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PERSPECTIVES ON HUMAN DIGNITY
(On judicial rulings regarding contemporary slavery in Brazil)

1. The legal definition of contemporary slavery in Brazil and its uses. — 2. The criminal courts’ interpretation of the crime of « reducing a person to a condition analogous to that of a slave »: resisting the change in the legal definition? — 3. The labour courts’ interpretation of contemporary slavery: violations of collective rights of the workers and the community, and the enforcement of collective moral damages. 4. Concluding remarks.

1. The legal definition of contemporary slavery in Brazil and its uses.

Between the mid-1980s and 90s, with the end of the military dictatorship, the enactment of a constitution deeply committed to basic rights and the incorporation of the core human rights international treaties into Brazilian law helped to shed light on a social phenomenon that, until that point, had received little or no attention: the massive exploitation of rural workers in the borders of the Amazon forest and in other rural areas deep in the country’s hinterland.

These super-exploited workers faced such shocking subhuman conditions that religious institutions and human rights organizations working in the field turned to Article 149 of the Brazilian Penal Code — « the strongest legal provision available » — to describe them as conditions of slavery (1). Since its enactment in 1940, the Brazilian Penal

(1) The situation had been deteriorating since the late 1960s when peonage was extensively employed by several economic enterprises on the borders of the Amazon forest. Between 1970 and 1980, deforestation in the south of Pará and northeast of Mato Grosso reached its peak, and the Catholic Church denounced the existence of a huge contingent of workers in subhuman conditions. The government was indifferent to the situation, characterizing it as mere routine violation of labour rights. Only a few independent research reports document the situation during the 1970s. Neide Esterci, Ricardo Rezende Figueira, Trabalho Escravo no Brasil: as Lutas pelo Reconhecimento como Crime de Condutas Patronais Escravistas, in « Revista da Faculdade de Serviço Social da Universidade do Estado do Rio de Janeiro », 20 (2007), p. 98. The actual
Code (BPC) has pronounced the conduct of « reducing a person to a condition analogous to that of a slave » as a felony. And yet, apart from being referenced by criminal law commentators, this was a forgotten provision.

However, in 1993, after considerable domestic and international pressure, Brazil officially recognized the existence of contemporary slavery in its territory, and by 1995, the Ministry of Labour had already outlined a policy to address the problem. It created « mobile inspection teams », groups of administrative officials responsible for proactively overseeing rural enterprises. These teams often coordinated with the Labour Prosecution Office and with federal and state police forces in a manner that inspections might result in a set of administrative, labour, and criminal procedures.

The outcome of the inspections made it clear to the Brazilian government that a more sophisticated approach and a greater range of administrative responses were required to address contemporary slavery. In 2002, « rescued workers » became qualified for unemployment compensation. In 2003, the National Council for the Eradication of Slave Labour was created within the Secretariat for Human Rights. The Council, a body formed by government officials and representatives of civic organizations, oversees the implementation of the national plan for the eradication of slavery, which is meant to create synergy between public policies associated with the fight against contemporary slavery (²). In 2004, the government disclosed a list with the names of the companies which were found to be exploiting labour under conditions analogous to slavery.

In addition to these initiatives, in 2003, Congress passed a statute (³) that reformed Article 149 of the BPC. The reform stemmed from the experiences of the mobile inspection teams and their partners from inside and outside the government. The original provision, written in a laconic style, defined it as a crime to « reduce someone to a condition analogous to that of a slave ». The new wording, on the other hand, was forged in response to situations faced by inspectors during their visits to the country’s hinterland. It was crafted to affirm contem-

wording in the Brazilian Penal Code is « condition analogous to that of a slave », probably influenced by the wording of the 1926 Slavery Convention of the League of Nations.

(²) There have been two National Plans for the Eradication of Slave Labour in Brazil. The first was published in 2003: PRESIDÊNCIA DA REPÚBLICA, et. al., Plano Nacional para a Erradicação do Trabalho Escravo. The second appeared in 2008: SECRETARIA ESPECIAL DE DIREITOS HUMANOS, PRESIDÊNCIA DA REPÚBLICA, II Plano Nacional para a Erradicação do Trabalho Escravo.

porary slavery as a violation of human dignity, rather than of individual liberty alone (4).

