Cassazione Civile, Sez. Lav., January 24, 2020, n. 1663 - Applicable to the discipline of subordinate work to the riders. Hetero-direction

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Chairman Di Cerbo - Rapporteur Raimondi

Done

1. In an appeal filed on July 10, 2017, P.M. , C.G. , R.A.A. , L.R. and G.V. requested the Court of Turin to ascertain the subordinate nature of their employment relationship with Digital Services XXXVI Italy srl (Foodora) in liquidation, work consisting in the performance of duties as a delivery boy under coordinated and continuous collaboration contracts (so-called riders), with the consequent condemnation of the defendant company to pay the accrued salary differences, to be settled in separate proceedings. The plaintiffs also claimed to have been unlawfully dismissed by the company and asked for the relationship to be reinstated, as well as an order to pay compensation for damages suffered as a result of the dismissal, and for breach of art. 2087 of the Italian Civil Code. Finally, the plaintiffs claimed to have suffered non-pecuniary damages, to be settled in a separate judgment, due to violation of the regulations governing the protection of personal data.
2. In a judgment dated May 7, 2018, no. 778, the Court of Turin rejected all the claims.
3. The workers have appealed against this sentence.
4. The Court of Appeal of Turin, with judgment no. 26 filed on February 4, 2019, in partial acceptance of the appeal, denied theconfigurability ofsubordinationanddeemedapplicableto theemploymentrelationshipbetween the partiesLegislative Decreeno.81of2015(/index.php?option=com_content&view=article&id=13630:dlgs812015&catid=5&Itemid=137), art.2,asrequested in the alternative by the workers in the first instance; consequently, in application of this regulation, the appellants were granted the right to be paid the amount accrued in relation to the work carried out, based on the pay established for level V employees of the National Collective Labor Agreement for the Logistics and Carriage of Goods, less the amount received; in addition, the appellant was ordered to pay the difference in pay thus calculated, plus accessories. All other grounds for appeal, including, in particular, those regarding the alleged illegitimacy of the dismissals, were rejected, although the Court of Appeal pointed out, on this last point, that in any event there had been no interruption of the existing employment relationship by the Company before its natural expiry date.
5. As far as it is still of interest here, the District Court held that Legislative Decree no. 81 of 2015, art. 2, in the text applicable ratione temporis, identifies a "third kind", which is placed between the subordinate employment relationship referred to in art. 2094 c.c. and the coordinated and continuous collaboration as provided for in art. 409 c.p.c, no. 3, a solution sought by the legislator in order to guarantee greater protection for the new types of employment that are developing as a result of the evolution and increasingly accelerated introduction of new technologies. The appellate court found that the prerequisites for the application of this rule existed, in particular the hetero-organization of the collaboration activity also with reference to the times and places of work and the continuous nature of the service.
6. Foodinho s.r.l., in its capacity as the incorporator of Digital Services XXXVI Italy s.r.l. (in liquidation), has appealed against this sentence of the Court of Appeal of Turin. The appeal is based on four grounds, illustrated by a memorandum. The workers have resisted with a counter-appeal.
7. Subsequentto thefiling oftheappeal,Law Decreeno.101of2019waspublished(/index.php?option=com_content&view=article&id=20964:dl101_2019&catid=5&Itemid=137), containing, among other things, amendments to Legislative Decree no. 81 of 2015, art. 2. This suggested the postponement to a new role of the case originally set for the hearing of October 22, 2019, pending the conversion of the aforementioned decree into law, which took place with Law no. 128 of 2019.

