Superior Labor Court and the subtlety of the dialectics of decisions concerning outsourcing: the elaboration of a database for the period 2000-2013[1]

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> Economic trends are not acts of God. Political action has curbed dangerous inequalities in the past and may do so again [Thomas Piketty, Capital in the Twenty-First Century]

Abstract:

In this essay we present a database about Superior Labor Court decisions concerning outsourcing. It was developed under as part of the thematic project *Contradições do trabalho no Brasil atual: formalização, precariedade e regulação* (Labor Contradictions in Brazil nowadays: precariousness, outsourcing and regulation, in English), which is funded by State of Sao Paulo Foundation for Research Support, FAPESP, and aims to enlarge the studies on the field of the role of Labor Law in face of this form of hiring. The project is developed as part of the research field entitled *A terceirização e a Justiça do Trabalho* (Outsourcing and Labor Courts) and *A terceirização e a Justiça do Trabalho: diversidades regionais* (Outsourcing and Labor Courts: regional diversities, in English). Methods and conclusions will be indicated in the text. The main sources are the judgments of Superior Labor Court upheld in lawsuits claimed by workers, trade unions or Ministry of Labor in which the outsourcing and its consequences are discussed. The selected economic sectors are: paper and cellulose, electricity, public banks (especially call centers and Information Technology areas) and oil sector. In all of them, outsourcing has been the major form of hiring labor and *locus* of a great percentage of accidents at work. They are also some of the more dynamics sectors of Brazilian economy and the workers organize themselves

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practically as one and strongly. Our main purpose is to observe the current tendency of jurisprucende in the mentioned sectors, in the period between April 2000 and April 2013. The reference is the start date of the thematic project. The results reveal the subtleties of the dialectics that constitute judicial decisions.

1. Introduction[3]

Outsourcing has advanced worldwide and also in Brazil from 1990 on, both in public and private sectors, which might be the result of a phenomenon both internal and external to the work contract (VIANA, 2006). Adopted as a strategy for cutting costs, share risks and increase organizational flexibility (KREIN, 2007), its scope increased when capitalism put greater pressure for a market deregulation, with direct impact on the form by which labor force was contracted (BIAVASCHI; SANTOS, 2014).

This manner of worker's admission has been gaining new expressions on the administration techniques, presenting itself on the world of labor under different appearances, sometimes under a disguised form, increasing inequalities and fragmenting the worker's organization (KREIN, 2007). On one hand, economists and scholars of the *main stream,* conservative thinkers, support it as a way to increase productivity, widen the competition and generate jobs. On the other hand, scholars and researchers from several areas of knowledge reach the conclusion that there is no evidence, theoretical or empirical, that outsourcing contributes the increase productivity and competition, but deepens inequalities, having a high potential to turn regular labor relations into precarious ones (BIAVASCHI: SANTOS, 2014).[4]

In Brazil, differently from what happens in other countries in Latin America, which also have a tradition to regulate labor relations by legal statutes, there is no statute to specifically regulate outsourcing. There are some statutes

[3] This article is part of finished and ongoing research at the State University of Campinas - UNICAMP, supported by the Foundation for Research Support of the State of Sao Paulo – FAPESP, that analyses the role of the labor Brazilian institutions dealing with outsourcing, focusing particularly the Labor Court. They are: "Outsourcing and Labor Courts", and "Outsourcing and Labor Courts: regional differences", both at the Center of Social Studies and Labor Economy, of the Economy Institute of Unicamp – CESIT/IE/UNICAMP, whose final reports were approved by FAPESP, and the ongoing one at the research project entitled "Labor Contradictions in Contemporary Brazil: formalization, precariousness, outsourcing and regulation of work relations", led by Professor Marcia Leite, Phd, at the subsection that examines outsourcing.

[4] This second position is expressed, for instance, by: BIAVASCHI, Magda Barros; SANTOS, Anselmo. "A terceirização no contexto da reconfiguração do capitalismo contemporâneo: a dinâmica da construção da Súmula 331 do TST". In. *Revista do TST*. v. 80, p. 19-35, 2014.

that introduce a licit trilateral relation, legal precedents from the Superior Labor Court, bills currently under the analysis of the Federal Parliament, bill's propositions being drafted at the Secretary for the Judiciary Reformation in the Ministry of Justice, also at the Ministry of Labor and Employment, and at the Secretary of Strategic Affairs. Throughout this vacuum, the Labor Justice, via the Supreme Labor Court, in deciding the lawsuits filed by the workers, the unions or the Federal Labor Prosecutors Office, ruled on the subject through a series of enumerated precedents (BIAVASCHI; DROPPA, 2014), at first, by the Resolution 04/86, of september 22nd 1986, Precedent # 256 which, at this time, forbid outsourcing[5]. Such prohibition was then the orientation to most part of the judicial opinions, both those who recognized a direct legal work relation between the worker and the company who used his outsourced labor, as well as those decisions which recognized a joint responsibility of the companies that signed the outsourcing contract (the receiver and the provider of the services), as the researches described in this article demonstrate[6].

