waste, work overload and weight lifting, contamination by biological or chemical materials etc. "(IPEA, 2013, p.6). Waste collection in Brazil is an extremely unhealthy, dangerous and difficult activity that does not have any form of protection.

The waste picker is ignored or viewed negatively by the public, who is or pretend to be ignorant of the fact that these are the workers who collect their waste, rendering a service that should be shared by the government, businesses and society. The workers are already informally included in the process of waste collection in the Brazilian cities. It is usual for them to have verbal agreements with residential condominiums and construction sites to collect their waste. In addition to the dangers of the work, the informality of the economic process in which they are involved contributes to the workers' low-income. For example, often the trader who buys the waste has a profit margin of up to 150% by buying from the waste picker and reselling to the recycling industry (Fioratti, 2008). The common use of the term "catador de lixo" ("waste picker") in Portuguese denies the value of the activity done by these workers and stigmatizes the informality of their activity because "lixo" means "any object without value or utility" (Houaiss Dictionary). Thus, it favors the view of those who dispose the waste without fulfilling their environmental and social responsibility, and denies the environmental, social and economic value of the waste picker's work (Magalhães, 2012, p. 44).

According to IPEA, the statistics on the number of waste pickers in Brazil are not accurate, with a large variation because of the degree of informality and seasonality of the activity.⁵ Still, considering the data provided by the Brazilian Institute of Geography and Statistics (IBGE), the National Movement of Waste Pickers (MNCR)⁶, among others institutes and associations, we can estimate around 400,000 to 600,000 waste pickers in the country. A IPEA study also indicates, from different sources, the existence of 1,100 waste pickers' cooperatives in 2010 and between 40,000 and 60,000 waste pickers associated with these cooperatives (IPEA, 2012, pp.12-13).

In 2002, this activity was recognized by the Ministry of Labor and Employment (MTE) Brazilian Classification of Occupations and consequently, the work could be better identified in the IBGE survey (Census and National Household Survey Sampling - PNAD):

5192-05 – Collector of recyclable material
Scrap iron collector, Collector of paper and cardboard, Collector of scrap, Collector of containers, Scrap baler (cooperative)
5192-10 - Collector of recyclable material
Separator of recyclable material, scrap separator, Screener of recyclable material, Screener of scrap.⁷

Considering significant regional differences inside Brazil and based on the 2010 IBGE Census and 2012 IBGE PNAD, IPEA presented important data on the work of waste pickers in Brazil. A summary table of the data allows us to observe important characteristics of the life and work of these people:

⁵ Seasonality results from "prices of recyclable materials in the waste supply and, unfortunately, from the presence of children in waste collection during school holidays" (IPEA, 2011).

⁶ The MNCR indicates the existence of one million waste pickers in Brazil (Magalhães, 2012, p.15). In the IBGE 2010 Census, 387,910 people declared themselves pickers (IPEA, 2013, p. 46).

⁷ MTE, Brazilian Classification of Occupations. Available online:

<http://www.mtecbo.gov.br/cbosite/pages/pesquisas/BuscaPorTituloResultado.jsf>. According to the MTE, the collector is responsible to "collect recyclable and reusable material, sell the material collected, select material collected, prepare the material for shipment, undertake environmental maintenance and work equipment, promote the recycling work, manage the work and work safely".

