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Contents

THE DIRECTIVE THAT WILL CHANGE THE INTERNET HAS BEEN APPROVED

by Diego Solana

The European Council's adoption, on April 15th, of the Directive on copyright in the digital single market is an indisputable victory for authors and holders of intellectual property rights over the big Internet multinationals - Facebook, YouTube, Instagram...-.

"Should websites that host unauthorized disclosure of protected works be responsible for what users upload?"

This statement may be the subjected to many nuances but, in my opinion, it is the headline of the decision adopted in Luxembourg after almost three years of intense discussions. The new directive is on its way to becoming a turning point in the history of the network of networks, as we have known it to date.

As it is often said, winning a battle does not mean winning a war. I think it is appropriate to use war terminology to describe the last 25 years of clashes between two great giants, the holders of intellectual property rights and the technological companies that make it possible to store and share digitised content.

One of the first milestones in the relationship between digitization and intellectual property rights occurred in the 1990s, when Timothy John Berners-Lee developed the first website and publicly relinquished any rights to which he could be entitled to, arguing that it was a collective and joint creation designed to allow people to work together. Quite a declaration of intent. Ever since music, movies and books started to be converted to digital format and shared, the notion of copyright as a tool to control the copying and distributions of artistic creation was overloaded. The challenge for the holders of these rights was - and still is - to adapt the concept of copyright and its business models to digitalization and the current ways of sharing and consuming culture.

I- The Information Society Services Directive of 2000

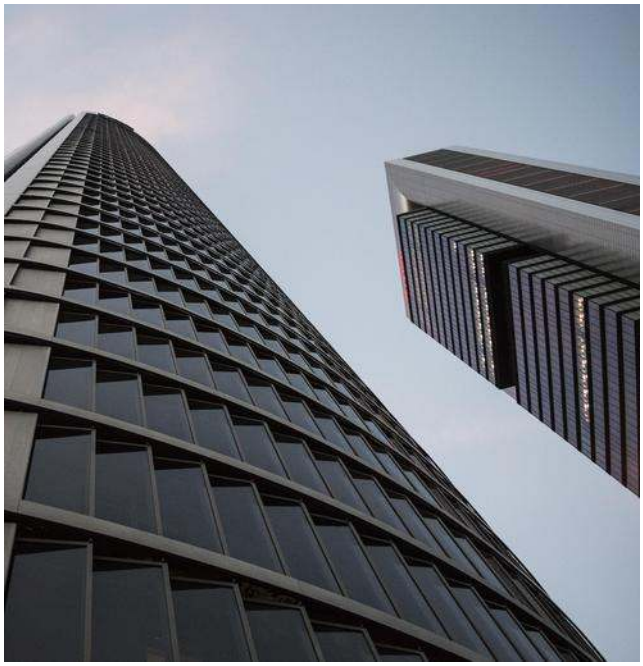
Intermediation services have played a key role in the birth and development of the Internet. Over the years, they have increased their storage capacity and improved/facilitated the exchange of films, books, music, etc. Initially they were limited to hosting simple web pages, but soon after, a multitude of platforms and content aggregation services were born that enabled sharing through different platforms -Facebook, Blogger, Google...- and gave rise to what is known as Web 2.0 in which the users themselves generate content.

DIEGO SOLANA
Deputy Managing Partner and Coordinator of the Area of Intellectual Property Rights and Competition Law at **Cremades & Calvo-Sotelo.** He is an Intellectual Property Agent. Since 2015, Mr Solana is the Director General of Euro Latam Lex.

Since the emergence and consolidation of intermediation services, problems related to the responsibility of such services and, especially, infringements of intellectual property rights, began to arise. The decision that the legislator from the early years had to take was far from simple: should websites that host unauthorized disclosure of protected works be responsible for what users upload. On one hand, there were the interests of the holders of rights to obtain from the legislator an adequat protection of their interests and, on the other hand, there was the playing field in terms of incentives to technological innovation and a general interest in the proper functioning of the Internet.

At that time, it was considered that establishing a broad liability system that would force intermediaries to supervise the actions of their users would be a disincentive to investing in new applications that would improve the functioning of the Network, and that it would be a burden for its development and success.

Thus, the two main legal systems in the world made a move from the general principle of exemption from liability of intermediaries of the information society - Digital Millennium Copyright Act of 1998 and the European Union Directive 2000/31/EC of June 8th. Neither legislation imposes a general liability on providers of intermediation services to control or supervise the data they store or transmit, insofar as they act as mere intermediaries and that they have not contributed to the creation of illegal content. The legal certainty that these rules gave to technological companies allowed for the network of networks to expand exponentially until becoming the Internet we know today. However, this history of success and technological advances would be



incomplete if it is unmentioned that digitization has also been used to copy and make publicly available unauthorized content without their creators consent, and that it has sunk countless companies in the music, audiovisual and overall cultural industries.

The main and traditional argument made by right holders has been that platforms such as Google, Facebook or YouTube are not mere intermediaries but that they are content exploiters who use the work of third parties to compete unfairly with them and thus should not benefit from the liability exemption. It is difficult to develop a paid business model when the content you offer is easily accessible for free and with the same quality. However, from the other side of the dispute it has been argued that there are the users who share the content and that, in any case, they provide tools to block and prevent the availability of protected content both through notification or artificial intelligence tools, such as the well-known YouTube Content ID that prevents certain content protected by copyright from being uploaded to their website.

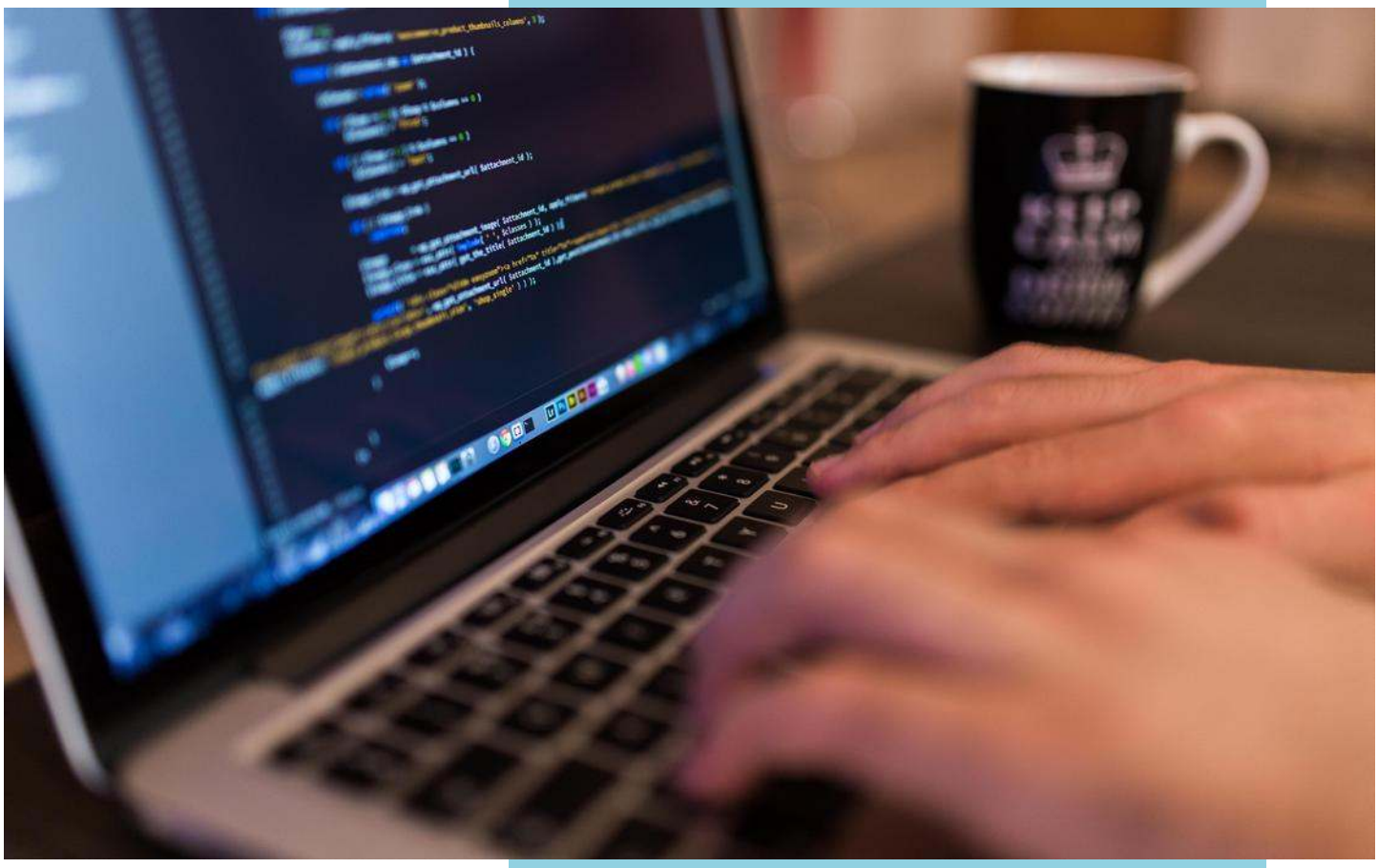
In general, the European and North American Courts and Tribunals had been agreeing with the platforms. In Spain, among the most noticeable cases was the litigation between YouTube and Telecinco or the lawsuit against Google - Supreme Court ruling of April 3th of 2012. In addition, the Spanish legislator has taken measures to try to limit rights violations - the creation of the Intellectual Property Law Commission, better known as the Law *"Sinde-Wert"*, or restrictions on news aggregators, popularly referred to as *"Google rate"*.