However, beginning in 1990, during neoliberal times and facing important pressures to end the full prohibition of outsourcing coming from economic and financial sector and also from outsourced workers, Precedent 256 was canceled. In its place, in 1993 the Superior Labor Court published Precedent 331, which considered legal outsourcing when the labor force is engaged on merely support tasks, and prohibiting it on those considered the main activities of the company that uses outsourced workers, also affirming the alternative responsibility of those companies dealing with outsourced worker´s labor rights. In 2000, this Precedent was partially changed, in order to include the alternative responsibility of the Public Sector that uses outsourced labor force. Its text was, then, as it follows:

[5]The Precedent was: Precedent 256 – WORK CONTRACT – LEGALITY. With the exception of temporary services, and of private security services, regulated by Laws # 6019, of January 3rd of 1974, and 7.102, of July 20th 1983, it is illegal to contract workers through an intermediary company, therefore the legal work relation in this case is established, for all legal purposes, directly with the company in which the work is executed.

[6] Those researches analyse the role of the labor institutions – specially Labor Justice – dealing with the outsourced labor demands when confronted with the outsourcing of work force, focusing the Labor Courts decisions and the actions of the Federal Labor Prosecutors Office -MPT, inquiring if they have been or not a locus of resistance to this phenomenon, trying to complete the academic studies in this area. The Research Reports "Outsourcing and Labor Courts" and "Outsourcing and Labor Courts: regional differences" can be accessed at: **http://www.trt4.jus.br/portal/portal/memorial/textos**

> 331 – CONTRACT OF OUTSORCED SERVICES – LEGALITY – RECONSIDERATION OF THE PRECEDENT NUMBER 256.
> 1 – The admission of workers through an intermediary company is no legal, therefore the work relation is, for all legal purposes, established directly with the company for which de labor is executed, except in the cases of temporary workers (Law 6016, of january 1st, 1974).
> II – The illicit admission of a worker through an intermediary company does not result in a legal work relation with any branch of the public administration, in any level [article 37, II, of the Federal Constitution].
> III – The outsourcing of services of private security (Law 7102, of august 20th 1983), of cleaning services and of supporting services does not result in a legal work relation directly with company for which de labor is executed, provided there is no personal intent in the services executed by a specific worker, and as long as there is no direct subordination between the outsourced worker and the company in question.
> IV – The non compliance with the legal rights of the outsourced worker, commited by the company that provides the outsourced labor, results in a alternative responsibility of the those for which de labor is executed, included all branches of the public administration, in any level, as long as they have been also part of the lawsuit that recognized the non compliance, and as long as they have been also convicted for this non compliance in a final decision (article 71 of the Law 8666 of 1993).

The inclusion of the subsidiary responsibility of the public administration in the Precedent 331 came as a reaction to the increasing use of outsourced labor in the public sector (BIAVASCHI; DROPPA, 2011). However, the pressure to widen even more the scope of the Precedent 331 remained strong. In this sense, the Supreme Federal Court decided the Direct Constitutional Writ number 16, ruling as constitutional the article 71, of the Law 8666 of 1993, by which the public sector is exempt of labor responsibility in the use of outsourced workers. From that point on, many judicial complaints were directed to the judges sitting at the Superior Labor Court, as those still upheld the subsidary responsibility of the private administration in their opinions. Because of that, the Superior Labor Court changed the Precedent 331 in 2011, still upholding this subsidiary responsibility, as long as the public administration has been proved negligent in supervising the compliance of the worker's legal rights by the company that provides outsourced labor. Although this position it

can be taken beyond the limits of this text, we will keep it [7] (BIAVASCHI; DROPPA, 2014).

This article presents some of the results obtained by the ongoing research related to the investigations made on the Superior Labor Court, TST, data base. Furthering the previous researches the studied lawsuits filed by workers at paper and celulose companies between 1985 and 2000, the current research, whose main object of analysis are the opinions of the Superior Labor Court, TST, widens the focus of analysis in order to include the lawsuits filed by the workers at the electricity, oil, and information technology sectors, and also at call centers of public banks, from 2000 to 2013.

To do so, there will be examined mostly the decisions from TST on the lawsuits filed by workers, unions and the Federal Labor Prosecutors Office, MPT, in which outsourcing is objected. Because of the classification criteria and availability adopted by the Labor Courts – as yet there are no data that allows to research the object of the legal claims – there had been used a tool available at the Superior Labor Court, TST, home page that allows a key-words search, using *Outsourcing* as one of those words, according to the methodology that will be explained in the next subsection of this article.

Many important judicial decisions are known for affirming the unlawfullness of Outsourcing in light of the constitutional principles such as the protection of human dignity and the work social value. One precise exemple is the decision of the Individual Claims Section 1, SDI 1, from TST, in a class action filed by the Federal Labor prosecutors Offic, MPT - case TST-E-RR-586341/1999.4 – that states the unlawfullness of Outsourcing the main activities at the electricity companies, in spite of the permission inserted in the Law 8987 of 1995, edited during the period in which the production and distribuition of electricity was largely transfered to the private sector. The Federal Labor prosecutors Offic, MPT, had his arguments refuted at the Regional Labor Court (18th Circuit – State of Goias), but appealed to TST.