Right

1. With the first reason, pursuant to art. 360 c.p.c., paragraph 1, no. 3, the appellant alleges violation and/or false application of Legislative Decree no. 81 of 2015 (/index.php?option=com_content&view=article&id=13630:dlgs812015&catid=5&Itemid=137), art. 2, in relation to art. 2094 c.c. and art. 409 c.p.c., no. 3, as well as art. 12 preleggi.
2. According to the Appellant, Legislative Decree no. 81 of 2015, art. 2, did not introduce, as instead considered by the Court of Appeal, a tertium genus of work, not referable neither to coordinated work without subordination (provided for by art. 409 c.p.c., no. 3) nor to subordination in the proper sense (art. 2094 c.c.). According to the appellant, hetero-organization is already a typical feature of the subordination governed by art. 2094 of the Italian Civil Code, with the result that art. 2 cited above, in exposing it, would add nothing to the reconstruction of the notion so far made by case law, appearing as a sort of apparent norm, unable to produce autonomous legal effects (thesis accepted by the decision of first instance).
3. The Court of Appeal also committed another serious error of law, when it stated that the hetero-organization governed by art. 2, in question would consist in the power to determine the manner of execution of the service, i.e. the possibility of establishing the times and places of the service. In this way, according to the appellant, the local court overlooked the fact that art. 2 requires, for the purposes of its application, that the manner in which the service is carried out be organized by the client "also with reference to the time and place of work". The word "also" of the regulatory text would show that the protection of employment guaranteed by art. 2, require not a simple hetero-determination of time and place of performance, let alone in terms of mere "possibility", but "a more meaningful interference in the conduct of collaboration, therefore exceeding such hetero-determination" (p. 19 of the appeal).
4. The reason is unfounded.
5. Legislative Decree no. 81 of 2015, art. 2, paragraph 1, under the heading "Collaborations organized by the principal", reads as follows: "1. As of January 1, 2016, the discipline of the subordinate employment relationship also applies to collaboration relationships that take the form of exclusively personal, continuous work performance and whose methods of execution are organized by the principal also with reference to the time and place of work."
6. On the text of Legislative Decree no. 81 of 2015, art. 2, and, more generally, on work through digital platforms, in particular on riders, Decree Law no. 101 of September 3, 2019, converted, with amendments, into Law no. 128 of November 2, 2019, intervened. The amendments to the regulations in question are not retroactive, so the aforementioned art. 2, in the text prior to the aforementioned recent legislative intervention, must be applied to the case in question. The latter, in particular, as of art. 2, paragraph 1, first sentence, replaces the word "exclusively" with "prevalently" and deletes the words "also with reference to working hours and place". Moreover, the amendment adds the following text after the first sentence: "The provisions set out in this paragraph also apply if the methods of performing the service are organized by means of platforms, including digital ones".
7. Before proceeding with the analysis of the complaint, it is worth briefly recalling the contractual regulation of the case, concluded in the form of contracts for coordinated and continuous collaboration, and the modalities of the services in dispute, as these elements have been reconstructed by the territorial Court, which refers to the judgment of first instance, and briefly retrace the logical-juridical procedure followed by the judgment appealed against to reach the conclusions now criticized with the appeal.
8. According to the reconstruction of the territorial court, which adopted that of the judge of first instance, the work of the appellants was carried out in the following way: after filling in a form on Foodora's website, the appellants were summoned in small groups to XXXXXX's office for an initial interview in which it was explained to them that the activity presupposed the possession of a bicycle and the availability of a cell phone with advanced functions (smartphone); in a second moment they were offered the signing of a contract of coordinated and continuous collaboration and, upon payment of a deposit of 50 Euros, they were given work clothes and safety equipment (helmet, t-shirt, jacket and lights) and equipment for transporting food (plate and box).
9. The contract that was signed, to which was attached a sheet containing information on the processing of personal data and the provision of consent, had the following characteristics:
it was a "coordinated and continuous collaboration" contract;
was provided that the employee was "free to apply or not apply for a specific race depending on his or her availability and life needs."
the worker undertook to carry out deliveries using his own bicycle "suitable and equipped with all the requirements required by law for circulation";
it was foreseen that the collaborator would have acted "in full autonomy, without being subject to any constraint of subordination, hierarchical or disciplinary power, or to constraints of presence or timetable of any kind towards the client", but it was however "made except for the necessary general coordination with the activity of the same client";

it was foreseen the possibility to withdraw freely from the contract, even before the agreed expiry date, with written communication to be sent by registered letter with 30 days' notice;
the employee, once he had applied for a ride, undertook to make the delivery strictly within 30 minutes of the time indicated for the pick-up of the food, with the penalty of 15 euros being imposed on him;
the fee was set at 5.60 euros gross of withholding taxes and social security contributions for each hour of availability;
the collaborator had to forward to INPS "a request for registration in the separate management scheme pursuant to art. 2, paragraph 26, of Law no. 335 of August 8, 1995" and the client had to pay the relative contribution;