II - The new Copyright Directive

Well, the issue of intermediaries' liability is once again very topical. Holders of intellectual property rights regain an advantage in a debate that they lost - or at least did not win - in the year of 2000. The new Copyright Directive includes an Article 17 - formerly Article 13 - which may change the network of networks from how it was configured at the time and which will substantially limit the general liability exemption principle of information service providers.

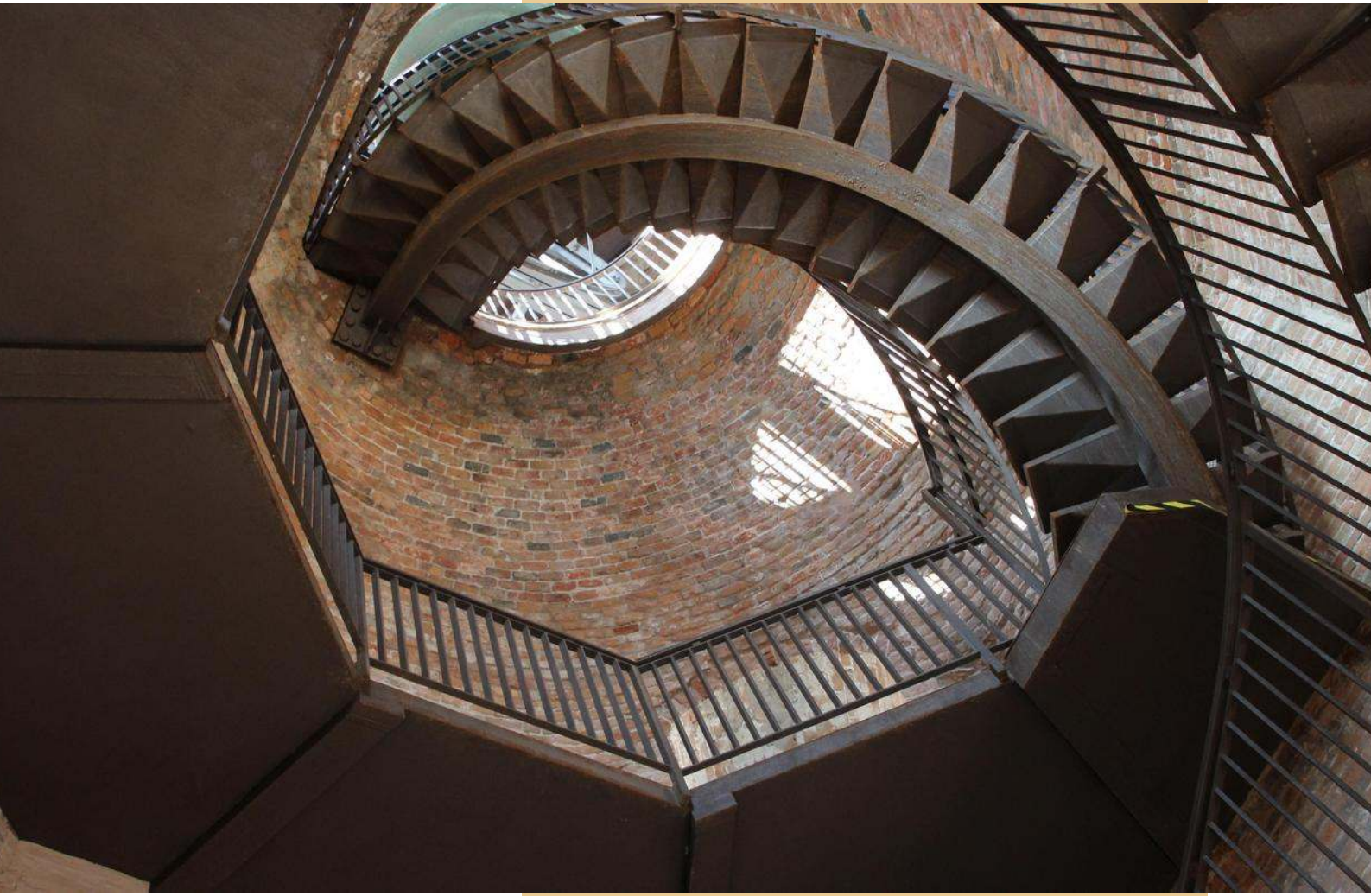
Despite the fact that the EU States Members have a certain margin to transpose the Directive into their national legislation, they will have to maintain the principle on which it is based. This principle is that the most important Internet platforms will not be able to benefit from the liability exemption for content shared by their users provided for in the 2000 Directive. YouTube will therefore be liable, even for damages, if its users share content through its platform without a licence. However, they will also be able to benefit from the exemption even if they do not have such a licence, if they implement a system that prevents users from sharing that content - for example, by means of computer and artificial intelligence tools. In a far from simple balance, the EU legislator modifies the exemption regime but at the same time points out that the new system should not be interpreted as *"a general obligation of supervision"*.

During the processing of the Directive, in addition to the complex balance between intermediaries and right-holders, it became clear that there is a third agent that must also be heard and attended to: the users. It is foreseeable that the prior checks imposed by the platforms to avoid claims will limit the ability to upload content. For this reason,



the legislator establishes that the computer control and supervision systems implemented by these platforms will not restrict freedom of expression, nor will they prevent users from sharing unauthorized content for criticism, parody or caricature (for example, through popular memes).

Although the victory of the rights holders I referred to at the beginning is full of nuances and exceptions, its not risky to say that we are heading towards a different Internet from the one we have known to date. I do not know if we are heading for a scenario of new conflicts before the Courts or cooperation and agreement between multinationals and creators, but this Directive is going to change the Internet.



MIRCO BROGGIATO

Mr. Broggiato graduated in Law at lÚniversità degli Studi di Verona in 2008, and was inscribed at the *"Ordine degli Avvocati di Verona" (Verona Lawyers Association) in 2015. He is a member of various organizations, including the National Center for Law Studies "Domenico Napoletano,"* Veneto Section, and also AVAG, Veronese Association of Labor Lawyers. Mirco is a Labor law specialist, specifically subordinate, para-subordinated and self-employed work. He is currently an **Associate in the Menichetti Law Firm**, and a member of Ellex

THE EUROPEAN COURT OF JUSTICE WORKING TIME RULING.THE DIFFICULT DEMARCATION BETWEEN REST TIME AND WORKING HOURS

by Mirco Broggiato

The Court of Justice of the European Union ruled on May 14th 2019 that, in order to comply with the EU Working Time Directive's (Directive 2003/88/EC) provisions, each Member State must establish a detailed system to record daily work hours.

