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Superior Courts
Newsletter

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The Superior Courts Newsletter presents the most important decisions to the business community of the Brazilian Superior Courts which occurred in the last month.

Supreme Court of Brazil - STF

Appeal regarding municipal laws prohibiting plastic bags has nationwide repercussions

The Virtual Plenum of the Federal Supreme Court unanimously held that there are nationwide repercussions from the matter dealt with in Extraordinary Appeal (RE) 732686, which discusses the constitutionality of a law of the Municipality of Marília (São Paulo) that requires the replacement of plastic bags with biodegradable material. According to the rapporteur of the RE, Minister Luiz Fux, the issue requires a definite position from the Supreme Court, "for pacification of relations and, consequently, to bring legal certainty to others also subject to the jurisdiction", since there are several cases in which a similar subject is discussed.

For Fux, the concern of the municipalities regarding the reduction of plastic bags is commendable. "The disposal of plastic bags is one of the main factors responsible for the clogging of urban drainage and water pollution, and these plastic bags are even found in the digestive tract of some animals," he said. "In addition, they contribute to the formation of dead zones of up to 70,000 km² in the bottom of the oceans."

However, the minister maintains that the issue should be treated "with due complexity", considering that the ban on plastic bags harmful to the environment, combined with the obligation to substitute for other material, can become excessively burdensome and disproportionate for business owners. "The pluralism of political and social forces in contemporary society demands that we promote a balance of principles in order to reconcile diverse and heterogeneous values and interests," he said.

With these arguments, the minister concluded that the matter transcends the subjective limits of the case for presenting relevant issues from the social and economic point of view, regarding the right to the fulfillment of environmental policy. "According to the appellant, the issue undermines the relevant expedient of achieving results, rendering the use of an effective instrument of environmental awareness and protection impossible, and, on the other hand, the obligation to comply with the rule may violate the principle of consumer protection, if it is understood that the municipality is overriding the business owner in outlining the form of service provision to be offered by the company, "he said.

Exclusivity of North/Northeastern Brazil sugar mills exporting to the US is a matter with nationwide repercussions

The possibility of exclusive participation of companies from the sugar-ethanol sector located in the North and Northeast regions of Brazil in the so-called “American quota” for sugar exports to the United States is a matter with nationwide repercussions. The Virtual Plenum of the Supreme Court of Brazil (STF) unanimously acknowledged that the issue dealt with in the Extraordinary Appeal surpasses the direct interest of the parties involved and should be judged by the STF's physical Plenary.

The appeal was filed by a group of sugar-ethanol plants located in several cities in the State of São Paulo, with mill owners complaining about the unequal treatment of the North/Northeast companies compared with those from other regions.

The Federal Regional Court of Appeals for the 3rd Circuit upheld the differential treatment provided for

by Article 7 of Law 9.362/1996 - which establishes the so-called American quota - to producers in the North/Northeast of Brazil. According to the Law, this preferential quota is set annually for North/Northeast producers in order to establish a volume of sugar that can be sold to the United States at prices above market.

Accordingly, the rapporteur stated that there was a nationwide repercussion to the subject. "I understand that the legal issues raised in the proceedings transcend the subjective interests of the parties involved, and there is relevance from the economic, political, social and legal point of view regarding the exact understanding of the rule set forth in Article 7 of Law 9.362/1996", said Minister Lewandowski. As such, the rapporteur took into account the decision of the Supreme Court on the constitutional matter raised.

Federal Superior Court of Justice - STJ

Technological advancement raises new discussions on copyright

The advancement of digital technologies and communication has revolutionized access to music, movies, series and videos in general. There is no longer any need to purchase physical formats to access these works. In the face of these innovations, new questions have also arisen regarding the payment of copyright to the creators of the artistic works.

While facilitating access to cultural products, technology has given rise to new discussions about the payment of copyright by those who use the public works of art. At the center of this debate is the Central Office of Collection and Distribution (Ecad), a private, non-profit institution that centralizes the collection and distribution of copyrights for public musical performance.

One of the most recent judgments deals with the collection of copyrights by Ecad from internet broadcasts via streaming. Based on Law 9.610/98, the Ministers of the Second Section of the STJ understood that this form of transmission is a public display of the musical work, therefore, it consists of a taxable event.

"What characterizes the public execution of musical works over the Internet is their availability due to the transmission itself considered, in view of the potential reach of an indeterminate number of people," said the rapporteur (REsp 1.559.264).

The topic was once again discussed, when the Ministers of the Third Chamber agreed once more that televisual broadcasting from the internet, through streaming technology (webcasting and simulcasting), constitutes public performance of musical works, capable of generating the collection of copyright by Ecad. (REsp 1.567.780).