The new provision detailed the different actions through which the crime of « reducing a person to a condition analogous to that of a slave » could be committed. Those are: (a) submitting a person to forced labour, debilitating workdays, or degrading conditions of labour; (b) restricting, by any means, a person’s freedom of movement under the guise of a debt undertaken with the employer or with someone entrusted to act on his behalf; (c) restricting a worker’s access to proper transportation, with the intent of keeping him or her in the workplace; or (d) maintaining guards at the workplace or retaining documents or personal belongings of a worker in order to keep him or her in the workplace.

Despite being written in the Penal Code, the interpretation and enforcement of the legal definition of contemporary slavery is not the sole province of criminal courts. Labour courts also use the definition to assess collective moral damages, claimed by the Labour Public Prosecution [Ministério Público do Trabalho] in lawsuits aimed at punishing the violation of collective rights of the workers. The purpose of this article is to explain how criminal and labour courts deal with the legal definition of contemporary slavery within their jurisdictions.

2. The criminal court’s interpretation of the crime of « reducing a person to a condition analogous to that of a slave »: resisting the change in the legal definition?

Since 2003, criminal courts have been dealing with the new definition of contemporary slavery. Legal commentators read that change as a transformation of the crime provided for under Article 149 of the BPC from a violation against individual freedom of movement to a violation against human dignity, which may not necessarily involve the curtailment of the worker’s ability of leaving the workplace.

One could reasonably expect that after more than a decade in force, the new wording in Article 149 would be well assimilated by the judiciary. Back in 2006, the Brazilian Supreme Court [Supremo Tribunal Federal], the country’s highest court, decided that the hearing and

(4) Since the early 1990s, the idea of conceiving the crime of enslavement as a violation against human dignity had been discussed in Brazilian Criminal Law and certainly inspired the work of the mobile inspection teams. Ela W.W. de Castilho, Trabalho Forçado e Trabalho Escravo no Direito Penal Brasileiro (1994), unpublished Qualifying Doctoral Dissertation, Universidade Federal de Santa Catarina (on file with Coordenação de Documentação e Informação Jurídica da Procuradoria-Geral da República), p. 75.
trial of criminal cases involving contemporary slavery falls under the competence of the Federal Courts (5). And in 2012, the Supreme Court decided to prosecute two congressmen charged with contemporary slavery offences (6), in a decision that extensively addressed Article 149 of the BPC, favouring the legal definition adopted in 2003. However, neither the settling of the controversy concerning the competence with regard to these crimes, nor the position advanced by the Court in the 2012 decisions secured a coherent and consistent interpretation of Article 149 of the BPC. Moreover, a comparison of the number of cases identified by the mobile inspection teams with final criminal convictions suggests that there is a considerable discrepancy between the mindset of the judicial branch and the administrative officials responsible for the labour inspections.

As of May 2013, the mobile inspection teams had inspected over 3,700 establishments nationwide and had rescued approximately 46,000 workers from conditions analogous to slavery. Within the jurisdiction of the First Circuit of the Federal Justice is the highest incidence of cases involving contemporary slavery, according to data provided by the Ministry of Labour (7). There are no precise statistics available, but within the entire Federal Court of Appeals for the First Circuit (which has jurisdiction over the Federal Justice of thirteen states and the Federal District) only five appeals led to final criminal convictions so far. Even considering that there must be a number of convictions in the several District Courts that were never appealed, and that not every case reported by the labour inspection teams should end up in criminal prosecution, the figure is quite modest.

This topic of the article aims to elaborate on how criminal courts are interpreting Article 149 of the BPC. In order to do so, first we explain recent precedents established by the two higher courts in Brazil, the Supreme Federal Court and the Superior Court of Justice, in which the issue of contemporary slavery was addressed. Then, we proceed to looking at rulings — particularly criminal appeals — of the Courts of


Appeals for the different circuits of the Brazilian Federal Justice, the branch of the Judiciary responsible for trying these cases.

Criminal trials are not the primary responsibility of the Supreme Court in Brazil. Nevertheless, as in many countries, criminal prosecution against members of the Congress needs to take place before the Supreme Court. In this situation, the Court will first decide whether or not to prosecute, and only then deliberate on the merit of the case, deciding for a conviction or an acquittal. So far, there are no criminal convictions based on Article 149 of the BPC issued by the Supreme Court, but there are decisions initiating criminal prosecution, which elaborate on the interpretation of that legal provision, as indicated above. Those cases involved the interpretation of the « degrading conditions of labour » and « debilitating workdays » clauses of Article 149.(8)

