

# EDITORIAL

Covid-19, popularly known as coronavirus, has brought consequences one could never imagine less than a year ago. In the labor scope, the factual-legal implications of the measures aiming at prevention or precaution regarding the disease have not yet been fully assessed. Even so, *Revista da Escola Judicial do TRT4* chose the pandemic impacts to challenge writers to focus on relevant issues that require answers from the Law and the Labor Process. The proposed perspective is the legal-constitutional adequacy, which should ultimately guide the interpreter and the enforcer of the Law. Mainly when it faces critical situations brought about by the pandemic, affecting the fundamental social rights to health and work, among others.

The uncertainties now experienced have the possibility to enhance natural fears, prejudice or discrimination when the presence of migrants makes up this equation. In the previous issue, two texts focused on legal problems that were not solved by national laws of any European country which is receiving migrants. Now, the theme resurfaces here with the presence of Venezuelan immigrants in Brazil, who left their country due to political and economic problems. Even before considering the insertion of these people in the labor market, humanitarian issues have to come into consideration, such as ensuring decent shelter and social integration, which is hampered by language. Brazilian law and judicial institutions will have to be qualified to respond to this challenge enforcing recent legislation and international human rights standards before governmental acts and regulations which are guided by social and cultural segregation measures.

The so-called **uberization** is the object of three articles. The first of them examines the decision of the Court of Justice in the European Union which imposes the recognition of the same rights of employed workers to the ones who render services to Uber, this solution is also recommended for the platform drivers working in Brazil. The second focuses on uncertainties arising exactly from the way in which the app drivers' service is provided as well as the precarious situation, which was intensified during the pandemic period due to the decline in economic activity. The article advocates the creation of a new contractual figure that addresses the specificity of this kind of work. The third examines, in turn, legal aspects of the Law 13467/17 and Provisional Measure<sup>1</sup> that tried to solve problems caused by home office during the pandemic period. The edition of Provisional Measure 927/20, even though it has expired, imposed legal changes that compromise the protection of health and safety at work, as well as its duration, precisely in the period of the pandemic, contradicting what could reasonably be expected from the legislator. This is the paradox which this article deals with pointing out unconstitutionality in these changes.

There is an article that addresses the essence of Labor Law where it highlights its fundamentals since its inception to the present moment, showing the onset it is undergoing because of legal changes introduced by the Law 13467/17. Legal professionals are challenged to develop legal work that removes the various violations of Labor Law, especially those that offend constitutional and international human rights standards and lead to the degradation of the laborer itself.

In addition to the four aspects mentioned above, the labor reform also dealt with the teleworking regulation, which got to be

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<sup>1</sup> N.d.T: A **provisional measure** (Portuguese: *medida provisória*) is a legal act in Brazil through which the President of Brazil can enact laws effective for a maximum of 60 days (it may be renewed only once for the same period), without approval by the National Congress. There are two requirements for a provisional measure to be used: **urgency** and **relevance of the matter** to be regulated.

known as home office<sup>2</sup> during the pandemic period. In this matter, the legislator's tendency towards precariousness is revealed by the way he/she dealt with the topic. The serious gaps present in this regulation are the cause of numerous problems. Starting with the implications in the worker's physical and mental health, going through the worker's responsibility for providing the means to carry out his job which converge into a recurring problem: the duration of the work. In these three cases, the law in discussion is contrasting to the constitutional project that includes rights regarding the working environment and limiting the duration of work, which are among the fundamental rights of those who have to work for a living. Again, the interpreter and enforcer of Labor Law is instigated to solve controversies caused by the - perhaps on purpose - poor regulation of the issues focused here, in which a legal-constitutional adequacy is required.

The deconstruction of the collective sense and solidarity which are fundamentals of Labor Law since its origin is the idea that underlies the Law 13467/17, whose purpose was to weaken the legal system aimed at workers' protection, through advertising in favor of a pretended entrepreneurship and of the individualism that characterizes society. Moreover, there is the regulation of intermittent employment in this law. An article dealing with this theme points out that Brazilian legislation opens up the possibility for this type of contracting in any industry, unlikely similar regulations in European countries. The deliberate objective is the precariousness of human work, which was curiously recognized in a government measure during the pandemic period by extending the right to emergency assistance for intermittent inactive workers.

The implementation of the Law 14010/20 to the labor scope is the matter of concern in an article that deals with the interruption and suspension of its extinct prescription for the period that goes

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<sup>2</sup> The expression Home office started to be acquainted during the pandemic period in Brazil.

from 20-3-20 to 30-10-20. In the hypothesis in question, the need for the creditor to be able to use his/her right to have the deadline at covering up the right holder's claim effectiveness is always relevant in this case.

The possibility of workers' strike in so-called essential activities is the focus of an article that analyzes the possibility of exercising this constitutional right in a period of public calamity resulting from the pandemic. The difficulties faced by the whole society end up imposing restrictions on their exercise having as an exception, according to the author, cases of environmental strikes, when the discussion about the right to life emerges vigorously in the most diverse professional categories.

Finally, from the procedural viewpoint, there is an article that addresses the difficulties arising with the use of telepresence hearings during the pandemic period, especially due to deficiency access of the internet or even electronic equipment problems. Following constitutional principles, such as due legal process, the contradictory, the access to justice and the infeasibility of jurisdiction, is a decisive condition for the practice of this procedural act, either during the pandemic period or with progressive use of electronic means within the Labor Process in line for the future.

We thank the writers for their effort and for the original contributions brought in with their texts. We wish readers a good reading and a fruitful learning experience.

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