Petrobras cannot charge a fine for a condoned breach of contract

The Fourth Chamber of the Superior Court of Justice (STJ) dismissed Petrobras' appeal against a judgment of the São Paulo Court of Justice (TJSP), which ruled that a fine for breach of contract that had been tolerated for years was undue.

The contract for promissory purchase and sale of minimum monthly fuel quantities was entered into by the distributor and a retailer in 1989. However, throughout the commercial relationship - for about six years - the gas station never reached the minimum monthly target.

According to the minister of the STJ, Luis Felipe Salomão, the inaction of Petrobras to demand compliance with the contractual obligation agreed upon during the commercial relationship established the *supressio* - inhibition of a previously acknowledged right to non-exercise - and the *surrectio* - the acquisition of a right, whether (i) over the course of time, (ii) by an action that would legitimately give rise to the expectation of such right, or (iii) as a result of sustained behavior in contraposition to the norm and accepted within the scope of mutual trust.

For Salomão, the contractual obligation cannot be classified as illegal or abusive, since the contract between the station and the distributor was signed before the advent of Law 8.884/94 (later repealed by Law 12.529/11), which provided for the prevention and repression of potential violations to the economic order, such as the imposition of the purchase of minimum or maximum quantities of certain products.

Even so, according to the minister, Petrobras' passive tolerance of noncompliance with the clause during the term of the contract prevents the retroactive claim of the right not exercised.

Superior Labor Court – TST

President of TST affirms that Federal Constitution guarantees flexibilization of labor rights

The president of the Superior Labor Court (TST) and the Superior Council of Labor Justice (CSJT), Minister Ives Gandra Martins Filho, affirmed that the Federal Constitution provides a flexibilization of labor rights, in a system of checks and balances, in order to guarantee a balance in relations between companies and workers.

According to Ives Gandra Filho, the Constitution invoked by critics of the labor reform is that it provides flexibility and possible reduction of rights, and there is no reason for non-application of items VI, XIII, XIV and XXVI of Article 7 of the Constitution. The first three items allow salary reduction and negotiation of the working day, while the fourth item guarantees the recognition of collective bargaining agreements and other agreements. According to the minister, "It is possible to reduce salary and work hours, provided that employment is secured, especially in times of crisis," he said, citing as an example the reforms promoted in European countries, such as Spain, endorsed by the respective constitutional courts. "In times of economic crisis it is not possible to reconcile the extension of rights and a policy of full employment," he added.

For the president of the TST, it is necessary to accommodate the reduction of some rights through certain compensatory benefits of a social nature, so that the legal entitlement of the worker, as a whole, is not affected. "Flexibilization balances rights, reducing some to guarantee others," he said. In the minister's assessment, the backbone of the labor reform is founded on the search for this balance, and is echoed in the decisions of the Federal Supreme Court on collective bargaining autonomy.

Labor Justice Council debates new rules for homologation of extrajudicial labor agreements

The Superior Council of Labor Justice (CSJT) held its first public hearing to discuss the standardization of the operation of voluntary labor jurisdiction. At the meeting, the changes rendered on the extrajudicial labor agreements by Law 13.467/2017 (Labor Reform), which entered into force on November 11, 2017, were discussed.

At the opening of the hearing, the president of the TST and the CSJT, Minister Ives Gandra Martins Filho, noted that both the new Code of Civil Procedure and Labor Reform provide for the possibility of the Labor Court ratifying agreements signed extrajudicially. The initiative of the hearing, therefore, seeks to obtain support from all those directly involved in the subject (judges, lawyers, prosecutors, political parties, economic agents, business professionals) so that the Council can regulate certain standards with the entry into force of Labor Reform, from the point of view of procedures, statistics and a general guideline for the entire Labor Court.

According to Minister Emmanoel Pereira, the proposal to convene the hearing is to make the mechanism of voluntary jurisdiction a way of social pacification and healthy restraint of demands in the Judiciary.

Federal Court of Accounts – TCU

Clauses in leniency agreements or plea bargains that prohibit the sharing of evidence they produce do not detract from the powers of the TCU

The existence of clauses in leniency agreements or plea bargaining collaboration that prohibits the sharing of evidence produced in them for use in civil and administrative spheres to the detriment of the employee, doesn't detract from the constitutional and legal powers of the TCU and therefore doesn't prevent the Court from arraigning the employee, based on such evidence, to answer for any damages caused to the public treasury.

Judgement 2343/2017 – Plenary
(Representation, Minister-Substitute Augusto Sherman)

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