- theclienthad toprovide forregistrationthecollaboratorwith INAILaccordancewithLegislative Decreeno.38February232000art.5(/index.php?option=com_content&view=article&id=384:decreto-legislativo-23-february-2000-n-38-insurance-for-accidents-and-professional-diseases&catid=5&Itemid=137#art5); the premium wascharged to thecollaboratorfor one third and to theclientfortwo thirds;
- the client - as mentioned - had to entrust the collaborator with a free loan of a bicycle helmet, a jacket and a trunk with the distinctive signs of the company against the payment of a deposit of 50 euros.

10. As regards the manner in which the services in question were carried out, the relationship was managed via the "(OMISSIS)" multimedia platform and a smartphone application (initially "(OMISSIS)" and subsequently "XXXXXXX"), for the use of which Foodora provided specific instructions. The company published weekly on (OMISSIS) the time slots with an indication of the number of riders needed to cover each shift. Each rider could give his availability for the various time slots on the basis of his personal needs, but was not obliged to do so. Having collected the availability, the "fleet" manager confirmed through (OMISSIS) to the individual riders the assignment of the shift. Having received confirmation of the shift, the worker had to go to one of the three predefined departure zones ((OMISSIS)) at the start time of the shift, activate the XXXXXXX application by entering the credentials (user name, username, and password) to log in and start the geolocation (GPS). The rider then received the order notification on the application with the indication of the restaurant address. Once the order was accepted, the rider had to go with his bike to the restaurant, take delivery of the products, check their correspondence with the order and communicate through the appropriate command of the application the success of the verification. At this point, having placed the food in the box, the rider had to deliver it to the customer, whose address had been communicated in the meantime through the application, and had to confirm that he had regularly made the delivery.

11. The Court does not ignore the lively doctrinal debate that accompanied the entry into force and the first years of life of Legislative Decree no. 81
of 2015, art. 2, paragraph 1 - a debate that has not been exhausted and will certainly continue in the light of the innovations brought about by the recent legislative intervention mentioned above - and within which the most varied interpretative solutions have been proposed, solutions that can be summarized schematically and without any claim to exhaustiveness as follows:

a) a first way, which inevitably follows the qualifying method, preferably in its typological version, is to recognize the services rendered by the workers of digital platforms the traits of subordination, albeit modernized and evolved;

b) a second one imagines the existence of a new intermediate figure between subordination and autonomy, which would be characterized by hetero-organization and would find in Legislative Decree no. 81 of 2015, art. 2, paragraph 1, the legal paradigm (theory of tertium genus or hetero-organized work);

c) The third possibility is that of entering the world of self-employment, where, however, the interpretative models differ considerably, being, however, all traceable within a broad notion of parasubordination;

d) Finally, there is the "remedial" approach, which finds in certain regulatory indicators the possibility of applying "enhanced" protection to certain types of workers (such as those on digital platforms who are considered "weak"), to whom the protections of employees can be extended.

12. The path followed by the judgment appealed is that the Legislative Decree no. 81 of 2015, art. 2, would have introduced a tertium genus having characteristics of both subordinate and self-employed work, but distinguished by its own identity, both at the morphological level, and functional and regulatory.

13. The most significant consequence of the framework proposed by the Turin Court is represented by the application of the protections of subordinate employment to the collaboration relationship of the riders. Also in this case, however, the Court does not consider practicable a generalized extension of the statute of subordination, but opts for a selective application of the provisions prepared for it, limited to the rules on safety and hygiene, direct and deferred remuneration (therefore related to the professional classification), the time limits, vacations and welfare but not the rules on dismissal.

14. The workers did not lodge an incidental appeal against the sentence of the Turin Court, thus not insisting on their original main argument, which tended to recognize that the disputed case involved actual subordinate employment relationships.

15. Coming now to the examination of the reason, under the first profile the grievance radically censures the application to the litigious case of the Legislative Decree no. 81 of 2015, art. 2, paragraph 1, since it would be an "apparent" rule, unable as such to produce effects in the legal system.