[7]Reports available at :http://www.trt4.jus.br/portal/portal/memorial/textos. See also: BIAVASCHI, Magda Barros; TEIXEIRA, Marilane Oliveira; DROPPA, Alisson. *A Terceirização e desigualdade: abordagem crítica sobre os projetos de lei 4330/04 e 87/2010.* Article written from a presentation at the International Seminar: May 1st, a new vision for labor unions in Brazil, organized by UGT and CESIT/IE/UNICAMP, Sao Paulo, 2014.

At first, the 4th Chamber of the Superior Labor Court ruled followed the opinion of the Regional Labor Court. Another specific type of appeal was filed, this time to the Individual Claims Section 1, SDI 1, of the same TST. This Section has as one of its legal tasks to unify the trend of the labor jurisprudence in all regions of the Brazilian Labor Justice. Stating his opinion, the Hon. Judge Aloysio Correa da Veiga, in sight of the Law 8797 of 1995 ruled that the decision of the Regional Labor Court should be upheld thus recognizing as legal the outsourcing allowed by that statute in main activities in the electrical energy companies. The Hon. Judge Lélio Bentes disagreed. Amidst the debates, the Hon. Judge Luiz Phillipe Vieira Mello Filho requested the deliberations were suspended in order to better examine the case. Finally he accompanied the dissent and, in a historical deliberation, by eight votes to six, prevailed at the SDI-1 the arguments of the Federal Labor prosecutors Office, MPT. Therefore, the opinion of the majority was written by the Hon. Judge Luiz Phillipe.

This decision, although applicable to a spefic case, indicates the analytical potential of all lawsuits at the Labor Courts. There is here a pontential way beyond the field of Law, making possible to find, in several primary sources of undeniable historic value, documents, depositions, traces, that allows the researcher recover, for instance: the historical role of the struggle of several social actors, the dinamic of those conflicts once made into lawsuits, the socialeconomic context of the time and, specifically for this research, the role of the Labor Courts in light of this form of hiring workers.

There are several other TST decisions that recognize, for all legal purposes, that the company who is the beneficiary of the outsourced labor is the real employer. The results of the researches confirm this tendecy. The economic sectors selected for the present study are: paper and celulose; electricity; public banks (specifically, Call Centers and Information Technology) and also oil sector, in whom the Outsourcing is been largely applied, as a *locus* of a great percentage of work accidents; and, furtheremore, are some of the most dinamic sectors of brazilian economy.

It is important to note that on July 19th 2013 the Unified Workers Central, CUT, informed that the Federal Labor prosecutors Office, MPT, has

been developing overseen iniciatives againts outsourcing on the paper and celulose sector, in light of the visible deterioration of the work conditions.

In one of the cases, at the State of Bahia, the Suzano company was fined in two million reais for having at its services 11 thousand outsourced workers. According to the news, on the lawsuits filed by the Federal Labor prosecutors Offic, MPT, Labor Courts have been convicted several companies to the payment of fines, in adition to regarding irregular their use of outsourced labor, as follows:

> [...]
> At the State of Bahia, two lawsuits filed by the Federal Labor prosecutors Office (MPT) made the companies rescind their contract with the providers of outsourced workers. Suzano, a large paper manufacture, uses 11 thousand outsourced workers and many of them performed duties considered part of the main activities of the company, such as the cultivation and transport of eucalyptus. As a compensation for moral demage, the company shall pay R$ 2 millions. In the opinion of the Federal Labor Prosecutor at Bahia, Marcio Amazonas, Marcio Amazonas, “more than the two million as compensation for collective moral damages, the correction of the hiring procedure was the most important point of the aggreement, because our Law does not regulate outsourcing per se. Beyond the manufacturing of celulose itself, Suzano has agroforestry as one of its main business purposes, which is all activity of study and cultivation of forests, also harvest and transport. If the company choses agroforestry as one of its main activities, the execution of it cannot be outsourced.(CUT, 2013).

Those lawsuits and opinions stimulate a deeper study of the field. This article begins by explaining the research methodology applied on the Superior Labor Court, TST, data bese. Next, some of the main results obtained so far are presented. At the end, there are some final considerations.

2. Methodology research applied on the Superior Labor Court, TST, data base

The research is focused on the Court decisions dealing with outsourcing on the forementioned economic sectors. In order to atend the specificities of this study, and to refine this research, the key-word Outsourcing was used and, in adition, the following expressions: paper and celulosis, electricity workers; Bank of Brazil, Banco do Brasil, Federal Savings Accounts