Social Situation of Waste Pickers (WPs) in Brazil

Categories	Indicators	Brazil	South	Southeast	Northeast	Center-West	North
Demographics	Total #	387,910	58,928	161,417	116,528	29,359	21,678
	Average age	39.4	38.9	40.6	38.3	40.0	36.5
	Women(%)	31.1	34.1	30.9	29.3	34.1	29.5
	African-Brazilians(%)	66.1%	41.6%	63.0	78.5	71.3	82.0
	Living in urban areas(%)	93.3	93.5	96.2	88.5	95.6	93.2
	Dependency ratio for children in a household with at least one WP	50.0	53.5	43.6	55.3	46.3	64.1
Work and Income	Formal workforce(%)	38.6	32.2	45.7	33.8	38.4	29.0
	Average Monthly Income(US\$)	184.27	192.44	203.70	148.09	199.56	195.77
	Income inequality among WPs (Gini Index)	0.42	0.42	0.39	0.43	0.37	0.42
Social Security	WPs contributing to Social Security (%)	15.4	25.9	17.7	6.2	10.6	7.4
Education	Analphabetism (%)	20.5	15.5	13.4	34	17.6	17.2
	WPs with 25 years old or more that have concluded middle school	24.6	20.6	28.3	20.4	23.9	30
	WPs with 25 years old or more that have concluded high school	11.4	7.9	13.5	9.7	10.8	14
Digital Inclusion	Household with at least one WPs with	17.7	20.1	26.4	7	19.2	9

	a computer						
Access to public service	Children (0 to 3 years old) in daycare in households with at least one WP	22.7	19.8	27.9	21.7	18.5	13

Source: IPEA, 2013, pp. 44-45.

According to the data shown by IPEA, the areas with the greatest number of waste pickers are the most urbanized regions, especially the city of São Paulo with 79,770 workers. It is an activity thus essentially urban due to the higher production of waste in the cities. The average age of these workers is 39.4 years (almost half of the collectors is between 39 and 49 years). This age group indicates workers in a mature professional phase, that is, these are not workers who are temporarily exercising this work. Being a waster picker is their permanent job.⁸

IPEA indicates that only 2.1% of waste pickers are under 18 years old. Nevertheless, the number of children (under 14 years old) may reach 5,000 children, according to 2008 IBGE data (IPEA, 2012, p.13). In addition, "in households with at least one waste picker, the dependency ratio is 50% for children. That is, children are 50% of the population "(IPEA (a), 2013). Especially during school holidays and considering that only around 20% of these children are in daycare, the risk for them, permanently or temporarily, also participate in the waste collection is very high. In 2008, the federal government published the list of worst forms of child labor (TIP list), which includes collection, sorting and processing of waste as one of the worst forms of child labour. The TIP list describes the characteristics of the work

⁸ See the accounts collected by Magalhães, 2012, pp. 26-28.

as "strenuous efforts; exposure to physical, chemical and biological hazards; exposure to toxic dust, heat; repetitive movements; anti-ergonomic positions" and list its possible risks:

Muscle-skeletal infections (bursitis, tendonitis, back pain, synovitis, tenosynovitis); injuries; lacerations; insolation; colds; Work related pain/RSI; spinal deformities; respiratory infections; pyoderma; dehydration; occupational dermatitis; contact dermatitis; alcoholism and olfactory dysfunctions. Decree No. 6481 of June 12, 2008.

Regarding the level of schooling, 20.5% of waste pickers have declared themselves illiterate. Considering the workers over 25, only 24.6% completed elementary school - the average for the overall population is 50.3% (IPEA, 2013, p.61). African-Brazilian men and women represent 66.1% of the total number of waste pickers (their participation in the Brazilian population is 52%) (IPEA, 2013, p.49). IPEA indicates that the average income of waste pickers was US\$ 184.27 in 2010, with regional variations. It was slightly above the national minimum wage at the time - US\$ 164.42. The same forms of discrimination generally found in the labor market are also found among waste pickers: while the average income for men is US\$ 197.10; for women is US\$ 148.48; while white waste picker have an average income of US\$ 207.13; Africa-Brazilians have an income of US\$ 169.33. (IPEA, 2013, p.54).

On average in Brazil, only 38.6% of collectors are parties in any formal working relationship (as a waste picker or more usually in a parallel activity) (IPEA, 2013, p.51). The high level of informality is an essential trait in the unprotected situation experienced by these workers, that can be described as not having recognized any labor rights, being ignored by public administration bodies responsible for policy development, not contributing to the social

security system (only 15.4% of waste pickers contribute to Social Security). This last indicator is particularly worrying since waste collection is an activity that involves significant risks to workers' health, as we have already emphasized.⁹ According to IPEA, in the North and Northeast (the poorest regions) of Brazil only 7.5% and 6.2%, respectively, contribute to social security (IPEA, 2013, p.59). The low income and lack of knowledge about social security benefits are considered the main reasons for the low contribution rate.