It is important to note that behind this decision lies the generally perceived convinction that the worker is *"the weaker party in the employment relationship"* and that it is also necessary to prevent the employer from being in a position to impose a restriction on employees' rights. For this lone reason, as the Court stated, *"the effective protection of the living and working conditions of workers and better protection of their safety and health"* (that is the essential objective pursued by the rule) can only be ensured through a domestic legislation that obligates employers to set up a system for measuring actual daily work hours; and consequently, each national court, from now on, must interpret the national law, as far as possible, in light of the purpose of the directive.

Apart from the relevant practical consequences of this decision (after all, the employers will probably have to deal with this new request soon, by developing and implementing, case-by-case, the most efficient systems to track work hours, having regard to the compliance with the rules on Privacy), I would like to highlight in this brief paper that it may not be a coincidence that this decision has been taken in this historical moment, when the digitalization has already revolutionized the concepts of space and time, i.e. the context in which society and the economy live and work.

There is, in fact, the need to distinguish more clearly between rest periods and work hours so that the dematerialization of the workplace does not accentuate problems in terms of work-life balance. As we know - also according to the above-mentioned decision - the quantification of work hours (that is also crucial for defining an equilibrated work-life balance) is already difficult in itself because of the employers power.

Consequently, it is clear that this quantification becomes increasingly difficult in digitalized business, where the employer, for example, could ask the worker (that is the *"weaker party"*, as held by the Court) to connect and work at any time without predetermining the period of the day qualified as working time.

While on the one hand the issue of a clear demarcation between work time and rest time can no longer be delayed (in this respect the words of the Court are clear), on the other

“It may not be a coincidence that this decision has been taken in this historical moment, when the digitalization has already revolutionized the concepts of space and time.”

hand we need to consider that it is not always easy to establish when an employee works for the employer as part of his or her contractual obligations.

This is confirmed by the several cases brought before the Courts of each Member State, in which the workers demand remuneration for preliminary activities that are not directly connected to their own tasks.

For the moment, the cases concern the time spent for changing or wearing work clothes, travel time, or periods of availability, but in the near future such requests may increase because of digitalization and the consequent new way of life, thereby changing the concept of working time and rest time.

In conclusion, I think that the challenges of this evolving and undefined context could be effectively addressed by the trade unions, employers or employers' associations, as they could agree on measures of protection (including the system of recording the time worked) and even clarify in the most uncertain cases whether an activity can be categorized as working time.

ROGERIO DA FONTE

He **founded DFA (Da Fonte Advogados)** in 2000, on the basis of his experience in legal and business administration training, and utilizing his career path working as an internal counsel for a large company. His professional experience has enabled him to be responsible for the offices in Luanda and Angola for almost 10 years. His professional career began 20 years ago in the civil litigation area. He has taken part on activities in administrative and corporate law areas for more than 20 years.

IVSON ARAUJO

Ivson Araujo is a **lawyer at the Administrative Law Team at Da Fonte Advogados.** He acts in the orientation and analysis of subjects of administrative law. He has experience in State purchasing and public contracts, anti-corruption administrative regulations, civil service disciplinary code, and property intervention, in particular expropriations.

OPPORTUNITIES FOR THE BRAZILIAN INFRASTRUCTURE SECTOR

by Rogerio Da Fonte & Ivson Araujo

The infrastructure agenda is currently regarded by Brazilian's Federal Government as a priority matter, therefore relevant investments are foreseen in this sector for the next years.

"The attraction for private-sector investments has been dealt by the Brazilian State as key effort"

From this perspective, facing the expanding demand for infrastructure improvements, the attraction for private-sector investments has been dealt by the Brazilian State as key effort.

Amongst the fundamental conditions to make such privately originated assets feasible are predictability, legal certainty, risk mitigation, regulatory maturity and observance of the best international practices. In this regard, it is possible to state that the Government has been proposing a perennial relationship of dialogue and synergy between public and private actors towards national economic development, followed by job creation and better profiting of national resources.

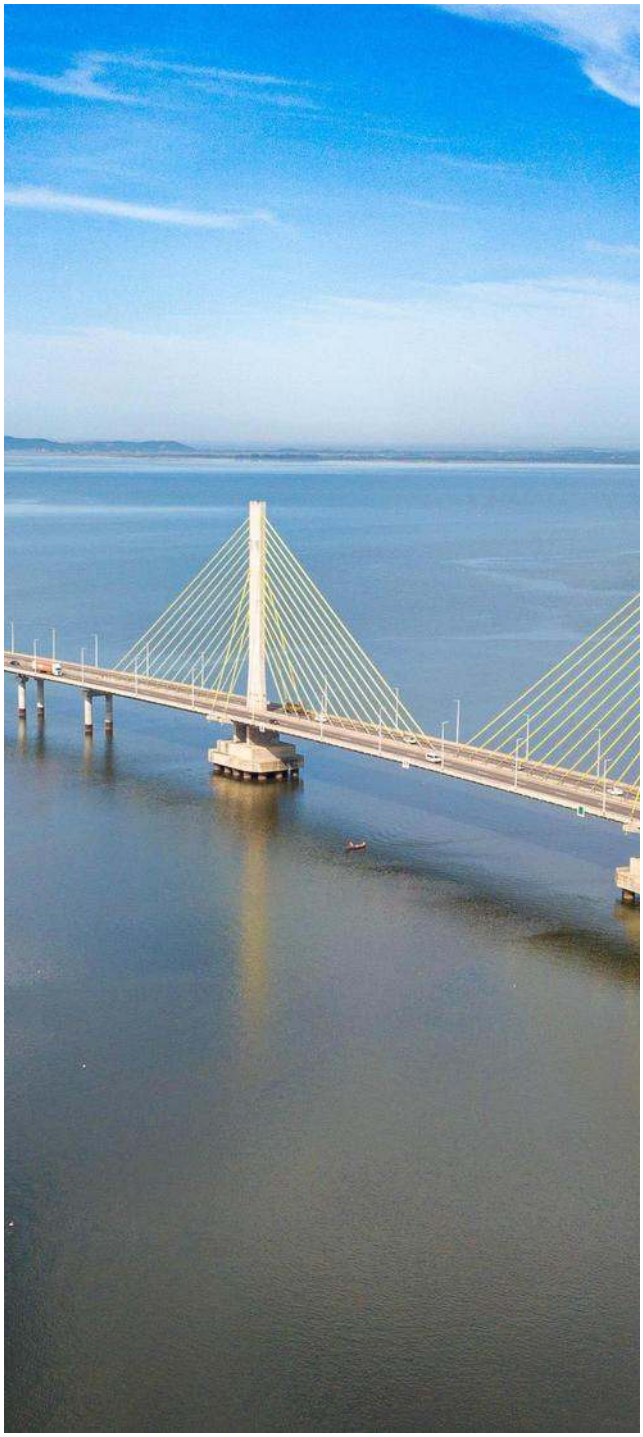
Objectively, the continuity of the Investment Partnerships Program[1] (PPI) deserves special attention. Created by Act number 13.334, in 2016, the program aims to expand and strengthen the combined effort of State and private actors through the conclusion of partnership contracts and various privatization measures.

Significant infrastructure programs are commonly based on the strong use of private capital – alongside contractual adjustments and amortization of long-term investments (up to 35 years) – and market opening to foreign companies' competition. The adopted legal model comprehends public concessions and public-private partnerships.

PPI is coordinated by the Special Secretary for the Investment Partnerships Program, an organ directly linked to the Presidency of the Republic, endorsing its strategic nature. The projects' schedule disclosed by PPI[2] envisages in the very near future auction rounds for, among others, railroads, hydroelectric power plants, mining and oil and gas areas.

[1] Disponível em: https://www.ppi.gov.br/

[2] https://www.ppi.gov.br/cronograma-dos-projetos



In this scenario, national and foreign companies heavily focused on the infrastructure area will encounter prosperous opportunities in the Brazilian Market.