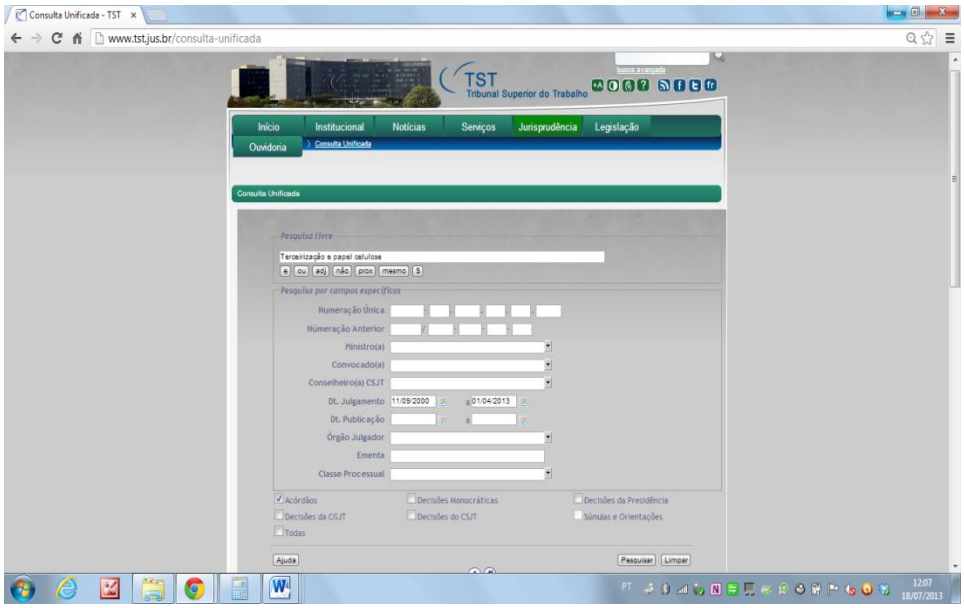
Bank, Caixa Econômica Federal, National Bank for Economic Development, BNDES, Savings Accounts Bank of the State of Sao Paulo, Nossa Caixa, Information Technology, Call Center*;* and oil workers.

As for the time parameters, an option was made for the opinions published from April 1st 2000 to April 1st 2013 – this time frame is made possible by the research tool inserted at the Superior Labor Court home page, using the begin of this research project as a final date. The inicial date of 2000 is justified for several reasons, among them the fact that on the two previous researches the study envolved the period between 1985 and 2000, starting one year before the Precedent 256, of 1986, and ending in 2000, when, under pressure by constant lawsuits envolving outsourced workers, the Superior Labor Court reexamined the Precedent 331 to include, on the item IV, the subsidary responsibility of the Public Sector when using outsourced labor force. We now intend to go further. Other reason is that, by widening the time frame beyond 2000, it is possible to verify how the Superior Labor Court has currently been interpreting the Outsourcing and in which directions lean the opinions of the Court on the lawsuits regarding this form of hiring workers, resisting to it or widening its possibilities.

Once defined the methodology, the research tool on the home page of the Superior Labor Court was used, namely the *Unified Query,* accesseble ate: http://www.tst.jus.br/consulta-unificada. The key-word aplied on this tool was Outsourcing, adding the expressions, individualy: paper and celulosis; electricity workers; Bank of Brazil, Banco do Brasil, Federal Savings Accounts Bank, Caixa Econômica Federal, National Bank for Economic Development, BNDES, Savings Accounts Bank of the State of Sao Paulo, Nossa Caixa, Information Technology, Call Center*;* and oil workers. Then, for the first year of the investigation, the type of appeal that was specified was the *Appel of Review* (Recurso de Revista). For the second year, there was included the *Wtrit of Instrument* (Agravo de Instrumento) on the parameters of the research, thus resulting a list of the opinions in which one of the individual expressions inserted in adition. Once the list of opinions was compiled, the decisions were read to check the compatibility with the theme of the research, then they were saved in digital archives in the “doc” format to be later analysed. According to the

objectives of the research, questions were asked, whose answers are found on the discussion part of each opinion.

The layout of the unified Query used by this research is as follows:



This tool allows: the use of key-words, the definition of a time frame and of the type of appeal to be researched. Here was selected the Apeal of Review, used to submit to the Superior Labor Court the opinions of the Regional Labor Courts. The opinions obtained were digitally saved with the respective register of the date when they were collected.

Next, they were individyally analysed, using this questions:

1. How the company that used outsourced labor was held responsible by the Regional Court?

1.1. The company that used outsourced labor was held as the real legal employer;
1.2. The company tha used outsourced labor was held as jointly responseble;
1.3. The company thad used outsourced labor was held as an alternative responsible;
1.4. The company that used outsourced labor was excluded from the lawsuit or exempted of responsibility;
1.5. The company that used the outsourced labor was excluded of the lawsuit by request of the worker;
1.6. The outsourcing was not put in question by the worker;
1.7. Others.

2. What was the opinion of the Superior Labor Court (TST)? The opinion of the Regional Court was totally reversed, partially reversed, or totally upheld.