By a narrow majority, the Supreme Federal Court endorsed the view that in criminal prosecutions based on Article 149 of the Brazilian Penal Code, any one of the different actions described in the expanded language of the provision can independently constitute the crime of « reducing a person to a condition analogous to that of a slave ». Consequently, curbing individual freedom of movement is not a necessary feature of the crime, but one of several possible elements that can constitute it. According to Justice Rosa Weber, « modern slavery is more subtle, and the curtailment of liberty may rely on economic rather than physical constraints »:

You deprive somebody of her liberty and dignity by treating her as a thing, not as a human being. This might be achieved not only by means of coercion, but also through intense and persistent violation of her basic rights, includ-

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(8) BRASIL, Supremo Tribunal Federal, Inquérito no 2.131. Relator para o acórdão: Min. Luiz Fux, « Diário da Justiça Eletrônico », 7 de agosto de 2012, acórdão. The case report describes the situation of the workers like that: « In the inspection carried out by the mobile team, those were the conditions to which the workers were subjected to: a) ‘lodging’ in huts made of palm leaves, without a floor, one of which was built upon a marsh with an unbearable smell, besides excessive humidity; b) there were no kitchens, only ‘makeshift stoves’; c) there were no refectory, therefore the workers had their meals over stones or fallen branches (or even on the ground); d) the dirty water the workers had to drink came from three different places: a ‘muddy swamp’, a ‘rustic well’ [...] and a small dam (whose water was shared by the workers and the farm’s livestock); e) there were no restrooms for the workers; f) no personal equipment was provided to the workers (such as boots, gloves or hats), nor first aid materials; g) there were sick workers, some of them with bruises in their hands ». The inspection also reported that the workers were subjected to 12 hours workdays, with no rest on Sunday (when they worked for 6 hours). In addition to that, the workers were allegedly subjected to debt bondage, committed through the use of a « truck system ».
ing the right to decent conditions of labour. Violation of this right impairs the victim’s free will. That also is «to reduce someone to a condition analogous to that of a slave.

This approach refuses the idea that «real» slavery requires control of the body of the enslaved person, which would be primarily an offense against individual liberty. Based on a reading of the 2003 expansion of the definition in the rewritten article of the Criminal Code, the Supreme Court depicts contemporary slavery more broadly, as a violation of human dignity. It assumes that some forms of treatment of workers are not a simple violation of labour rights. They humiliate workers in a manner that diminishes them as human persons. As perpetrators prey on vulnerable workers — illiterate or very poorly educated persons, with little or no income at all, and who are often trafficked away from home — it might also be difficult to ascertain, even under a narrow definition, how free to walk away such persons really are.

Justice Gilmar Mendes led the dissenting opinion. According to Mendes, the crime of submitting a person to a condition analogous to that of a slave is a violation of individual liberty. It occurs only when there is: (a) curtailment of the worker’s freedom of movement; (b) withholding, abusive reduction, or simply refusal of payment; or (c) violence perpetrated against the worker, all in order to keep him or her in the workplace.

One could assume that, no matter how close those decisions were, the Supreme Court reached a majority and settled the controversy. This, however, is not true. First, because the arguments regarding which value is at stake when it comes to the crime of reducing a person to a condition analogous to that of a slave (individual liberty or human dignity) were made in obiter dicta. Second, because the Supreme Court’s rulings on these matters have no binding precedential effect. As a result, the disagreement between the Justices is, to some extent, mirrored in the lower courts, as explained below.

The Superior Court of Justice, responsible, among other competences, for reviewing the interpretation and enforcement of the federal legislation by federal and state courts, had the opportunity to address the interpretation of Article 149 of the Penal Code in some occasions. Since 2012, in at least three opportunities, the Court affirmed that the crime of reducing a person to a condition analogous to that of a slave is committed whenever any of the conducts described in Article 149 is performed. According to these rulings, the concomitant presence of all the elements listed in the provision is not a necessary condition for its
perpetration (9). The Court also ascertained that this crime is not a mere violation of individual rights, but an « unlawful conduct that strikes at the heart of the principle of human dignity » (10). Moreover, the « commission of the crime provided by Article 149 does not require the curtailment of the workers’ freedom of movement; subjecting them to degrading, subhuman conditions of labour suffices » (11).

The situation within the federal courts is more complicated. Brazil’s Federal Justice has five circuits. The First Circuit encompasses the territory of thirteen states and the Federal District, cutting across the middle of the country and reaching the deepest parts of the Amazon forest in the Northwest, including states such as Pará, Minas Gerais, Goiás, and Mato Grosso, which have a historically high incidence of cases of contemporary slavery. So, it is reasonable to expect that the majority of criminal cases involving the enforcement of Article 149 of the Penal Code are within the First Circuit.