Taking into account that multidisciplinarity is a distinctive element of the infrastructure sector that permeates various phases and fronts of projects, companies should come across the need for working besides regulatory agencies and courts of accounts (fundamental government entities in the sector's dynamics), drafting and revising contracts with financial and insurance companies, preparing tax and working relations of allocated human resources planning, regularizing involved property, drafting and negotiating contracts with providers and third-parties – e.g. Procurement and Construction Contracts (EPCs), Turn-key, built–to-suit, joint ventures -, establishing consortiums, introducing and discussing claims with grantor agents, in addition to, eventually, having to amicably or litigiously solve conflicts before judicial bodies or arbitral tribunals.

Several steps must be taken both by the private initiative and by the Brazilian State in order to achieve the purpose of sustainable and competitive economic growth. In any case, the existence of a selection of projects, the institutional maturity and the continuity of programs such as PPI – in full execution mode – are concrete evidence of the wide range of opportunities of business in the Brazilian infrastructure sector.

MICHAL JACKOWSKI

Michal is **co-founder in DSK Kancelaria**. He is a law professor, advocate, tax advisor, and MBA graduate at the world's oldest ESCP business university. He is the arbitrator of the arbitration court for Internet domains at the Polish Chamber of Information Technology and Telecommunications (PIIT). He is the author of several dozen publications in the field of law. He also is a legal advisor in dozens of large entities from the IT sector, an expert in the field of new technologies law, intellectual property rights, personal data protection, e-privacy. In his free time, he is a marathon runner (with one marathon and five half-marathons on the account) and a skier.

ALEKSANDRA POMIN

Aleksandra Pomin is the **Marketing Manager in DSK Legal**. She is the coordinator of projects implemented by the law firm in the area of customer service, knowledge management and administrative procedures. She gained her professional experience working in one of the international consulting companies belonging to the Big Four.

POLAND, COUNTRY OF INVESTMENT OPPORTUNITIES

by Michal Jackowski & Aleksandra Pomin

Poland is on a very fast development path. Since 1990 its GDP per capita has increased by 120% and during last 3 years the purchasing power index in Poland has increased by over 5.2 thousand USD, while for the entire EU it has increased by about 4.6 thousand USD at that time.

"The key factors of business development in Poland should be new technologies, industry 4.0, internationalization of Polish companies as well as setting up and acceleration of start-ups "

When joining the EU, Poland was a country of agriculture and industry subcontracting, mainly for big Western companies. However, since 2004 with help of EU subsidies it has been developing several own branches of business.

Polish authorities have decided that the key factors of business development in Poland should be new technologies, industry 4.0, internationalization of Polish companies as well as setting up and acceleration of start-ups. The decision has been accompanied with legal changes that provide some forms of state support for the companies operating in these fields.

The first worth mentioning regulation is R&D tax relief. It allows businesses engaged in research and development activities to deduct additionally from their taxable income certain qualified R&D expenditures, notwithstanding the fact that these very expenditures are already being taken into account as tax-deductible costs under the general rules. It means that entrepreneurs are given the opportunity of an increased deduction of 38 PLN from each 100 PLN spent on R&D works (and even up to 47,5 PLN from each 100 PLN spent on the expenditures connected with research and development centres). The catalogue of qualified expenditures is very broad and includes most staff costs, employer's social security contributions, purchase of specialist equipment, expenditures on protection of industrial property and certain external R&D services. The R&D relief is an attractive tool which every business with an innovative angle should consider. Implementation of that relief can lead to measurable and long-term financial benefits. In case of capital groups, the relief can support choosing Poland as a location appropriate for the R&D activities and developments undertaken within the group.

Second legal solution supporting new technologies in Poland is Innovation Box (also known as Patent Box, Intellectual Property Box or IP Box). It is meant to be a tax incentive for Polish and foreign enterprises to carry out R&D work in Poland and commercialize its results. Starting from January 2019, income generated from innovative and patented solutions created, developed or improved by enterprises are taxable at a preferential rate

of 5% (instead of 19%). The intellectual property rights refer to patents, utility models, industrial designs, integrated circuit topographies, any rights to computer programs etc. if they are created, developed or improved by a taxpayer as part of his R&D activities. If the core business of a company is sale of intellectual property rights (e.g. sale of licenses or other rights to computer programs) it may benefit from 5 percent taxation rate almost for its whole activity.

The companies may use these two forms of public support from the date of its registration in Poland. No form of authorities' consent and no official decision is required.

The third legal incentive for investors is the Polish Investment Zone – system of tax reliefs implemented at the end of 2018. The new law expands the area offering tax incentives up to almost 100% of Poland's investment space.

This is a diametrical change in relation to the old legislation which allowed Special Economic Zones only at 0.08% of Polish territory. The New Investment Support Act provides that all the areas allocated for business activities in Poland will be turned into a single investment zone. The investors who obtain a decision on support, are able to benefit from the income tax exemption for new investments located anywhere in Poland. Tax exemption is given for 10 up to 15 years (depending on business location) given that they fulfil specific entry criteria. The exemption concerns the whole income generated by activities covered by a decision on support and conducted within the territory specified in this decision.

There are several criteria evaluated to obtain the decision. Some of them are quantitative (capex expenditures) and some are qualitative (e.g. R&D activities, creating highly-paid jobs, investments in people).

There is also a requirement of maintaining period for the supported investment, created workplaces and purchased fixed assets. As an investment threshold is quite low (starting from 0,5 million PLN) it is an attractive tool not only for big corporations and capital groups, but even for SME companies.

The described regulations are a significant step as incentive rules in Poland. They are meant to attract new investors or encourage companies already present in Poland to implement further undertakings, especially in R&D area.

A HOTSPOT IN NORTH- EASTERN BRAZIL: TAX BENEFINTS FOR INVESTIMENTS IN PERNAMBUCO

by Víctor Cyreno

Located by warm-water beaches, the state of Pernambuco is one of the best places in Brazil for business development.

"Pernambuco has great competitive environment and advantages, specially its policy of state incentives for a wide range of industries."

In addition to its strategic location, Pernambuco has great competitive environment and advantages, specially its policy of state incentives for a wide range of industries, such as automotive, pharmaceuticals, textile, food, IT etc.

The requirements for eligibility vary depending on industry, investment and number of new job positions generated. Bellow you will find some of the main tax incentive programs, as well as their basic information:

1 - Recife's Porto Digital (Recife's Digital Harbor)

The State's Capital Recife is nationally known as the "Silicon Valley in Brazil" and its Porto Digital, an old harbor neighborhood, now hosts an ecosystem with more than 300 creative industry and IT companies. If the company is settled inside this area to develop activities like IT, music recording, photography and filmmaking, design and remote education, it can reduce the Service Tax (ISS) from 5% to 2%.

2 - PRODEPE – Programa de Desenvolvimento do Estado de Pernambuco (Pernambuco Economic Development Program)

Main State tax incentive program, PRODEPE offers a presumed credit on the State Value-Added TAX (ICMS) industrial companies and distribution centers, which increase progressively depending on the place of investment. The priority eligible industries are glass, biotech, metallurgy, agro industry, electronics, beverages, energy, textile, non-metallic mineral extraction, plastics, furniture, pharmaceuticals and hygiene.

"All these previous tax benefits can be claimed administratively, but it is strongly recommended to hire a tax lawyer to help the company in the whole application process"

3 - PRODEAUTO – Programa de Desenvolvimento do Setor Automotivo do Estado de Pernambuco (Pernambuco Automotive Industry Development Program)

This State Program offers several incentives to reduce taxation on the State Value-Added TAX (ICMS) for motor vehicles manufacturers, as well as the entire industry's supply chain (e.g. car parts, tires, motors). PRODEPE also brought to Pernanbu- co a FCA JEEP factory which develops new projects to produce cars from Brazil to all Americas.

4 - Programa Rota 2030 – (Rout 2030 Program)

A Federal Program for the next 15 years inautomobile industry that grants a Corporate Income Tax (IRPJ) reduction, as well as the Social Contribution on Nets Income (CSLL), according to the expenses made by the companies. This program aims to develop the country's car industry, bringing and establishing other famous car companies in Brazil for both domestic market and exportation.