The social and economic conditions experienced by waste pickers indicate the situation of extreme vulnerability and precariousness of this group of workers. These two characteristics, however, are not inherent to this type of work, but generated by the absence and little effectiveness of laws and policies at the environmental, labor and social security fields – the legal precariousness. The existence of such conditions of work reveals two important dimensions of this problem. First, government and society do not fulfill their responsibility in recycling waste generated in the cities.¹⁰ Second, given this environmental irresponsibility, there is a transfer of this task to most vulnerable groups in society that render the service in an informal and degrading way. Workers protection policies can temporarily alleviate this degree of vulnerability, but these policies should aim at the end a deep transformation of the waste collection work with the inclusion of workers in a process of collecting and recycling waste economically valued, environmentally sustainable and socially responsible .

3. From waste pickers to solid residues collector: three key issues

⁹ Even though, in Brazil, health care is a universal rights, the contribution to social security guarantee a series of benefits to workers, as health leave, from which informal workers are excluded.

¹⁰ IPEA estimated that "90% of all recycled material in Brazil is recovered from the waste by the hands of these workers" (IPEA 2012, p. 9).

Labour law still hesitates in regulating self-employment conditions and in extending its protection to vulnerable self-employed workers. For the waste pickers in Brazil, however, environmental law has already produced important legal protection landmarks, although still with low level of effectiveness. Law No. 12,305 of August 2, 2010 established the National Policy on Solid Waste (PNRS) and its Article 3, paragraph XVII, defines the shared responsibility for the lifecycle of products among manufacturers, importers, distributors and traders, consumers and public services organs of urban sanitation and solid waste management – in Brazil, the municipalities.¹¹ In addition, the PNRS provides in Article 7, paragraph XII, that among its objectives is the "integration of collector of reusable and recyclable materials in actions involving the shared responsibility for the product lifecycle." The PNRS also fixed June 8 of 2014 as the final date for the closure of all landfills (in Portuguese, “lixões”), for the creation of sanitary landfills and the establishment of selective collection of waste in all Brazilian municipalities. These measures are essential for the transformation of collection and waste management, but June 8 of 2014 has arrived and it is already gone and the measures were never taken by most municipalities in Brazil. As the Brazilian Public Cleaning Companies and Special Waste Association (ABRELPE) explains:

In 2013, just over 62% of the municipalities reported some initiative of selective collection ... Although it is significant the number of municipalities with separate collection initiatives, it should be noted that these activities often mean only the availability of voluntary delivery points or agreements with recycling cooperatives, which do

¹¹ See Article 26, Law n.12305 / 2010.

not cover the whole municipality or the city's population.

(ABRELPE, 2013, p.30)

Regarding landfills, ABRELPE (2013, p. 31) notes that 58.3% of the waste had a proper final disposal in 2013; however the percentage of waste with improper disposal increased from 41.74% in 2012 to 42.02% in 2013. The difficulty in the implementation of the PNRS goals occurs both for lack of economic resources from municipalities, and for the presence of economic interests from companies that collect garbage for local governments. Raimunda Alves Ribeiro, director of the Central Cooperative of Collectors of Solid Waste from the Federal District (Centcoop), explains:

Companies gain by every ton of garbage they pick up and without treatment in the areas listed by local governments. They resist the selective collection and the end of the landfills; pressure politicians because the investment of governments in recycling and social inclusion do not interest them (IPEA (a), 2013).

The low effectiveness of the PNRS reveals how the government uses waste pickers' work in degrading conditions to fulfill the government's legal obligation to do the selective collection. There is no way to disassociate this environmental dimension from the labor dimension in this matter. That is why the question raised by Magellan is very pertinent: "the change of the society perception towards the so-called environmental issue would be accompanied by a similar movement in relation to social issues?" (2012, p.18). We suggest

that the change in the environmental perception is required for the social transformation of the work of the waste picker.