16. The Court does not believe that it can accept this radical argument.

17. As has been observed, the legal concepts, especially if directly emanating from the rules, are conventional, so if the legislature introduces new ones, the interpreter can only update the exegesis from them, striving to give a sense to the rules, like what the art. 1367 c.c., prescribes for the contract, establishing that, in doubt, the contract or the individual clauses must be interpreted in the sense in which they can have some effect, rather than in that according to which they would not have any.

18. The regulation introduced in 2015 must be put into context. It is part of a series of regulatory interventions with which the legislator has tried to cope, by preparing disciplines as appropriate as possible, with the profound and rapid transformations known in recent decades in the world of work, also as a result of technological innovations, transformations that have deeply affected the traditional economic relations.

19. In theimplementation of thedelegation of authority set forth in Lawno.183of2014(/index.php?option=com_content&view=article&id=12169:2014jobs&catid=5&Itemid=137), which was followed by thedelegateddecreesof whichLegislative Decreeno. 81 of 2015 is a part, and which go by the name of Jobs Act, the delegated legislator, in the aforementioned Legislative Decree, after having indicated in the permanent subordinate work the reference model in the management of employment relationships, has in fact addressed the issue of "flexible" work understood as such in relation to the duration of the service (part-time and intermittent or on-call work), the duration of the contractual bond (fixed-term work), the presence of an intermediary (supply work), the content also formative of the contractual obligation (apprenticeship), as well as the absence of a contractual bond (ancillary work). With regard to the performance of the relationship, the delegated legislator then introduced a further indirect incentive to hiring, profoundly innovating the discipline of duties through Legislative Decree no. 81 of 2015, art. 3, with the reformulation of art. 2103 Civil Code.

20. The overall purpose of the Jobs Act interventions, consisting of the hoped-for increase in employment, pursued through the promotion of the open-ended subordinate employment contract, was also implemented through the contribution exemption provided for by the stability law, which provided for this facility for a three-year period in the case of hirings made in 2015 and the 40% contribution exemption for a two-year period for hirings made in 2016; the delegated legislator of 2015 therefore intervened in all phases of the employment relationship with the intention of providing direct and indirect incentives for hiring.

21. The abolition of project-based employment contracts, the stabilization of coordinated and continuous collaborators, including project-based collaborators and persons with VAT numbers, and the regulation of collaborations organized by the client are also part of the same perspective.

22. In fact, the provisions of Legislative Decree no. 81 of 2015, art. 2, should be read together with art. 52 of the same decree, a provision that repealed the provisions relating to the project work contract provided for by Legislative Decree no. 276 of 2003, articles 61 to 69-bis (provisions that continue to apply for the regulation of contracts in place at June 25, 2015, the date on which the decree came into force), without prejudice to the provisions of art. 409 c.p.c.. Therefore, from June 25, 2015 it is no longer permitted to enter into new project work contracts and existing ones cease upon expiry, whereas coordinated and continuous collaboration contracts may be entered into pursuant to art. 409 c.p.c., no. 3, both for a fixed-term and an indefinite-term period.

23. Therefore, a regulation that, having envisaged restrictions and sanctions, entailed guarantees for the worker has disappeared, while a broader type of contract has been reinstated which, as such, entails the risk of abuse. Therefore, the legislator, in an anti-avoidance perspective, intended to limit the possible negative consequences, however, providing for the application of the discipline of the employment relationship to forms of collaboration, continuous and personal, made with the functional interference of the organization unilaterally prepared by the person commissioning the service. Therefore, since January 1, 2016, the discipline of the subordinate employment relationship applies whenever the collaborator's performance is exclusively personal in nature and is carried out continuously over time and the manner of performance, including in relation to the time and place of work, is organized by the client.

24. The legislator, on the one hand aware of the complexity and variety of the new forms of work and the difficulty of bringing them back to typological unity, and, on the other hand, aware of the sometimes uncertain and variable outcomes of qualifying disputes pursuant to art. 2094 of the Civil Code, has limited itself to enhancing certain factual indices deemed significant (personality, continuity, hetero-organization) and sufficient to justify the application of the discipline dictated for the employment relationship, exempting from any further investigation the judge who sees the competition of these elements in the concrete case and without the latter can draw, in the appreciation of them, a different conviction in the qualifying judgment of synthesis.