5 - Incentivo SUDENE (Regional Incentive for Brazil's Northeast Development)

SUDENE is a federal body for regional development in Northeast Brazil. One of its key actions is granting tax benefits for industries in expansion, upgrading or new project development, exempting or strongly decreasing their Corporate Income Tax (IRPJ) for 10 years. All these previous tax benefits can be claimed administratively, but it is strongly recommended to hire a tax lawyer to help the company in the whole application process.

VICTOR CYRENO

He works in **Tax area of Da Fonte Advogados** and in all areas of tax litigation (administrative and judicial) and has experience in providing specialized legal advice for the information technology segment, notably through technical support in tax and corporate planning, from the constitution of startups to investment operations in the digital economy.

JUAN DOMINGO ALFONZO

Juan is an **Equity Partner at Torres Plaz & Araujo.** He is a specialist in Administrative Law having graduated from UCAB. He has a Doctorate from the Universidad Complutense de Madrid, Spain, and he graduated with distinction 'Cum Laude' from a Master's degree in Public Administration from the University of Alcalá de Henares. Most of his experience is dealing with Administrative, Constitutional and Tax Law. He has been director of the Venezuelan Chamber of Commerce, director of the British Chamber of Commerce and director of the Venezuelan Colombian Chamber – CAVECOL.

ASTILLAS NACIONALES ANCA V. SUNDDE. CASE OVERVIEW

By Juan Domingo Alfonzo

On October 18th, 2018, after having initiated an inspection procedure, the National Agency with competence in price regulation (hereinafter "SUNDDE"). dictated the Administrative Providence No. 05-2018 that decreed a Temporary Occupation preventive measure for ninety (90) days of the site, administrative offices, establishments and property owned by the company Astillas Nacionales ANCA, C.A. (hereinafter "ANCA" or"the

"The measure materialized by SUNDDE constituted a violation of the constitutional economic rights of ANCA."

Company") as well as the appointment of a citizen identified in said Providence as responsible for the Pro-tempore Administration Board, for the alleged perpetration of the crime of "boycott". Subsequently, this citizen proclaimed himself as President in Charge of ANCA and proceeded to appoint a Finance and Legal Director respectively of the aforementioned Board.

In this sense, it is necessary to mention that the purpose of the measure of temporary occupation as established in the Venezuelan law, is *"to ensure the operationalization and the use of the establishment, venue, vehicle, ship or aircraft by the competent body or entity; and the immediate use of the assets that are necessary for the continuity of the production or commercialization of goods, or the rendering of services"* to guarantee the supply and availability of said goods during the course of the administrative procedure. In addition, the Venezuelan legislation does not establish an *"administrative intervention"* as a form of preventive measure during administrative procedures, which seems to be the measure that was adopted by the SUNDDE in the present case, when appointing a person in charge of a Board of Directors, as well as a Director of Legal Affairs and a Finance Director of the aforementioned Board.

In view of this situation, the lawyers of ANCA attempted the appropriate administrative remedies, without obtaining until this date, any response from the SUNDDE, for which reason, on November 28th, 2018, a nullity claim together with a precautionary constitutional *amparo* action and, alternatively, a request for suspension of effects was filed in the Contentious Administrative Court against the aforementioned Administrative Providence, arguing that said Providence violated the constitutional and economic rights of the Company, such as the right to property, right to economic freedom, right to defense, right to due process and the right to the presumption of innocence, since the measure adopted by the SUNDDE seemed more an administrative intervention, rather than a "temporary occupation"

"This case constitutes a milestone in the Venezuelan jurisprudence regarding the limitations by the administrative activity of the SUNDDE"

On December 12th, 2018, the First Court issued an interlocutory judgement in favor of ANCA, that provisionally admitted the claim for annulment and declared appropriate the precautionary constitutional *amparo* action against the aforementioned Administrative Providence; since the measure materialized by SUNDDE constituted a violation of the constitutional economic rights of ANCA, particularly, the right to due process, the right to defense, the right to property and the right to economic freedom, granting us the reason on the arguments presented. In spite of the above, on February 11th, 2019, the SUNDDE issued the Administrative Providence No. 33-2019 that ratified the *"temporary occupation"* measure by 180 days, in flagrant contempt of the constitutional *amparo* mandate that was dictated by the Court.

However, on March 19th 2019, ANCA's lawyers managed to obtain a very favorable pronouncement from the Venezuelan courts. On that date, the First Court issued judgment No. 2019-0048 that extended the constitutional *amparo* mandate and ordered, among other things, the following: i) the suspension of the effects of Providence No. 33-2019 dated February 11th, 2019 referred to above; ii) the order to the SUNDDE of refraining from dictating any act that could violate the private business autonomy of ANCA and; iii) the order of returning of 17 trucks that had been stolen from ANCA's facilities by State officials; reaffirming the precautionary protection of the constitutional economic rights of ANCA.

This case constitutes a milestone in the Venezuelan jurisprudence regarding the limitations by the administrative activity of the SUNDDE and thus two judgments that declare the constitutional precautionary *amparo* action were successfully obtained, in the face of an evident and manifest violation of the constitutional economic rights of a Venezuelan company of foreign shareholder that is dedicated to the splintering and exportation of Caribbean pine wood. Currently, the process is still ongoing and legal efforts continue to be made to respect and duly execute the aforementioned constitutional protection orders.

AYSUN ERSOY

is a **member of the Board of Directors of MGC Legal**, conducting the merger-takeover-leasing operations, conducting the legal process with human resources and personal units in the personnel transactions of the workers, purchasing-sales-accounting unit Arrangement and preparation of contracts, as well as the preparation of correspondence and strikes ahead.

RECOGNITION AND ENFORCEMENT OF FOREIGN COURT DECISIONS IN TURKEY

by Aysun Ersoy

According to international trade and international law, it is accepted that parties are free to make contracts and determine the law to be applied.

"The Law foresees undermentioned requirements to enforce a foreign country's decision if a foreign country and a debtor who has assets in Turkey have decided an applicable law which is other than Turkish Law"

States holds court decisions as indicators of judicial sovereignty and independence. Accordingly, in Turkish Law, the jurisdiction of Turkish Courts is considered exclusive and definitive. Enforcement and Bankruptcy Law is under the enforcement power of the state and since it concerns the public order, interference of another state on this issue is not accepted in Turkish Law as in many countries. For this reason, it is not possible that Turkish courts to enforce a decision of a foreign country's court or a foreign country's administrative decision.

International Private Law and Civil Procedural Law No:5718 *("Law")* regulates legal relations with foreign elements in this scope. In cases involving territoriality and public order, the Law determines if the Turkish courts are strictly authorized even if the parties are free to choose the applicable law, or even if the parties have already chosen a foreign country's law. For this reason, it is of great importance for foreign companies to carefully examine the Law and take into consideration while concluding an international contract.

The Law foresees undermentioned requirements to enforce a foreign country's decision if a foreign country and a debtor who has assets in Turkey have decided an applicable law which is other than Turkish Law;

- Treaty of Reciprocity is made between Turkey and the country of jurisdiction.
- The court decision is made on a matter that is not in the exclusive jurisdiction of the Turkish courts.
- The court decision is not made by a country's court which is not related by the subject or the parties and the debtor has an objection.
- The court's decision is not be clearly contrary to the public order,
- The decision is in accordance with the defendant.

For foreigners to be able to levy an execution to collect their debt in Turkey according to a foreign country's decision, the decision should be recognized and enforced by Turkish courts.

"Foreign companies also have the right to claim for their debts to be collected with respect to Turkish Law."

Foreign companies also have the right to claim for their debts to be collected with respect to Turkish Law. Turkish courts determine the jurisdiction according to place of business rather than nationality of the debtor. Turkish Law considers Turkish courts are exclusively authorized when place of business of the company or place of performance is in Turkey.

In case the debtor is a company which its establishment place or place of business is Turkey, creditor shall commence execution proceedings and claim for enforcement from Turkish Courts.