The First Circuit decisions on criminal appeals regarding contemporary slavery were analyzed in a recent article by Mariana Dias Paes (12). Paes reports that the Court has ruled in 52 criminal appeals since November, 2006. In 24 cases, at least one defendant was convicted. However, the arguments used to support the acquittals were in clear conflict with those used to back up the convictions. There are very few instances of limitations upon the worker’s freedom of movement. The majority of the cases involved subjecting them to degrading conditions of labour.

According to Paes, while convictions tend to rely on the judgment of the labour inspection teams concerning the conditions in which the workers were found, and disregard the lack of curtailment of freedom of movement, acquittals turn to a different perspective. First, decisions freeing the defendants from the charge of an offence of Article 149 of the BPC generally depict the poor conditions of labour as part of the environment in which the work is performed: « the situation of the

workplace as described by the inspectors reflects the conditions of that region of the country itself». Therefore, these decisions refuse to attach criminal consequences to the conduct of an employer that fails to provide his workers with decent labour conditions, once the actual circumstances in which those workers live do not meet these standards. Second, acquittal decisions rely on the idea that contemporary slavery requires control over the body of the worker, meaning his or her «complete subjection» or even the «complete nullification of his or her personality», echoing precedents established even before the 2003 change in the legal definition (13):

[...] part of the Circuit Court judges rely on a definition of slave labour that demands a sounder body of evidence than the one offered by the Mobile Inspection Teams. Their definition is intimately connected with a particular notion of the history of slavery in Brazil. There are two basic elements that ground this definition: curtailment of freedom of movement and complete subjection of the worker.

The Court of Appeals for the Fifth Circuit has a very similar situation. The Fifth Circuit encompasses the Northeast of the country, except for the states of Bahia, Maranhão, and Piauí, which are part of the First Circuit. Decisions that acknowledge the existence of a violation of Article 149 in this jurisdiction usually rely on a precedent established by the full court (14). According to this 2012 ruling, even if direct curtailment of the worker’s freedom of movement is not a prerequisite of the crime, some form of deprivation of «other liberties», in a broader sense, is. The Court argues that «mere violations of labour law» cannot amount to the crime provided by Article 149 of BPC. The commission of the crime involves the «suppression of the power of the worker to make an autonomous decision [decisão espontânea] regarding the acceptance or permanence in a job, and the very conditions under which the job is performed». The interesting thing about this opinion is that the Court is clearly trying to reconcile the language of «liberty» and «dignity»: on the one hand, it condemns «the abusive control of one man over the other», that is, «treating a person as a thing»; on the other hand, it still turns to the

idea of a crime consummated when the worker is « subjected to the complete and discretionary power » of the employer.

The majority of the acquittals ruled by the Court, however, do not really dialogue with the proposed criteria (even if the precedent itself is commonly quoted). As a matter of fact, they largely reproduce the arguments used by the judges of the First Circuit: the degrading conditions of labour are part of the harsh « environment » that is « unfortunately experienced by the poor people inhabiting the deep northeast of the country » (15). Moreover, most absolutionary decisions expressly affirm that the infringement of Article 149 of the BPC requires demonstration that « the worker’s freedom was directly or indirectly curtailed by the employer, through incarceration in a specific place, withholding of payments or documents, or debt bondage [sistema de barracão] » (16). That automatically rules out the possibility of commission of the crime based solely on the « degrading conditions of labour » or « debilitating workdays » clauses.

The Courts of Appeals for the Second and Third Circuits reveal a slightly different situation. It is less frequent to come across a mention to « complete subjection » of the worker as a prerequisite of the crime in the opinions of the Courts of Appeals for the Second and Third Circuit. Nevertheless, the majority of convictions based on Article 149 of the BPC in the Third Circuit (that encompasses the states of São Paulo and Mato Grosso do Sul) rely in the imposition of restrictions upon the liberty of the victims, even if, in some cases, associated with « degrading conditions of labour » and « debilitating workdays » clauses. In at least one precedent, a panel of the Court admits that a conviction can be issued based exclusively on the imposition of degrading conditions of labour (17). In the Second Circuit (formed by the states of Rio de Janeiro and Espírito Santo), a similar pattern emerges. Most convictions are grounded in a combination of elements of the crime, usually involving some sort of curtailment of freedom of movement, especially debt bondage. Again, occasional rulings admit the commission of the crime solely through the imposition of degrading conditions of labour upon the workers. In one of those appeals, an


acquittal on charges of contemporary slavery is reversed in spite of the opinion of the labour inspectors, which registered in the official report that « they did not believe the situation amounted to labour analogous to slavery » (18).