25. In such a delimited perspective, it makes no decisive sense to question whether such forms of collaboration, so connoted and from time to time offered by the rapidly and constantly evolving economic reality, are collectable in the field of subordination or autonomy, because what matters is that for them, in a middle ground of blurred boundaries, the system has expressly established the application of the rules on subordinate work, drawing a rule of discipline.

26. This is explained from a preventive and remedial viewpoint. In the first sense, the legislator, in order to discourage the abuse of contractual shields that could lend themselves to this, has selected some elements considered symptomatic and suitable to reveal possible evasive phenomena of the protections provided for workers. In any case, it has been established that when the hetero-organization, accompanied by personality and continuity of service, is marked to the point of making the employee comparable to an employee, equivalent protection is required and, therefore, the remedy of the full application of the discipline.

of subordinate work.

27. This is a legislative policy choice aimed at ensuring that workers enjoy the same protection as subordinate workers, in line with the general approach of the reform, in order to protect workers who are obviously considered to be in a condition of economic "weakness", operating in a "grey area" between autonomy and subordination, but who are nevertheless considered worthy of homogeneous protection. The legislator's protective intent appears to be confirmed by the recent reform mentioned above, which certainly goes in the direction of making it easier to apply the discipline of subordinate work, establishing the sufficiency - for the applicability of the regulation of "prevalently" and no longer "exclusively" personal services, and explicitly mentioning the fact that the law does not apply to personal services. personal, explicitly mentioning work carried out through digital platforms and, as regards the element of "hetero-organization", eliminating the words "also with reference to the time and place of work", thus clearly showing the intention to encourage non-restrictive interpretations of this notion.

28. The second aspect of the complaint under examination invites this Court, instead, to adopt a restrictive interpretation of the rule in question.

29. According to the appellant, as mentioned above, the local court, stating that the hetero-organization governed by art. 2, would consist in the power to determine the manner of performance of the service, i.e. the possibility of establishing the time and place of work, would have overlooked that art. 2, requires, for the purposes of its application, that the manner of performance of the service be organized by the client "also with reference to the time and place of work". The word "also" of the regulatory text would show that the protections of subordinate work guaranteed by art. 2, require not a simple hetero-determination of time and place of performance, let alone in terms of mere "possibility", but "a more meaningful interference in the conduct of collaboration, therefore exceeding this hetero-determination.

30. Also this censure cannot be shared.

31. The regulation introduces, with regard to exclusively personal and continuous work services, the notion of hetero-organization, "also with reference to the time and place of work".

32. Once traced the hetero-organization to an element of a relationship of functional collaboration with the organization of the principal, so that the services of the worker can, according to the modulation unilaterally arranged by the first, appropriately fit and integrate with his business organization, it is highlighted (in the hypothesis of Legislative Decree no. 81 of 2015, art. 2) the difference from a coordination established by mutual agreement by the parties that, instead, in the norm under consideration, is imposed from the outside, precisely hetero-organized.

33. These differences illustrate a very different regime of autonomy, significantly reduced in the case of Legislative Decree no. 81 of 2015, art. 2: integral in the genetic phase of the agreement (for the detected faculty of the worker to oblige or not to the performance), but not in the functional phase, of execution of the relationship, with regard to the mode of performance, determined substantially by a multimedia platform and a smartphone application.

34. That said, if it is true that the conjunction "also" could allude to the need that the hetero-organization involves the time and manner of the service, the Court does not believe, however, that the presence in the text of this conjunction should be deduced that inevitable consequence.

35. The reference to the time and place of work expresses only one possible manifestation of the power of hetero-organization, with the word "also" taking on an illustrative value. The subsequent deletion of the clause by the new law, which has been mentioned several times, seems to bear this out. On the other hand, it has been pointed out that the space-time modalities of carrying out the work are, in the actuality of the computer revolution, less and less significant also in order to represent a real discretional factor between the area of autonomy and that of subordination.

36. Similarly, it must be considered that may be recognized hetero-organization relevant to the application of the discipline of subordination even when the principal is limited to determine unilaterally when and where the personal and continuous.