Considering this important requirement, this chapter explores three issues that we consider essential for addressing the social transformation of work of the waste pickers that would improve their working conditions: what immediate action should be taken to minimize the arduous, dangerous and unhealthy conditions of work; which instruments are effective to provide social guarantees to those workers; what measures are needed for the transition from this kind of unacceptable work for other types of activities.

The first issue to be considered concerns what immediate action must be taken to minimize the arduous, dangerous and unhealthy conditions of the waste picker's work. This question is directly related to the transformation of the theoretical framework of labor law in including self-employment in its scope of protection.

Certainly, there are different types of self-employed workers. Some are more qualified than others and consequentially less vulnerable to risks to their dignity, health and well-being.¹² In a certain degree, however, all of them might have fundamental rights violated. Therefore, as there is an employment law (in Brazil, the CLT), it is pertinent to think about a law for self-employed workers, in order to guarantee fundamental rights to these workers.¹³ Different from an employment relationship (where there is a counterpart responsible for complying with the employee's rights), in the case of self-employment, there is no employer. Therefore,

¹² See the case liberal professionals and self-employed workers called *ipros* (independent professionals) Gomes, 2015.

¹³ Recently, two countries approved self-employed workers regulation: Law 20/2007 in Spain (Estatuto del Trabajo Autónomo) and the 2013 Social Akkoord in the Netherlands.

a self-employment law should not focus on the accountability of one part in the work relationship for the fulfillment of the worker's rights. The law should establish minimum conditions for self-employment, which would serve as a paradigm for specific legislation, for the functioning of self-employed cooperatives and for the design of public policies. A self-employment law could establish a new theoretical framework for the valorization and de-precarization of this work, commonly seen as a survival strategy for those who failed to enter the labor market in an employment relationship. In this sense, the Law on Cooperatives, n. 12,690 / 2012, is an important example of such legislation, providing in its Article 7 basic labour rights that should be guaranteed to workers associated in a cooperative:

I – an income not inferior than the profession minimum wage and, in its absence, no less than the national minimum wage, calculated in proportion to hours worked or the activities developed;

II - normal working hours not exceeding eight (8) hours per day and 44 (forty-four) hours per week, except when the activity, by their nature, requires the provision of work by shifts or scales, provided compensation schedules;

III - paid weekly leave, preferably on Sundays;

IV - annual paid rest;

V – higher remuneration for night work;

VI - additional remuneration for unhealthy or dangerous work;

VII – insurance for work related accidents.

Considering specifically the situation of waste pickers, the immediate risks that must be addressed are those relating to their health and safety. Thus, the government must regulate

the use of work tools, such as gloves, masks, clothing and especially the transportation of these workers. The lack of adequate equipment to mitigate the risks to workers' health and safety, including the lack of an alternative to the manual transportation and the excessive weight supported by them, can not be tolerated anymore. Despite practical obstacles to assure these protective measures, they must be taken. This is a similar situation to the fight against child labour: even though some governments argue that they do not have the resources to end child labour and that the families need the income (sometimes) generated by the children, a political decision must be taken not to tolerate this type of work anymore. In Brazilian cities, a political commitment must be made not to tolerate the manual collection of waste by informal workers. Society and government can no longer passively look at workers pulling carts to collect waste without any labor protection.

In practice, this type of protection could be made effective through the payment for environmental services (PSA). According to IPEA, a PSA system "should provide extra income for agents that make more sustainable use of natural resources." (IPEA, 2010, p. 29). Waste pickers do the selective waste collection, which the city has the legal obligation to do, and are essential in the preservation and restoration of the environment. Municipalities should therefore arrange a payment system to these workers for the environmental services they render. In fact, IPEA considers that the PSA should not necessarily be in cash, which can be "made in the form of equipment or, alternatively, in the form of equipment or training and technical assistance - including literacy, training etc." (IPEA, 2010 , p. 31). The provision of adequate facilities and equipment for selective collection and training of waste pickers would promote an immediate change in the way this work is carried out. Concerning the equipment required to this work, it is essential to discuss how these workers move around the cities. In