Finally, the Court of Appeals for the Fourth Circuit — that encompasses the states of Rio Grande do Sul, Santa Catarina and Paraná — seems to be the most committed to the enforcement of Article 149 in its full implications. Not only can we find many convictions based on the violation of the « degrading conditions of labour » clause alone (19) (and, therefore, we can infer explicit acknowledgement that the commission of the crime can rely on any of the elements described in the legal provision), but also — and more important — acquittals are not grounded simply on the fact that there were no actual restrictions upon individual liberty: they also address the question whether the conditions of labour were actually poor enough to justify criminal prosecution (20). We might disagree with some of these

(18) BRASIL, Tribunal Regional Federal da 2ª Região, Apelação Criminal no 2012.51.05.000548-0. Relator: Des. Fed. André Fontes, « Diário Eletrônico da Justiça Federal da 2ª Região », 30 de agosto de 2013, acórdão. The rapporteur for the appeal wrote in his opinion: « How can we admit that workers subjected to more than ten hours of work daily, toiling barefooted, without any protective equipment, poorly fed, without potable water, sleeping in dirty accommodations over a thin mattress on the ground, intimidated by an armed guard (even if the guard was actually carrying a toy gun), are not victims of contemporary slavery? It is imperative to acknowledge that these unchallenged findings do not constitute « mere administrative irregularities »; that they are thoroughly able to characterize the felony provided for by Article 149 of the Penal Code, especially under the « degrading conditions of labour » clause. The labour inspectors themselves have reported that « working conditions were very precarious, undignified ». The fact that the same inspectors affirmed they did not believe the situation amounted to slave labour or degrading conditions of work — quite contradictorily, in my opinion — do not prevent the Court to hold the defendant criminally liable ».


decisions, and even question if they are not intentionally overlooking the terrible circumstances under which the workers are toiling. They might be « setting the bar too high » for criminal justice to recognize the existence of degrading conditions of labor. Nevertheless, as far as these decisions are not based on a straightforward refutation of the legal criteria, they can be more easily exposed. Moreover, in the long run, as the composition of the panels change, further elaboration of these criteria can guide the translation of the abstract principle of human dignity into a more concrete and manageable conceptual framework.

It is interesting to note that the constitutionality of Article 149 of the BPC was called into question before the Court of Appeals for the Fourth Circuit, based on an alleged violation of the principle of lex certa, arising from the vagueness of the « degrading conditions of labour » clause. The Court rejected the argument, and affirmed that Article 149 provides a fair warning regarding the sort of conduct that criminal law wishes to prevent (21).

Despite some relevant precedents established by the Brazilian Supreme Court and the Superior Court of Justice, the federal courts’ interpretation of the crime of reducing a person to a condition analogous to that of a slave stands in a crossroad. There is considerable resistance to the idea that contemporary slavery does not require some sort of restriction upon the workers’ freedom of movement; there is discomfort with the fact that the crime is now conceived as a violation of human dignity, rather than of individual liberty alone. Within federal courts, some rulings choose to openly defy these ideas. Others seek to reconcile the « individual freedom » and the « human dignity » approaches, by upholding convictions (or reversing acquittals) in cases

Eletrônico da Justiça Federal da 4ª Região », 9 de janeiro de 2014, acórdão. Note that in this ruling the panel refused to label as « degrading » conditions of labour generally associated with contemporary slavery.

(21) BRASIL, Tribunal Regional Federal da 4ª Região, Recurso em Sentido Estrito nº 5000380-79.2012.404.7012/PR. Relator: Juíza Salise Monteiro Sanchotene, « Diário da Justiça Eletrônico da Justiça Federal da 4ª Região », 30 de novembro de 2012, acórdão. About the alleged « vagueness » of the legal definition, it is important to note that in 2011 the Ministry of Labour published extensive guidelines regarding the definition of contemporary slavery. The guidelines provide a detailed description of the many variables considered by the inspection teams when assessing if a particular situation should or not be labelled as « work in conditions analogous to slavery ». These variables include: the transportation of the workers from their homes to the worksite; forms of violence perpetrated against the workers; restrictions imposed upon the workers’ freedom of movement; workdays and resting hours; and conditions of labour. BRASIL, Ministério do Trabalho e Emprego, Manual de Combate ao Trabalho em Condições Análogas às de Escravo (2011).
involving the subjection of workers to degrading conditions of labour only when they can identify some form of limitation of their freedom of movement (even if through debt bondage, for instance). Others, yet, endorse the legal definition and try to add consistency to the concepts involved in its enforcement, undermining the critique that depicts Article 149 as a vague and indeterminate provision, incompatible with the certainty and objectivity demanded from criminal statutes.