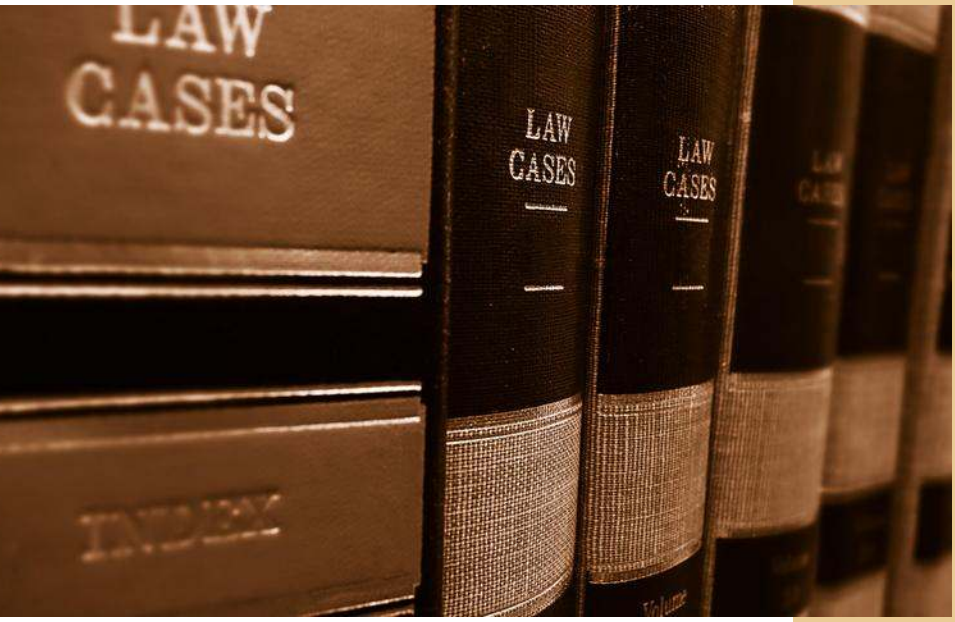
Foreign persons should consider the following matters while commencing execution proceedings;

• There is a contract with the debtor and if the contract is in Turkish? Also, if there is a clause stating that execution proceedings shall be made in a specific country?

• According to Turkish Law, especially in international debts, parties of the contract may choose the applicable law. Therefore, they shall be liable to the applicable law.

• Creditor should prove its obligation stated in the contract has been fulfilled by documents.

• Creditor has the right of choice regarding the currency of the debt.



• Considering the document proves the debt; bill of exchange type documents which are listed in Bankruptcy and Enforcement law entitles the creditor impoundment of the debtor's assets immediately in the case that creditor deposits %15 of the debt as an assurance.

• Since the time and order is very significant in impoundment of the assets of the debtor, it is critical to start the execution proceedings when the debt is delayed.

GABRIELA PAATS

Gabriela Paats graduated in Law at the Universidad Católica Nuestra Señora de la Asunción (Paraguay) in 2017. She has been a **lawyer at the Asunción office of Estudio Jurídico Livieres Guggiari** since she graduated. Her expertise areas are Labor Law and Social Security, and also has experience in Legal advice on Labor Law, and Judicial Litigation. She speaks English and Spanish.

LABOR AND DIGITAL PLATFORMS IN PARAGUAY

By Gabriela Paats

We find ourselves facing a digital era, where everything is about technology and internet. Today we have almost everything solved and in the palm of your hand thanks to internet and a smartphone.

"Today we have almost everything solved and in the palm of your hand thanks to internet and a smartphone"

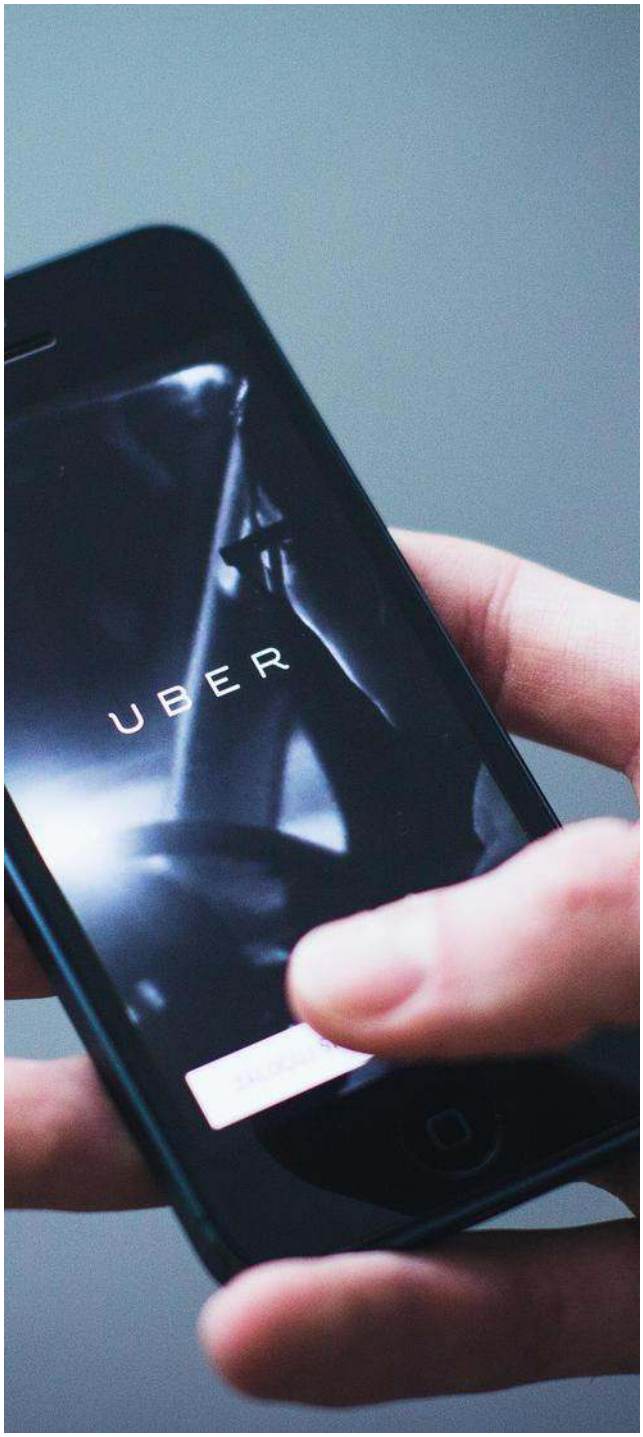
There is no doubt about the generated impact of this in almost every area of our lives, where even the legal world has been involved. New technologies have an impact in several areas, specifically in the workplaces through the use of digital platforms and applications as sources of work breaking in that way, the established paradigm of the typical employment relationship.

A few years ago, digital platforms that are mostly used for passenger transport like *"Uber"* and *"Muv"* since 2017, have echoed in Paraguay. This latter, similar to Uber platform has been developed in Paraguay with Paraguayan private capital.

By using this applications as an example, one of the main questions and issues that arise in the face of this technological and labor revolution is the relationship between drivers and the service providers firms. Do they enjoy their labor rights? Are they independent or dependent employees?

The current labor legislation considers the employee as *"any natural person who executes a work or renders other material, intellectual or mixed services, under an employment contract"*, in accordance with the provisions of Art. 21. In the same sense, the Decree Law that regulates social security, considers as subjects *"salaried workers who provide services or perform a work under a work contract, verbal or written, regardless of their age and the amount of remuneration they receive; the apprentices and staff of the Decentralized Entities of the State or Mixed Companies "*.

In practice, we have that drivers of both "*Uber"* and *"Muv*" are independent in their work performance, they issue invoices, they do not have a fixed schedule, do not wear uniforms and nor do they work under similar conditions to a dynamic relation of dependence. For this reason, they are not under protection of the Labor Code or considered as mandatory subjects to hire a compulsory social insurance either, from which it can be inferred that the provisions of the Paraguayan Civil Code are applicable to this type of providers with respect to service contracts.



However, we cannot affirm or being 100% certain that the authorities in Paraguay would eventually consider the hiring of these service providers as purely of a civil nature, since labor relations overlap in numerous elements with the typical characteristics of civil contracts, given certain features of the relationship that evoke a certain dependence on this type of work, such as the control by the proprietary companies of the technological platforms over the periodic payments to the providers of service and the dependence them on the platforms to generate their daily sustenance. Likewise, the existing working conditions do not seem to adapt to the new work models that include disruptive technological edges of the classic contractual work models.