2.1. The opinion of the Regional Court was totally reversed
2.2. The opinion of the Regional Court was partially reversed
2.3. The opinion of the Regional Court was totally upheld
2.4 The appeal to the Superior Labor Court was not admitted for procedural reasons, therefore the opinion of the Regional Court was totally upheld

3. Regarding the Outsourcing and the Responsibility of the company that used outsourced labor, the Superior Labor Court (TST):

3.1. Helds the company that used outsourced labor as the legal employer of the worker;
3.2. Helds the company that used outsourced labor as joint responsible;
3.3. Helds the company that used outsourced labor as an alternative responsible;
3.4. Excludes the company that used outsourced labor from the lawsuit or exempts it from the responsibility regarding the worker's rights;
3.5. Excludes the company that used outsourced labor, by request of the worker;
3.6. The outsourcing was not put in question on the lawsuit;
3.7. Others.

4. Regarding the Outsurcing, the Superior Labor Court (TST) was the locus of:

4.1. Resistance;
4.2. Support;
4.3. None of the above;
4.4. Others [in cases where the outsourcing and its consequences are no longer in question on the appeal before the Superior Labor Court and in cases where the opinion of the Regional Court was considered invalid for procedural reasons, thus forcing the return of the case to the Regional Court, without the outsourcing questions been actually examined by the Superior Labor Court yet].

5. Regarding the Outsourcing, the Superior Labor Court (TST) was the locus of:

5.1 Resistance;
5.2 Support;
5.3 None of the above;
5.4 Others [in cases where the outsourcing and its consequences are no longer in question on the appeal before the Superior Labor Court and in cases where the opinion of the Regional Court was considered invalid for procedural reasons, thus forcing the return of the case to the Regional Court, without

the outsourcing questions been actually examined by the Superior Labor Court yet].

6. Regarding the arguments applied in the opinions on the cases that recognized the unlawfullness of the Outsourcing, or recognized its lawfullness:

6.1. The opinion used constitutional principles and arguments;
6.2. The opinion used only infraconstitutional laws;
6.3. The opinion used only the Precedent 331;
6.4. The opinion used all of the above, applying a systemic analysis;
6.5. None of the above.

7) Regarding the arguments applied in the opinions declaring the unlawfullness of the outsourcing, or recognizing its lawfullness:

7.1 The concept of main activity was made explicit;
7.2 The concept of main activity was not made explicit.

Specifically the question # 3 focused what was decided by TST that, sometimes, held the company that used outsourced labor as the legal employer of the worker. Or, sometimes, held that company as jointly or alternatively responsible for the worker's rights. Also, sometimes this company is excluded from the lawsuit or is exempted of responsibility. At last, the option *Others* concerns the cases that the appeal presented to TST do not discuss the matter. The purpose of this question is to provide elements to the following question # 4.

The question # 4 aims to establish if the opinion of the Superior Labor Court *supported* or *resisted* to this phenomenon. The option *None of the above* concerns the cases in which the Outsourcing was not put in discussion on the lawsuit. The option *Others* concerns the cases in which outsourcing and its consequences are not discussed at the Superior Labor Court, although it might has been discussed by the first or second level Judges and also for the cases where the opinions of the Regional Labor Courts were considered invalid for procedural reasons, thus forcing the return of the case to the Regional Court, without the outsourcing questions been actually examined by TST yet. On such cases, the analysis of the Outsourcing was put on hold.

The question # 5 aimed to verify the role of the Federal Labor Courts system in face of the outsourcing, analysing the group of decisions of all its judicial instances. For that, there were used the results obtained with que

questions # 1, 2, 3 and 4. The first precaution in the intepretation of those data is to take in account the hypotesis that the more the company thar uses outsourced labor is held responsible, the greater are the obstacles to the phenomenon. Therefore, when that company is regarded as the direct legal employer of the worker, or when it is held jointly or alternatively responsible, the result was interpreted as a *Resistance* to outsourcing. But the opinions that exclued the company that uses the outsourced labor from the lawsuit, or exempt them from any responsibility were took as a *Support* to the phenomenon. Regarding specifically to the question # 5, the option *Both* is related to the cases in which the position of one of the judicial instance was to *Resist*, and the position of another judicial instance was to *Support* the outsourcing. This is possible when the decisions of the Labor Justice are analyzed as a hole, revealing the contradictions within the system thas is been studied.

Last but not least, in this question, there are two different options: *None*, when the lawsuit does not concern outsourcing; *Others* when the outsourcing and its consequences are no longer in discussion by the Superior Labor Court, although the original lawsuit might have discussed outsourcing, when the Appeal of Review, Recurso de Revista, was filed for other reasons, such as, for exemple, on the cases of Telêmaco Borba, examined on the research “Outsourcing and the Labor Courts: regional diversities”, in which the Regional Labor Court of the 9th Circuit (State of Paraná), upheld the opinion of the Labor Judge that, understanding the outsourcing as illegal, recognized the company that used outsourced labor (KLABIN) as the legal employer of the worker thad filed the lawsuit. The company, however, in its Appeal of Review to the Superior Labor Court, did not contest this part of the decision, debating only the question of regarding the worker legally as a rural or a urban worker, and applying to him the respective set of legal norms. The option was maintained for symmetry purposes. However, as question # 5 stablishes a dialogue between the several judiciary instances and the Superior Labor Court, analyzing the position of the Labor Justice system as a hole, it regards what was debated at Regional level, if there are no decisions included in this answer.