3. The labour courts’ interpretation of contemporary slavery: violations of collective rights of the workers and the community and the enforcement of collective moral damages.

Few institutions have undergone a transformation as radical as the Labour Prosecution Office (MPT) in recent Brazilian history. The dimension of that change cannot be adequately understood with exclusive support in the text of the legal rules — in their successive versions. Constitutional experience involves a living relationship with the text and social practices that give form and redefine the uses of the same text. In Brazil, there is a real fracture between the constitution promulgated on October 5, 1988 and the legal order built by the military regime. This disruption is not only reflected in the existence of a new constitutional document. It involves, first of all, a new conceptual framework. Thus, there is a new text and a new context (22).

It is important to make a clear distinction between MPT today and before 1988. Nowadays, Public Prosecution Offices (in Federal and State levels) don’t belong to any of the branches of government. They form a branch located outside the other traditional powers. To sum it up, MPT is not attached to the Executive, Judiciary or Legislative Bodies. The whole Public Prosecution became endowed with functional and administrative autonomy, governed by the principles of indivisibility and functional independence, its members have life tenure, cannot be removed, and their income cannot be reduced.

Moreover, the Constitution established a link between the activity of the prosecution and defence of collective interests. According to its article 129, III, Members of Public Prosecution have the power « to

institute civil inquiries and ‘class actions’ to protect public and social property, the environment and other diffuse and collective interests». The main duty of MPT was then set; it is to protect collective rights of workers, especially those in situations of vulnerability: workers facing health and safety risks, subject to discrimination, super-exploited by their employers and so on.

And that is why fighting slavery-like practices in Brazil is a crucial part of MPT’s job, particularly through class actions [ações civis públicas] filed by the labour prosecutors against persons, corporations or economic groups that exploit slave labour. In these trials, MPT acts on defence of human rights in its broadest sense, which means that it can require the immediate freedom of enslaved workers and, at the same time, request a special kind of compensation. It is called « dano moral coletivo », literally « collective moral damages ». The inquiries and class actions initiated by MPT have shown that it was not enough to impose administrative fines on the employer for breaches of labour legislation, to collect pending wages, and issue identification documents to workers. Labour Courts began to accept the idea that a more severe punishment was required to discourage work in conditions analogous to slavery and to protect workers — and the whole society — from these most extreme violations of human rights.

The concept of « collective moral damages » emerges as a way of strengthening Labour Court’s response towards contemporary slavery. It is not a compensation that reverts to the victims, that is, to workers subjected to conditions analogous to that of a slave. It is not the legal obligation of paying minimum wages and following legal and administrative rules on health and safety. It is more than that. « Collective moral damages » are intended to reduce or eliminate these forms of degrading work. It means that the whole society is affected — and offended — by the behaviour of the employer. The conviction expresses the refusal, by the community as whole, to tolerate these forms of human rights violations.

The employer is sentenced to pay a considerable amount of money to a fund (created by law or by the judge himself). On the one hand, the compensation works as a disincentive to those who insist to resort to super-exploitation of workers as an economic strategy; on the other hand, the measure empowers initiatives committed to preventing contemporary slavery, particularly by funding efforts towards professional development and education (23).

(23) For an accurate account of this theme, see Xisto Tiago de Medeiros Neto, Dano moral coletivo, São Paulo, LTr, 2014 and André de Carvalho Ramos, Ação Civil Pública e o Dano Moral Coletivo, in « Revista de Direito do Consumidor », 25 (Jan-mar 1998), 26, pp. 80-89.
There are many class actions involving the subjection of workers to contemporary forms of enslavement filed by MPT. All of them are based on the fundamental principle of human dignity (Article 1, III, of the Brazilian Constitution) and in the prohibition of inhuman and degrading treatment (Article 5, III, of the Brazilian Constitution), which works not only as a limit to the powers of government, but also as a rule governing the relationship between private parties. In this topic of the paper, we will address three different cases from three different Brazilian states.