Up to date, there has been no conflict or legal action by drivers of platforms such as Uber or Muv in relation to labor rights in Paraguay. Although jurisprudence on this subject already exists in other Latin American and European countries in which independent service providers are considered as dependent workers of technology firms, this is not the reality in Paraguay.

Faced with all these changes, which move faster than the legislation can cover, there are no legislation in Paraguay regulating the type of work described in this brief article. I believe that the doctrine and not even the jurisprudence, is the one that should determine the relationship of those who provide their personal services through these platforms.

PUBLIC AFFAIRS, THE LEGAL PRACTICE ON WHICH EVERY PREVAILING FIRM SHOULD BET ON

by Teresa Gutiérrez

Cremades & Calvo- Sotelo, Department of Public Affairs and Lobby.

Globalization is an undeniable and multifaceted global phenomenon. The effects of globalization have affected the world of law and paradigms and systems have been modified. New problems have appeared, for instance, the new regulation surrounding Brexit, and as a result, different kinds of solutions are required. Hence, it is essential to be aware of international factors as all citizens, companies and all kind of entities are vulnerable to events outside their frontiers However, not only does this global interconnected phenomenon bring interdependence between countries but it also contributes to create an over communicated society where information is achieved with just a chick. In addition, a multi system of media has been developed but at the same time, risks have appeared such as the need to verify the available information. According to present circumstances, law firms should not work without paying attention to the media spotlight, due to the fact that internet has an imaginable power as information can expand through the entire globe in time record.

The challenges that globalization pose in the world of law, demand an active participation of law firms in the international field. Taking into account that both national as well as supranational regulation is in continues change, lawyers need to be prepared for those modifications. Thus, for instance, the collaboration between law firms and public and private entities is essential in order to manage agreements and sector meetings and in order to know firsthand the legislation that affects the business of their clients. Also, due to the internationalization of the economy and the development of new technology, a considerable number of enterprises have suffered notable difficulties when they have tried to offer a quality service to their clients, as a result of the language barrier, the divergence of legal and the lack of coordination between lawyers.

“A multi system of media has been developed but at the same time, risks have appeared such as the need to verify the available information.”

As a consequence of globalization as it has been already explained, the legal sector has followed the path of internationalization, and prominent law firms have developed a department focuses on Public Affairs and Lobby.

The creation of such an international department can demonstrate how law firms are committed to adapt to this phenomenon. Moreover, the development of Public Affairs as another area of law practice should be interpreted not only as a suitable method to be up-dated to the current economical-social changes, but also as an effort to make a difference in the legal service provided.

So why having a practice focused on Public Affairs can differentiate your law firm? Well, first of all, it is important to analyze what are the main pillars of this practice in order to have a better understanding of its relevance in the sector.

The main objective of this legal practice is to bring civil society, companies and different social groups closer to laws and rules approved in a democratic system. Lawyers in this field work hard to ensure a stable regulatory and political environment that assures the institutional activity and commercial growth of their clients.

Lawyers in Public Affair not only work to adapt to their clients demands, but also, they try to anticipate to their necessities Thus, they provide a full and extraordinary legal service through techniques, such as monitoring the policy development processes, identifying those that could potentially impact the interests and business of their clients, or prepare legal-reports to help their clients identify opportunities and challenges.

Likewise, they carry out functions of identification of key policy makers to achieve their client's objective, and at the same time work on building relationships that may allow for interactions with the latter. But not only lawyers in this field anticipate to the regulatory changes and sector policies, they have an active participation in the international arena by creating and developing platforms that facilitate the communication between continents in order to meet the needs of their clients.

As a result, the legal service provided to the client is extraordinary and full legal service that makes law firms that include this practice area rapidly differentiable from the rest. Clients appreciate this kind of legal advice as this law firms have better chances to position them in relevant places, within the economic and social circles, from which to launch their initiatives, generating value for their clients, attracting potential customers and strengthen their brand. In other words, we may say that what is good for the client is good for the law firm. Everybody wins.

However, this practice has also some risks and challenges that need to be discussed in order to be handled. Although, the advantages of having a practice area such as Public Affairs are numerous, this practice demands a constant and active level of participation in forums and alliances. Being outdated is a requirement, but also searching new trusting relationships in economic, political and social sectors. Moreover, communication functions are highly relevant, for instance, the presence in social media is essential in order to project an image that exposes transparency and maintain a prestigious reputation.

"The main objective of this legal practice is to bring civil society, companies and different social groups closer to laws and rules approved in a democratic system."

In conclusion, the practice area of Public Affairs is becoming more important for prestigious law firms that work hard to provide excellence in their legal service. Apart from the benefits that Public Affairs can offer to their clients, it also demonstrates that a law firm has adjusted to this new era of globalization, taking advantage of the digitalization process. Given the circumstances explained above, it is recognized that this is the practice area of law, on which every prevailing firm should bet on for several reasons. Firstly, it provides a distinctive service, characterizing the law firm as one capable of giving a truly full legal service. Secondly, the client is the first partner that benefits from this service as it receives a legal advice not only adapted to its current needs but also to its future ones. Finally, receiving legal advice for future legislation and challenges increases the client's probabilities of success on the long run.

HOW POLITICAL INSTABILITY IS AFFECTING SPAIN´S ECONOMY

by Marta Martínez

Cremades & Calvo- Sotelo, Department of Labour Law.

The constant changes in Spain's political scene are generating a sensation of instability. The country's current situation goes back to May 31st of 2018, when the former President of Spain was decommissioned due to a no-confidence motion filed by the opposition party. These social political circumstances can generate concern for investors, whom require political stability in order to invest.

Nonetheless, political stability has not been fully accomplished. The calling for new elections in 2019 has reinstated uncertainty among the Spanish citizens, and this ambiguity is still present in our society. In Spain we have traditionally had a two-party system; but, because of the social unrest regarding these two parties, three other new ones have arisen, which leads to, on one hand, more options for the voting citizens but on the other hand entrains more difficulties to reach a stable government that is able to guarantee the persistence of a solid economic and juridical situation.

In the short term, there is a big chance that the lack of government agreements will give rise to new elections and therefore preoccupations are raising on how this situation will impact and what risk will is suppose for the country's welfare. And all of the previous must be summed up, of course, with the current social-political situation in Catalonia, currently involved in the quest for independence. Among other effects the latter situation may be linked to an estimated number of 5.567 companies that have moved their headquarters outside Catalonia.

Some of the main effects that this general scenario is causing are the rise of the risk premium, the stock market downturn and the unemployment rise. In addition, the economic growth rate is decreasing year by year; in 2017 it was 3%, whereas this year it fell down to 1,9%. The expectations for 2021 are daunting; economic growth rate will reach 0%, meaning an economic stagnation (information provided by INE: National Institute of Statistics). The substantial reduction of this rate is mainly due to the negative impact that political instability has in the companies´ investing decisions. The public deficit must be reduced immediately due to its alarming figures (it is almost equivalent to the totality of the national debt), by implementing the right government policies for it. However, this can not happen until Spain has a stable administration to do so.

It is important to highlight that no IPOs (Initial Public Offering) have been made by corporations in the first semester of this year. The last one to go public was Árima, in October 10th, 2018. Investors are waiting for instability to be solved, and are also worried about the possible harm that the consequences of Brexit can have on their investments.

Similarly, the legal field can be affected by political unsteadiness. Thus, the principle of legal certainty implies that the law must offer its subjects the guidelines to act legally.

But this of course does not mean that laws can not be changed in order to adapt them to

the social needs. However constant political changes can result in the implementation of different and contradictory laws, depending on whom leads the government in different periods of time, and this clearly reflects on the good progress of the country.

In the long term, the forecast is more promising. Two Spanish ex-ministers (José Manuel García-Margallo and Joaquin Almunia), with great knowledge in economics, say that our country will recover the disbursement in funds and investment operations. The European Union will also play a key role in this recovery, given that the regulation that it implements helps to unify and moderate the governments of the Member states. Its parameters seek to offer additional guarantees for all the citizens of the EU that their national politicians will not put into effect any policies that could compromise their wellbeing.