37. Thus, the plea under consideration does not effectively criticize the relevant rulings of the judgment under appeal.

38. Having said this, the Court does not believe that it is necessary to frame the disputed case, as the Turin Court of Appeal did, in a tertium genus, intermediate between autonomy and subordination, with the consequent need to select the applicable discipline.

39. More simply, to the occurrence of the characteristics of collaborations identified by Legislative Decree no. 81 of 2015, art. 2, paragraph 1, the law imperatively links the application of the discipline of subordination. It is, as said, a rule of discipline, which does not create a new case.

40. Moreover, the rule does not contain any criteria for selecting the applicable discipline, which could not be entrusted ex post to the variable interpretation of individual judges. In the past, when the legislator wanted to assimilate or equate different situations to subordinate work, he specified which parts of the discipline of subordination had to be applied. In fact, the technique of assimilation or equalization has been used several times by the legislator, for example with Royal Decree no. 1955 of 1923, art. 2, with Law no. 370 of 1934, art. 2 and with Law no. 1204 of 1971, art. 1, paragraph 1, with which the legislator had provided for the application to cooperative members of certain institutions dictated for subordinate workers, as well as withLegislative Decreeno.626of1994(/index.php?option=com_content&view=article&id=1144:decreto-legislativo-19-settembre-1994-n-

626-artt-1-29&catid=5&Itemid=137), art. 2, comma 1 e il D.Lgs. n. 81 del 2008 (/index.php?option=com_content&view=category&id=73:aggiornamento-dlgs-9-aprile-2008-n-81&Itemid=59&layout=default), art. 2, paragraph 1,lettera), onthe subject ofextension of theregulations for the protection ofhealth andsafety,and withLegislative Decreeno.151of 200(/index.php?option=com_content&view=article&id=111:decreto-legislativo-26-marzo-2001-n-151-tutela-e-sostegno-della-maternit-della- paternit&catid=5&Itemid=137)1, art. 64, as subsequentlyamended, whichprovided fortheapplicationto female workersenrolled in Separate Account of the INPS some protections provided for employees.

41. Situations in which the full application of the discipline of subordination is ontologically incompatible with the cases to be regulated, which by definition are not included within the scope of art. 2094 of the Civil Code, cannot be excluded, but this is not a relevant issue in the case submitted to the examination of this Court.

42. On the contrary, it cannot be ruled out that, in the face of a specific request by the interested party based on the normative parameter of art. 2094 of the Civil Code, the judge ascertains in concrete terms the existence of a real subordination (in this case excluded by both levels of merit with a ruling not challenged by the workers), with respect to which there would not even be a problem of incompatible discipline; It is well known how the controversies are influenced in a decisive manner by the actual way in which the relationship is carried out, how the same are introduced in court, the results of the investigation carried out, the appreciation of this material made by the judges of merit, the belief generated in them about the sufficiency of the elements found symptomatic, such as to deem proven subordination, all with sometimes different outcomes even with respect to work services typologically similar, without that on these findings of fact can extend the review of legitimacy.

43. On the other hand, the rule under scrutiny does not want, and could not even introduce any limitation with respect to the power of the judge to qualify the case with regard to the actual contractual type that emerges from the concrete implementation of the negotiated relationship, and, therefore, does not affect the possibility for the same to ascertain the existence of a subordinate employment relationship, according to the criteria developed by the case law on the subject, being a power constitutionally necessary, in light of the rule of effectiveness of protection (cf. Constitutional Court no. 115 of 1994) and functional, however, to purposes of contrasting the abusive use of contractual screens pursuedby thelegislaturealsowiththeprovisionexamined(similarlyseeCass.no.2884of2012,onLegislative Decree.
No. 276 of 2003 (/index.php?option=com_content&view=article&id=700:decreto-legislativo-10-settembre-2003-n-276-occupazione-e-mercato-del-lavoro&catid=5&Itemid=137), art. 86, paragraph 2, on the subject of joint ventures).

44. The second and third grounds may be examined together, given their close connection.

45. With the second reason, pursuant to art. 360 c.p.c., paragraph 1, no. 3, the appellant alleges violation and/or misapplication of art. 132 c.p.c. and art. 118 of the current provisions of the c.p.c., in correlation with art. 111 of the Italian Constitution. The motivation would be characterized by an irreducible contrast between irreconcilable statements. The judgment would have reached the subsumption of the specific case in art. 2, after having described the manner of performance of the service by the appellants in terms such (freedom to make themselves available to the shifts, freedom not to appear at the beginning of the shift without prior notice and without penalty) to exclude the root hetero-organization, as then outlined and assumed the basis of subsumption.