Our first example comes from São Felix do Araguaia, a town located in the state of Mato Grosso. In this case, MPT filed a civil lawsuit against Gilberto Luiz de Rezende, accused of keeping workers in slave-like conditions in a large rural area. According to the decision of the local Labour Judge, the employer: (1) imposed restrictions upon the workers freedom of movement, since they were taken to an isolated and distant place and kept under armed surveillance; (2) failed to comply with regulations that require him to register those workers and to provide them with valid labour contracts; (3) subjected the workers to debilitating workdays; (4) withheld payment based on a truck system, characterizing debt servitude; and (5) subjected the workers to degrading conditions of labour: there was no potable water available, workers were forced to sleep in black plastic tents, there were no toilets, and no place where the workers could have their meals.

Besides all that, another aspect should be emphasized: workers who tried to escape were imprisoned and tortured. According to the deposition of one worker, « when he said he wished to quit the job, he was told to wait for three days. After that, he was ordered to gather his things and then taken, at gunpoint, to the embankment of a dam. Then he was told to lie down on the floor, where he was kicked and beaten with a chain ». His testimony was confirmed after a forensic medical exam in a police station. The decision was published on December 18, 2006 and upheld by the Regional Labour Court for the 23rd Circuit on July 30, 2007 (24).

We should add a particular circumstance. The defendant in this case belongs to a network of « grileiros » (persons who take possession of land by means of false deeds) which exploited lands traditionally occupied by Indians in the Araguaia Zone (in the border of Mato

The Federal Criminal Prosecutor Office filed a lawsuit and launched a huge operation to remove non-Indians from the land (which is named Marãiwatsédé and belongs to the Xavante Indians) (25).

In the second case, MPT required the conviction of three different companies, including the Sourcetech Química Ltda. The action was brought before the Labour Court of Xinguara, in south-eastern state of Pará and the conviction ruling was issued by the Regional Labour Court for the 8th Circuit on December 14, 2012. The situation is very similar. The Court also considered that the transportation of the workers to an isolated and distant place constituted a form of curtailing their freedom of movement. Workers were unregistered, and without valid labour contracts. A truck system was in place. As a result, payment was withheld in order to compensate debts contracted with the local shop, which belonged to the employer. Finally, workers were toiling under degrading conditions, with total disregard for all health and safety protocols (26).

There are interesting particularities in this case: the workers were harvesting jaborandi leaves, a natural product only found in Brazil. The entire harvest was destined to Sourcetech Chemical Company Ltd., which has a factory in the State of São Paulo. The jaborandi leaves are used for the extraction of pilocarpine, for sale on the international market. Pilocarpine is the raw material for an eye drop used in the treatment of glaucoma. Sourcetech did not hire the workers directly: rather, they hired a contractor, Mrs. Maria Georges Daher, who had legal authorization to extract jaborandi leaves in lands traditionally occupied by Indians. In addition to exploiting work on indigenous land, the contractor recruited the workers in the state of Maranhão (which, under the circumstances portrayed, amounts to domestic trafficking of workers).


(26) BRASIL, Tribunal Regional do Trabalho da 8ª Região, Recurso Ordinário no 0011100-09.2009.5.08.0124. Relator: Des. Maria Valquíria Norat Coelho, Belém, PA, 14 de dezembro de 2012, acórdão (in file with the authors). The decision (along with the MPT appeal) is also published in the «Revista do Ministério Público do Trabalho», XXIII (março 2013), 45, pp. 509-553, download available at: www.anpt.org.br, retrieved on April 26, 2015.
The third case involves urban slavery. After conducting an investigation, MPT found that a famous brand of clothes, Zara, benefited from the outsourcing of part of its sewing activities to sweatshops where individuals were kept in conditions analogous to slavery. At that point of the supply chain, workers were paid R$ 2.00 per garment (less than a dollar). The conditions under which these workers were living were as follows: (1) they were illegally hired and kept unregistered by the company; (2) child labour was identified in the sweatshop; (3) workers were subjected to degrading conditions of work and debilitating workdays of up to 16h per day, and also to restrictions on their freedom of movement. One of the workers confirmed that they could only leave the house with the permission of the owner of the sweatshop, which was granted only in urgent cases, such as in the event of a sick child; (4) the workers were all undocumented immigrants, coming from Bolivia, Peru, and Paraguay. Some of them could only speak Quechua, a native language of the Andean region.