The goal of the questions # 6, 7 and 8, was to obtain elements that allow an analysis of the arguments applied on the decision and made explicit on the judicial opinions, that, most of the times, are credited to the Judge who wrote

the decision for the majority. Those data are relevant in order to evaluate if the Labor Justice interprets brazilian law sytematically as a hole or not, taking or not in account the constitutional principles on the matter, starting from the decision on the electrical companies case, mentioned above, which, inspite of the existence of a statue allowing the use of outsourced labor force in the main activities of this economic sector, regarded as unlawfull this form of hiring workers, based on a wider interpretation of the Law, whose assumption, on the words of Eros Grau, is that the Law is not to be interpreted as separarte pieces (GRAU, 2000).

In addition to those elements, in the examination of each individual judicial decision, the researcher – on this case, Ana Bianchi – made note of other interesting data, highlighting them for a more detailed analys of their content. At the end, the information gathered from the individual analysis of each judical opinion was inserted in a data base using XLS format, which allows to organize, classify, and quantifty the decisions that wer found from the perspective of each one of the questions asked. Those informations, formated e whose data were submited to quantitative and qualitative analysis, allows to observe the Superior Labor Court, TST, jurisprudence dealing with outsourcing, with relevant elements to inform the current debate on the role of the brazilian Labor Court.

3 Some results found so far

Using the methodology explained above, 1786 judicial opinions were found, all of them cases relating to the workers in the economic sectors selected in this study: electricity, oil, paper and celulosis, Call Centers and workers on information technology on public banks, all cases downloaded and saved in the DOC format, according to the methodology applied. However, when individually examined, it was noted that, many of them, in spite obtained with the use of the mentioned key-word, did not concern any of the categories selected for this study. Therefore, those opinions were descarted, and saved in a separate file for further analysis.

By the way, one of the obstacles that has been presented since the first research “Outsourcing and the Federal Labor Courts”, is the limitations resulting from the use of the key-word. The insertion of data on the digital base

of TST is made by personnel without legal training, therefore the research tool produces answers for a query with judicial decisions that do not actually match the intention of the researcher, although those decisions might have made some reference, in its arguments, to the key-word. For this reason, it is always necessary a mindfull reading of the judicial decision in order to verify if it actually concerns to the object of the present research: outsourcing on the selected economic sectors.

Once this first and criterious analysis was completed, it was found, regarding the workers on electricity companies, that only 151 of the 694 judgements initially colected were actually about this economic sector. The first group have joined the sample. The rest of them, although some might debate outsourcing, were concerned to other categories of workers, some of them part of professional categories that have a special regulation by specific law statutes, such as security workers. Some other judgments did not concern outsourcing at all.

As for the oil workers, the use of the key-word made possible to collect 354 judgments. However, only 104 of those actually involved this type of professional. The rest of them involved other workers and, adopting the same procedure above, were excluded from the sample in this first moment, and saved in a separate file for further examination.

Regarding the workers on the paper and celulosis industries, we found 200 judgments, from which 191 actually concern those workers. The rest of them regarded other professional categories, although the question of outsourcing was debated on those cases.

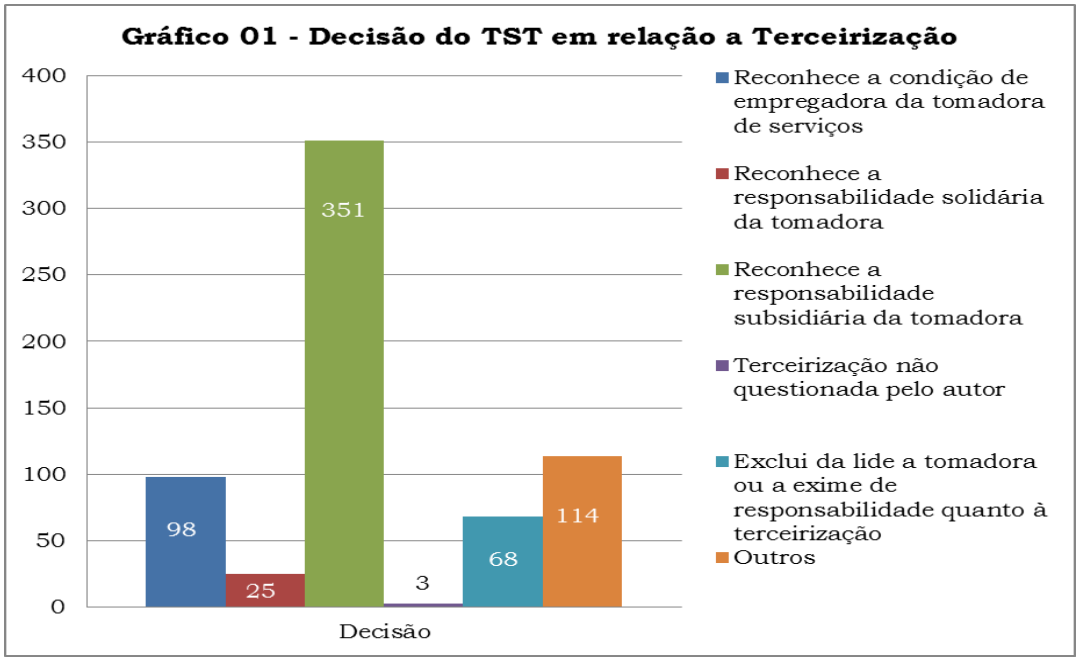
At last, regarding the workers on Call Centers and Information Technology in public banks, there were found 587 judgements. After they were examined, 213 turned out to have relation to the Outsourcing in the Call Centers of public banks, or in the Information Technology of those banks, most of them filed against the Federal Savings Account Bank, Caixa Econômica Federal. The rest of them were concerned to other workers or involved the discussion of Call Centers or Technology Information in private banks. They were descarted from the sample and saved in a specific file. Thus, the number of total judgments os