India, for example, the Cooperative of Solid Waste Collection (SWaCH Co-Op - solid waste collection handling) has partnered with the city of Pimpri Chinchwad to make the collection of waste motorized (Chikarmane; Narayanan, pp 57. -58). The end of the manual transport is urgent. Living with workers pulling carts crammed with waste is to ignore a clear violation of the most basic rights of these people – their right to life and to their physical integrity. In Brasília, Brazil, in 2007, the Central de Cooperativas de Materiais Recicláveis do Distrito Federal e Entorno (Centcoop) has received 13 motorized tricycles from the Banco do Brasil Foundation to be used by waste pickers (MDS). Unfortunately, this was an isolated initiative in Brazil as most waste pickers work carrying their own cart.

The second issue deals with effective tools to provide social guarantees for waste pickers. Here, we emphasize the role of the cooperatives. Recycling cooperatives have been extremely effective in securing better working conditions and income, in addition to providing an occupational identity to workers, not only in Brazil, but also in other countries where there is still informal and manual waste collection, such as in India, (Chikarmane; Narayanan, 55 pp.). The PNRS already provides that municipal plans of integrated solid waste management must contain "programs and actions for the participation of stakeholders, especially cooperatives or other forms of association of reusable and recyclable material collectors formed by low-income individuals" (Article 19, section XI). In addition, among the principles expressed by the PNRS is "encouraging the creation and development of cooperatives or other forms of association of reusable and recyclable material collectors" (Article 8). Finally, the Sanitation Law n. 11445 / 2007 altered the Public Bidding Law (Law n°8666 / 1993), allowing a bid waiver for

hiring of collection, processing and trading of recyclable or reusable solid waste in areas with selective waste collection system, made by associations or cooperatives formed exclusively by individuals of low income recognized by the government as waste pickers, with use of equipment compatible with the technical, environmental and public health standards. (Article 57).

Given the informality and seasonality that characterized the work of waste pickers, cooperatives are the most effective channel to reach these workers. Thus, public policies should focus on workers associated with cooperatives and support these associations. An important strategy is to strengthen waste pickers cooperatives and gradually increase their membership base (IPEA, 2012, p.13). In this sense, the Federal Government created the CATAFORTE program - Sustainable Business in Solidarity Network with the aim of strengthening recycling cooperatives in a way that these are "able to provide selective collection services for municipalities, participate in the reverse logistics market and jointly undertake the marketing and processing of recyclable products "(Secretary General Presidency of the Republic). The waste picker associated in a cooperative enjoys better working conditions than the one who works in isolation, with regard, for example, to their working hours and health and safety conditions:

...given the special features of the recycling value chain, only with great difficulty waste pickers will be able to obtain higher payment and greater bargaining power with other companies in trading the residues or with governments in forming partnerships, unless they

achieve a greater degree of internal organization of their work force. And for that, the cooperative and solidarity economy principles emerge as important guidelines in the pursuit of these workers for greater autonomy and social recognition. (IPEA, 2013, p. 52).

Despite the benefits legally guaranteed to cooperative work, most waste pickers cooperatives still work informally and, due to the little support they have, have a very short life cycle (IPEA, 2012, pp. 15:17) and about 60% of waste pickers' cooperatives have low or very low efficiency.¹⁴ Public policies must support waste pickers cooperatives in a way that they can move improve their level of organization.

The milestone in the organization of waste pickers in Brazil was the creation of the National Movement of Recyclable Materials Collectors (MNCR) in 2001, decided during the First National Meeting of Recyclable Collectors held in Brasilia in 1999. According to IPEA, the MNCR is present in all states, except Acre, Amapá and Roraima (IPEA, 2012 p.10). Among the objectives of MNCR, we emphasize: the " socio economic inclusion of recyclable residues collectors which means payment for their services, payment for environmental services and their development in the recycling production chain" (MNCR, 2014). Another important MNCR claim is the establishment of a special retirement regime (of 25 years of contribution) for waste pickers (Magalhães, 2012, p.37). The level of informality of these workers, in fact, indicates the need for specific programs that promote their inclusion in the Social Security system "by means of special forms of contribution for this sector, which is

¹⁴ Low or very low efficiency indicate the use of few or no technical equipment and low or no knowledge about the activity, working in the street, requiring support for funding and technical support, and even having no information on how to access any sources that would offer some support (IPEA, 2012, p.18).

constantly on the agenda of the MNCR claims, or through increasing the awareness of the benefits that social security coverage provides"(IPEA, 2013, 59).