46. With the third reason, proposed pursuant to art. 360 c.p.c., paragraph 1, no. 3, the appellant alleges violation and/or misapplication of Legislative Decree no. 81 of 2015, art. 2, in relation to the requirement of hetero-organization. The error that in the second plea would be reflected in the reasoning is complained here directly as of error of subsumption and therefore as a violation of law.

47. In fact, with the second reason, although it is presented as an error in judicando, pursuant to art. 360 c.p.c., paragraph 1,
No. 3, it is deduced a defect of nullity of the judgment, relevant pursuant to art. 360 c.p.c., paragraph 1, no. 4 (see Cass, SU, no. 8053 of 2014), complaining the appellant of an irreducible contrast between statements of the judgment appealed against that would be irreconcilable with each other, in particular in relation to two data functional to the establishment of the hetero-determination of the times and places of work by the judgment considered decisive, namely, on the one hand the "time factor", in particular with regard to the circumstance that, according to the Court of Appeal "The appellants ... worked on the basis of a "shift schedule" established by the appellant" and, on the other hand, to the "place of performance" factor, since the same judgment recognizes that the workers had to go to the start time of the shift in one of the three departure zones defined ((OMISSIS)).

48. Under the first profile it is argued that the same judgment had recognized that, although the time slots predetermined by the company, the company did not have the power to require workers to work in the shifts in question or not to revoke the availability given, in addition to the fact that it is admitted in the judgment of the Territorial Court that workers were free to give their availability for the various shifts offered by the company, and that the same Court had also ascertained the non-existence of a hierarchical disciplinary power by the company against the appellants, since the latter had never adopted disciplinary sanctions against workers even if they after giving their availability revoked it (swap function) or did not present themselves to make the service (no show).

49. In the second aspect, the applicant argues that the possibility for the worker to go to any of the three squares indicated showed that the choice of place was not imposed by the company.

50. As noted, the same elements are valued as a subsumption defect in the case governed by Legislative Decree no. 81, art. 2, paragraph 1, as interpreted by the Court of Appeal, and therefore as a violation of the law.

51. In the Court's opinion, the criticisms made in the two complaints under consideration are not sufficient to effectively censure the judgment under appeal, which identified the organization imposed on the time and place of work as significant of a further specification of the obligation to coordinate services, with the imposition of spatial and temporal constraints emerging from the reconstruction of the contractual regulations and the manner in which the services are carried out. In particular, under the first profile, enhancing the commitment of the worker, once he has applied for the race, to make the delivery strictly within 30 minutes from the time indicated for the withdrawal of the food, under penalty. Under the second profile, giving weight to the manner in which the service is carried out, in particular:

- the obligation for each rider to go to the start time of the shift in one of the predefined departure zones and to activate the application XXXXXXX, entering the credentials and starting the geolocation;
- the obligation, having received the order notification on the application with the indication of the restaurant's address, to go there with their own bicycle, take delivery of the products, check the correspondence with the order and communicate through a special application command the success of the operation;
- the obligation to deliver the food to the customer, whose address the rider has received via the application, and confirmation of regular delivery.

52. The elements highlighted by the appellant, if they confirm the autonomy of the worker in the genetic phase of the relationship, for the detected mere power of the same to obligate himself to the service, are not valid to revoke in doubt the requirement of the hetero-organization in the functional phase of execution of the relationship, decisive for its reconduction to the abstract case of which the Legislative Decree no. 81 of 2015, art. 2, paragraph 1.

53. As noted, if the element of coordination of the collaborator's activity with the company's organization is common to all coordinated and continuous collaborations, according to the diction of art. 409 c.p.c, paragraph 3, in the text resulting dalla modifica di cui alla L. n. 81 del 201(/index.php?option=com_content&view=article&id=17089:l81_2017&catid=5&Itemid=137)7, art. 15, paragraph 1, lett. a), in collaborations not attracted to the discipline of Legislative Decree no. 81 of 2015, art. 2, paragraph 1, the coordination arrangements are established by mutual agreement between the parties, while in the case considered by the latter provision these arrangements are imposed by the principal, which precisely integrates the hetero-organization that gives rise to the application of the discipline of subordinate employment.