judicial decisions under analysis in this study is 659, each of them examined in individual and detailed reports.

Differently from the previous researches, in which the object of study were gruped according the studies of Cochran[8] and of Campbel (1966), the present group of judgments was delimited by the criteria found in the home page of TST whose data were fed according the system organized by that Court. Therefore, from the total universe of judicial decisions collected using the key-word, and in light of the necessary selections imposed by the limites of the data base used in the research, as described above, the total number of cases obtained is significant, and allows the fulfillment of the goals of this research.

All the decisions were analysed in an invidual report, both in quantity as in quality, and as this research unfolds those analysis are deepened in order to better compare its data. The inicial analysis, examining the Appeals of Review, Recursos de Revista, and the Writs of Instrument, Agravos de Instrumento, filed before the Superior Labor Court, TST, made clear that prevailed the *Recognition of the alternative responsibility of the company that uses outsourced labor*, largely applying the Precedent 331.

Here is a graphic that illustrates this reality:



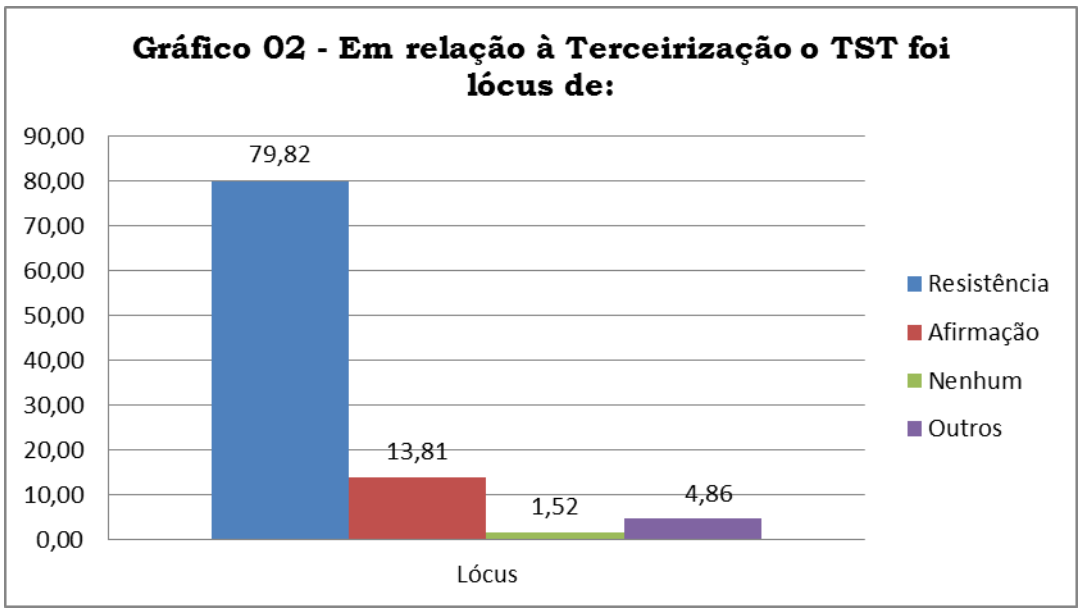
8 COCHRAN, 1953, W. G. Sampling techniques. New York : John Wiley, 1953, p. 442. The lawsuits were grouped (population) by their respective periods - 1985-1990; 1991-1995; 1996-2000 – and, on those, a random simple selection was made, with minimum criteria, such as the isonomic proportionality between the sample of the cases and the universe of the selected lawsuits, period by period.

Source: Subtheme Outsourcing, Reserch Project “Labor Contradictions in Contemporary Brazil: foramlization, precarity, outsourcing and regulation of work relations”
Graphic made by the authors

It was observed, also, that most of the Regional Labor Coutr decisions, TRT´s, were not reversed by the Superior Labor Court, TST, based on the arguments used on them, but sometimes as a result of procedure reasons that prevent the appeal to be examined by TST. Therefore, preventing the analysis of the questions dabated at the core of the case, prevailing, on those cases, what was decided by the Regional Labor Court.

In light of the nature of the Appeal of Review, which submits to the TST, certain kind of issues, – mostly concerning the violation of laws and of precedents of the same Court – a large part of those appeals was not even admitted, based on the absence of necessary procedure requirements. Thus, the Labor Regional Court decision was upheld on those cases.