Zara agreed to take responsibility for the labour conditions within all its supply chain. The company also agreed to pay a fine of R$ 50,000.00 per worker found toiling under illegal conditions. Avoiding the term « collective moral damage », the company settled a payment of some R$ 3,400,000.00, as a « social investment » intended for an emergency fund controlled by the Commission for Pastoral Care for Migrants and the Migrant Support Centre, to assist victims of slave labour. The company signed the settlement on December 19, 2011 (27).

Again, in all of these cases, the legal basis for MPT lawsuits and investigations, as well as for the judicial decisions, was the violation of the principle of human dignity. Another paradigmatic case, which may prove important in future investigations, was completed at the end of 2013. It involves Lima Araujo Agropecuária, a livestock company sentenced to pay compensation for collective moral damages in all instances of the labour judicial system, including the Superior Labour Court. The company had 180 workers in conditions analogous to slavery in the southern part of Pará. As a result of a lawsuit filed by MPT, the company was sentenced to pay R$ 5,000,000.00 in collective damages. All the company’s appeals were denied, and it ended up agreeing to pay the updated value of R$ 6,600,00.00. The agreement

was ratified by the Labour Judge of Marabá, State of Pará, on October 21, 2013 (28).

What can we learn from all these cases? Since the enactment of the 1988 Constitution, a huge mobilization of various organizations committed to the fight against contemporary slavery took place. The Ministry of Labour, the Labour Prosecution Office, the Federal Police, the Federal Prosecution Office, and other partners started to form mobile inspection teams with the aim of eradicating contemporary slavery. We understand that this mobilization was only made possible due to a cultural and political transformation triggered by the approval of a new Constitution; the same Constitution that chose the dignity of the human person as one of the fundamental principles of the Federative Republic of Brazil.

This highly abstract language eventually made it possible to unveil and challenge attitudes deeply rooted in the country’s hinterland as well as in its urban settings; attitudes that amount to the super-exploitation of workers in a slavery-like framework. The reading of several court decisions reveals that the courts use expressions such as «shame», «social feeling of unworthiness», «disgust», and «dishonour» to describe the practices investigated by MPT. That was only made possible because the principle of human dignity was embraced as the ultimate criterion to assess the conducts challenged in these lawsuits. From this idea of dignity has emerged the concept of «collective moral damages», an efficient and comprehensive form of punishment, which can hold individuals, companies, and economic groups accountable for subjecting workers to conditions analogous to slavery.


The attitude of the Judicial Power towards slavery cases in contemporary Brazil is somewhat complex. As we could see in the highlighted cases, there are many different ways of exploiting slave work, with different consequences for the workers, employers, and public sector. Courts have become more involved with this issue after some legislative changes and public policies were made in the 1990s and 2000s.

As we could expect, there are discrepancies in the standards used by Criminal and Labour Courts when dealing with slavery. Criminal judges tend to be more legalistic, using a narrow concept of slavery. Labour judges focus more on the collective damage caused by slave

(28) BRASIL, 2ª Vara do Trabalho de Marabá — PA, Ação Civil Pública nº 017800-01.2003.5.08.0117. Juiz Prolator: Jônatas dos Santos Andrade, publicação em 21 de Outubro de 2013, ata de audiência (in file with the authors).
work, and try to inhibit it through large compensations. Criminal and Labour judges alike use the Constitution, the BPC and some international norms, in an effort to provide a stable framework for lawyers, public officers and social actors.

From a legal history perspective, there is an interesting phenomenon in all these cases. Slavery is itself a strong human rights violation, but it is never « alone ». Merged with slave work, we can find other human rights violations. In the criminal cases, we could see the presence of a discussion about poverty; the judges kept asking about the poor social conditions in which slavery was found. In some cases, this concern was used to grant some acquittals.

In the Labour Courts rulings, it was possible to find other elements in the cases which were connected to labour law violations. The two first cases analyzed had a strong connection with indigenous lands and its use. Brazil is struggling to provide legal protection to the aborigines since its Independence. The 1988 Constitution has a special chapter dedicated to indigenous rights, lands, and cultural heritage, and several conflicts have arisen, especially in northern and western Brazil.

The Zara case has brought another huge human rights issue in Brazil to light. As we could explain, most of the workers who were found in slave-like conditions were foreigners from other South American countries (mainly Bolivian citizens). These migrants move to Brazil with their families; they are subjected to middlemen and are trafficked to Brazil. Labour exploitation is associated, in these cases, to migration and human trafficking (29).