54. The local court identified the logistical and temporal aspects of the hetero-organization, relying on the functional dimension of the relationship, and giving account of them with a consistent reasoning, free from the "irreducible contrast between irreconcilable statements" complained by the appellant.

55. Therefore, there is neither the defect of motivation below the "constitutional minimum" (Cass., SU, no. 8053 of 2014, cited above) nor that of subsumption resolved in violation of the law.

56. At the conclusion of the examination of the first three grounds of appeal it must be observed that, although this College has not shared the opinion of the territorial Court as regards the reconduction of the hypothesis provided for by Legislative Decree no. 81 of 2015, art. 2, paragraph 1, to a tertium genus, intermediate between subordination and self-employment, and the need to select the rules on subordination to be applied, the operative part of the judgment appealed must be considered, for what has been said, in accordance with law, so that the same judgment is not subject to cassation and its reasoning must be understood as correct in accordance with this decision, pursuant to art. 384 c.p.c, u.c., as requested by the Attorney General's Office.

57. There are no complaints relating to the other conditions required for the applicability of Legislative Decree no. 81 of 2015, art. 2, paragraph 1, namely the exclusively personal nature of the service and its performance in a continuous manner over time.

58. At the end of the appeal, the appellant then raises, as a fourth ground, a question of constitutional legitimacy of Article 2, in question if interpreted as a rule of facts, as a rule that is suitable to produce legal effects and to give rise to a third kind of employment relationship, halfway between subordination and coordinated and continuous collaboration. Under a first profile, the appellant observes that the delegation contained in Law no. 183 of 2014, would have authorized the delegated legislator to reorganize the existing types of contracts, but not to create new ones. If interpreted in the terms outlined by the Court of Appeal of Turin, art. 2, would therefore be in conflict with art. 76 Cost. as it would violate the limits set by the delegating legislator. Moreover, from a second point of view, such an interpretation would make art. 2 unreasonable and therefore in contrast with art. 3 of the Italian Constitution, equating riders with messengers covered by collective bargaining, regardless of the actual equivalence of the duties carried out.

59. From the first point of view, the question raised no longer has a reason to be, having this Court considered the Legislative Decree no. 81 of 2015, art. 2, paragraph 1, a rule of discipline and not a rule of fact, having to exclude that it has given rise to a tertium genus, intermediate between subordination and self-employment, for which there can be no talk of excess of delegation, being able to fit the rule in question in the overall reorganization and regulatory reorganization of existing contract types wanted by the delegating legislator.

60. Under the second aspect, the College does not see any profile of unreasonableness in the choice of the delegated legislator to equate, as regards the applicable discipline, the subjects referred to in Legislative Decree no. 81 of 2015, art. 2, paragraph 1, to employees, with a view to protecting a weaker employment position, due to the obvious asymmetry between

principal and employee, with

need for a stronger protective regime, in a balancing function.

61. The questions of constitutionality raised must therefore be considered manifestly unfounded.

62. In the light of the above considerations, the appeal is therefore to be rejected as a whole.

63. The absolute novelty of the matter justifies the offsetting of the costs of the judgment of legitimacy, pursuant to art. 92 c.p.c., paragraph 2, as amended by Law Decree no. 132 of 2014, art. 13, paragraph 1, converted, with amendments, into Law no. 162 of 2014.

64. Pursuant to article 13, paragraph 1-quater, of Presidential Decree no. 115 of 2002, it should be noted that the appellant meets the procedural requirements for payment by the company of a further amount by way of a unified contribution equal to that provided for the appeal, pursuant to article 13, paragraph 1-bis, if due.

P.Q.M.

The Court rejected the appeal and set off the costs of the proceedings. Pursuant to article 13, paragraph 1-quater of Presidential Decree no. 115 of 2002, the Court acknowledges the existence of the procedural requirements for the payment, by the appellant, of a further amount by way of a unified contribution equal to that provided for the appeal, pursuant to article 13, paragraph 1-bis, if due.