In this sense, and considering the Labor Justice as a hole a space of *Resistance* to Outsourcing when the company that uses outsourced labor is considered the legal employer of the worker, or when this company is held jointly or alternatively responsible for the worker's right, and considering the Court system a space of *Suport* of the phenomenon when the company that uses outsourced labor is excluded from the lawsuit or exempted of any responsibility for those rights, the obtained date demonstrate that, mostly, the Superior Labor Court has been a space of *Resistance* to the deepening of outsourcing, as, by the way, was proved by the two previous researches. The Graphic 02 illustrates this reality:



Source: Subtheme Outsourcing, Reserch Project "Labor Contradictions in Contemporary Brazil: foramlization, precarity, outsourcing and regulation of work relations"
Graphic made by the authors

Therefore, the results obtained so far allow the conclusion that, mostly, Brazilian Labor Justice has been a space of *Resistance* to the deepening of outsourcing. Using mainly the Precedent 331, the Superior Labor Court, TST, has limited this form of hiring by recognizing, for instance, the company that uses the outsourced labor as the legal employer of the worker in the labor is executed on the main and permanent activities of the company. This is what happened on the pardigm case of the electricity companies, as mentioned before, or also when the company that uses outsourced labor is held alternatively responsible for the evaded rights of the worker. On the cases of fraud, the Superior Labor Court has acted intensily and mostly to restrain Outsourcing, declaring the company thad used outsourced labor as the legal employer of the worker.

It is noted also that most of the Regional Labor Courts judgments was not reversed by TST largely because of procedure reasons. A large part of the Appeals of Review, Recursos de Revista, were not admitted for the lack of necessary procedure requirements, which resulted on the uphelding of the judicial opinions of the Regional Labor Courts on those cases. It is important to bare in mind, as mentioned before, that TST judgments and Labor Justice decisions as a hole tend to resist Outsourcing, despite the contradictions and the different regional positions that appear within the dialetic process that takes

place inside the Judicial Power wich expresses the tensions that exist in the society and permeate the state apparatus

Final Considerations

Starting from an interdisciplinary point of view, it was tried, on the study of the TST decisions, to understand Outsourcing and the role of the Brazilial Labor Justice in light of this phenomenon, in the supposition that: the social tensions ans conflits permeat the state apparatus, expressing the condensation of material forces present on the society; the intention of the involved in the judicial claims, and the content of the judicial decisions are inserted in the dinamic and in the complexity of the social, economic and political relations of a country at their historical moment; the Brazilian Labor Justice, in spite its contradictions and difficulties, has been a *locus* of *Resistance* to the deepening of the Outsourcing. Significantly, the companies concentrate now their arguments before the Federal Suprme Court, STF, where they intend that, by the use of an appeal known as “General Repercussion”, Repercussão Geral, the 11 Ministries interpret the Constitution of 1988 as if times were still those of the Constitution of 1891, when the economic ideas ignored any sense of social rights.

On the other hand, the conduct of the social actors in light of the Bill 4330 of 2004 was followed, since this bill aims to regulate the Outsourcing in Brazil, both on the resistance and on the support to it, examining the more current shift, by the economic power, of the arena of the debate, from the Parliament to the Federal Supreme Court (via the mentioned “General Repercussion Appeal”), in which is been questioned if the Superior Labor Court may limit the outsourcing merely to the support activities of a company, arguing that this limitation offends a suposed constitutional right to freely hire as part of the economic freedom. To deconstruct this fallacy has been one of the main concerns of this research, considering the text of the Constitution.

Recently, the struggle for the impositions of restraints to the outsourcing has won a battle: the Federal Attorney General recomended that a Writ of Certiorari, filed before the Federal Supreme Court and aiming to suspend the effects of the Precedent 331 of the Superior Labor Court, should not be admitted. This Precedent 331, as was explained above, stablishes limits to the

outsourcing. Still on the ´positive notes, the FORUM, in January 22nd 2015 obtained from Minister Miguel Rossetto, the President's General Secretary, support to those who resist the outsourcing, when he declared: there is a strong movement inside the society aiming to subtract income of the worker class, by economic sectors that wish to retain their income at the expense of others. This government does not approve this assumption. On the promisses of the President of the Republic are cleared stated that woker's wages and rights shall be preserved. He notes that we have lived the experience of outsourcing, and we know it is not a good one. However, there is a positive agenda for stimulating the direct hiring of workers, which is an important political memory and a positive dialogue experience.

One of the conclusios that could be reached, on the path of this research, is the relevance of the role of the public institutions that have the mission to interpret the law and supervise the legal protection of work. Thei have restrained the predatory action of a capitalism that knows no limites, made worse by the outsourcing. This form of hiring, by the way, has not been able to contribute to the building of a work reality founded on the values of justice and equality. Nor it has been able to contribute to a real democratic society, with less inequalities and more justice. The importance of the institutions in order to reduce inequalities in the world has been examined by the economist Thomas Piketty, reason why his words were chose to open this article.

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