Also, Fitch Ratings (international credit rating agency) has graded Spain an A, meaning by its scale *"Companies whose economic situation may affect finances"*, which is a good score, even though it leaves room for improvement. This score was provided in June of this year.

Finally, regarding the international perception of Spain, it has been surveyed that international investors do not perceive investing in Spain as risky because of its internal political debates. This perception is, of course, understandable considering that other countries are currently facing truly relevant stability issues that are happening on a global scale. Therefore investors find Spain more attractive for investing in, than other countries involved in complicated situations, such as, for example the UK due to its Brexit situation or Venezuela.

In conclusion, even though Spain has been going through a brief but intense instability period, most experts stand on the bright side and trust that this stage will soon be over, resulting in a higher economic growth rate, decrease of unemployment, debt reduction, and market stability.

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ABOUT DSK DEPA SZMIT KUŹMIAK JACKOWSKI

DSK is a modern law firm that provides legal and tax advice. Our team consists of over 60 experts: attorneys-at-law, advocates, lawyers, tax advisors and other specialists (e.g. in debt management, restructuring, patent matters, data protection).

What differs us from other law firms is the close cooperation with non-legal experts. We employ engineers, architects, expert in environmental protection, certified financial auditors, patent experts, data protection and compliance officers etc. We work with them as one team to fulfill our clients' business needs.

DSK's main areas of law expertise are:

• Building and Infrastructure Investment Support

• Public Procurement

• Corporate Services, transactions, M&A

• Compliance

• IT/IOT Law

• Tax Law

•Debt Management

According to the latest ranking of law firms in Poland, published by a national economic-legal journal *"Rzeczpospolita"*, DSK placed on the 3rd position in terms of the number of legal advisors in Central and Western Poland.

DSK was established in 2016, as a result of the merge of law and tax advisory firms. The founding partners: Jakub Depa, Łukasz Szmit, Paweł Kuźmiak and professor Michał Jackowski ensure comprehensive and highly efficient legal and tax advisory services. Our philosophy is not only to deliver a professional expertise but also to be a part of the Clients' business process - acting as a team member, not the external advisor.

DSK represents and advises Polish and international public and private businesses, as well as private individuals.

Our clients include firms from the following sectors: building and construction, IT, SSC & facilitation, food production, loan and financial services, transportation and other.

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Jakub Depa, attorney-at-law, is an expert in public procurement, construction law and labour law. He has provided services to a number of Polish and international companies from building and construction sector. Experienced advisor to public entities, insurers and individual clients.

Łukasz Szmit, attorney-at-law, is an expert in litigation and business negotiation, debt collection and public transportation. He also specializes in sport law and he is a member of the management, licence and disciplinary authorities of leading Polish sport associations.

Michał Jackowski, professor of law, advocate, tax advisor, MBA graduate of ESCP. He is an arbitrator of the domain name arbitration court at the Polish Chamber of Information Technology and Telecommunications (PIIT) and member working groups (on Personal Data Protection and Internet of Things), created by Polish Ministry of Digital Affairs. Professor Michał Jackowski has an extensive experience as a legal advisor to dozens of large companies in the area of IT, new technologies, IP law, personal data protection and e-privacy as well as compliance and legal project management implementation.

"DSK was established in 2016, as a result of the merge of law and tax advisory firms."

Paweł Kuźmiak, lawyer and tax advisor. Expert in commercial contracts, tax law, transfer pricing, MDR implementation. He has provided advice to a number of entities, including large international companies, public entities and individuals. He has represented clients not only before Polish authorities and courts, but also the Court of Justice of the European Union and in international arbitration proceedings.

MGC legal

A NEW PARTNER at MGC Legal

"Mr. Tarik Sahin is one of leading professionals of Turkey's in the field of energy law."

Mr. Tarik Sahin, J.D. has joined as Partner in MGC Legal at the end of 2018. He is head of the Corporate/Contracts and M&A departments of the firm. He has 20 years of regulatory and transactional experience in the areas of European Union law, internal market and customs, energy projects and licensing, commercial and company law, arbitration, corporate governance and banking and finance.

Mr. Tarik Sahin obtained his LL.B. degree from the Ankara University School of Law in 1998. He had excellence in academics while he is obtaining his bachelor's degree. Afterward his graduation from Ankara University School of Law, he started to work as a researcher at Ankara University due to his solid academic background. Meanwhile, he decided to leave the academics to work for the State Planning Organization. After working for the State Planning Organization for 6 years, he obtained an LL.M. (Master of Law) degree from Boston University in 2006.

During his education, he entitled to the Prime Ministry Scholarship. Following the LL.M. degree, he holds a Juris Doctor Degree at Kansas University School of Law since 2009.

Thereafter Mr. Tarik Sahin decided to return his home country and started to work for Akkuyu Nuclear JSC in 2010 as a Head of Contracts Department until the end of 2018.

Mr. Tarik Sahin is one of leading professionals of Turkey's in the field of energy law. He gained his knowledge and experience in energy law from Akkuyu Nuclear JSC by working as a Head of Contracts Department. Akkuyu Nuclear JSC is established pursuant to the cooperation Agreement signed between the governments of Russia and Turkey in Ankara on May 12, 2010. The Agreement provides for construction of a nuclear power plant consisting of four power units of NPP-2006 project with VVER-1200 reactors of total capacity 4 800 MW

in Mersin province located on the southern coast of Turkey. a cooperation Agreement. This is going to be the first nuclear power plant of Turkey.

Arbitration is one of the other expertise areas of Mr. Tarik Sahin. He executed arbitration proceedings on behalf of construction companies and energy companies. Also, company establishment and mergers and acquisitions are other professions of Mr. Tarik Sahin. Besides these experiences, he contributed to the works of the State Planning Organization for harmonization of the Turkish Law and European Union Law.

Studio Legale Menichetti

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MENICHETTI LAW FIRM CELEBRATES 50 YEARS OF ACTIVITY

The Menichetti Law Firm - which this year celebrates 50 years of activity - is one of the first Italian law firms that dedicated itself, almost exclusively, to labor law matters (labor law, trade union law and social security law) and distribution contracts (agency, sales concession and franchising).

"Since its foundation, in 1969, the Firm has never stopped growing by expanding its business abroad, gaining a nationally recognized status as one of the most important firms dealing with labor law."

Since its foundation, in 1969, the Firm - currently based in Verona, Milan, Trento and Bolzano - has never stopped growing by expanding its business abroad, gaining a nationally recognized status as one of the most important firms dealing with labor law.

Over recent years, thanks to the expertise and professionalism of its members and collaborators, the Firm has received important rewards, winning some of the most coveted prizes (individual or team ones) in the national legal sector (*TopLegal Awards, Le Fonti Awards and Loy Banking Award and Finance*).

In 2019, on the occasion of the IX edition of *Le Fonti Award*, the Firm has been awarded the prestigious prize *"Legal Team of the Year - Labor Law"* thanks to its ability to *"offer a prompt and accurate legal assistance service and to get to know in depth the needs and goals of its customers. For the speed of response and the talent to provide resolutive and efficient solutions"*.

On May 4th and 5th, the Firm organized as a part of the celebration for the 50th anniversary of its foundation, with the sponsorship of the Cà Foscari University of Venice and the University of Verona, a seminar entitled *"Labor Law and Civil Law in front of the Enterprises' Crisis - Contract types, company structure, layoffs"*, attended by, inter alios, Constitutional Court and Supreme Court of Cassation judges, University professors and lawyers of recognized prestige.

On September 19th, the Firm will organize, at the historic site of Capitolare Library of Verona (where the only surviving complete text of the *Institutes* of Gaius is kept), another legal, historical and cultural seminar on the *"Work in the Charter of the Carnaro"*.

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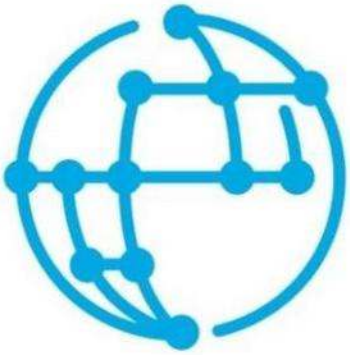

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