Currently, in the social security system, waste pickers are individual contributors and therefore are mandatory insured. However, they are responsible for their own contribution, according to Article 11 of the Law 8.213 / 1991. Given the characteristics of the activity (low education and low income), most waste pickers do not contribute to social security (15.4% according to IPEA). The social security system provides two rules to promote the inclusion of vulnerable workers. First, Law n. 8212 allows a lower contribution in the case of individual contributors (a reduction from 20% to 11% of the minimum wage) if the employee does not opt for a type of time of contribution retirement. Second, if the worker qualifies as an individual microentrepreneur, the worker can contribute 5% of the minimum wage (Dias; Macedo, 2012, pp 139-142.). However, these possibilities do not seem to reach the most vulnerable workers in the labor market. In these cases, which include waste pickers, there seems to be a need for specific programs considering the conditions of vulnerability that characterize this kind of work; both in the case of temporary or permanent programs providing information, stimulus and encouragement for these workers to formalize.

In this regard, it is essential also to plan educational policies and professional training. The design of these policies is not simple, since studies have indicated that, in the collection of waste, there is not a relation of causality between higher level of formal education and higher workers' income, which may explain the fact that waste pickers do not perceive professional improvement from higher education level (IPEA, 2012, p. 20). On the other hand, professional qualification is usually cited by workers associated in cooperatives as an

important benefit from being associated. In this regard, as well as in relation to labor policies, we suggest that the economic and social context in which waste pickers are part of and where there is a strong intersection between the productive and economical processes that allow a super exploitation of labor and the low effectiveness of environmental policies and poor working conditions should be considered. In other words, any educational policy must be accompanied by changes in the conditions of life and work in order that it may be minimally effective.¹⁵

The third issue deals with measures for transition from this type of unacceptable work for other activities. The aim of these measures should be to formalize the work of waste pickers in the selective waste collection process. The main reason for the existence of work of waste pickers in the conditions it happens in Brazil today is the inertia of governments in taking the responsibility for organizing all stages of waste recycling process. The question to be addressed is how to turn this work into a formal activity part of a public service and of a relevant economic and environmental process.¹⁶ If this process remains based on the self-employment of waste pickers, their work must be exercised in a dignified manner, without risks to the health and safety of workers and their family and with respect to minimum working conditions. Municipalities and companies that participate in this process by purchasing the recycled residues shall account responsible, together with workers' cooperatives, for the compliance with these guarantees. In such a context, this article suggests that a next step would be that the solid waste collectors gradually would enter the labor market as municipal public servants or employees of companies that provide services to

¹⁵ See UFRGS, 2010, p. 117.

¹⁶ According to IPEA, we can estimate at "US\$2,57 billions the financial resources that can be saved directly and indirectly by recycling in Brazil" (IPEA, 2012, p. 9).

municipalities, entitle to all employment rights. Whatever the situation is, as a self-employed worker or as an employee, labor law should ensure adequate protection to these workers.

Conclusion

This paper proposes that self-employment of workers in conditions of extreme vulnerability should be a central issue in the regulation and reflections of labor law - along with the typical subordinate work. This theoretical transformation of labor law will contribute to the end of vulnerability and precariousness of various forms of self-employment. Waste collection is a most significant example. The lack of standards and public actions turn this work in an unacceptable form of work. Regulation and policies aimed at protecting and promoting the autonomy of these workers have the potential to transform waste pickers in recyclable residues collectors - workers who perform an environmentally sustainable work and are entitled to fundamental and labor rights.

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