

LABOR STATE COURT FROM THE THIRD REGION DECIDED THAT LEGAL DEPOSITARIES SHALL NOT BE SUBJECT TO CIVILIAN PRISON

The first group of the Labor State Court from the third Region (TRT3) has granted habeas corpus which demanded the non applicability of civilian prison in a case of debtor under the accusation of unfaithful depository. Such decision was according to the current understanding of the Federal Supreme Court (STF) which has only accepted such demands of civilian prison when they result from the non-payment of alimony.

The reporting Judge of the habeas corpus highlighted that the STF has changed the understanding, cancelling Docket number 619, which stated: "The prison of legal depository may be determined within the same lawsuit in which the responsibility is undertaken, independently of the filing of a deposit lawsuit".

The new standpoint of the STF is based on the statements of various international treaties on human rights signed by the Brazilian government, which prohibit the prison of any individual due to the non-compliance to a contractual responsibility. Amongst these treaties, the American Convention on Human Rights is emphasized, it was signed by Brazil in September 25th 1992, with an above-the-law, ruling nature.

THE PARTING OF DEATH ALLOWANCE BETWEEN WIDOW AND CONCUBINE IS DENIED

The National Committee for the Standardization of Jurisprudence of the Federal Special Courts (TNU) decided, by the majority, that the concubine has no right to a share of the death allowance if the insured person had a wife.

Such decision was motivated by the non-observance of the Stable Unity institute, as stated by the Brazilian Civil Code of Law, article 1723, considering that the deceased partner was already married, that relation was considered to be extra-marital, in the existence of marriage; such relation is not covered by the Brazilian Law.

Furthermore, the Federal Constitution provides the principles of monogamy and fidelity, as characteristic elements of marriage. It is, therefore, not accepted that two simultaneous marriages, nor one marriage and one Stable Unity at the same time, that is why the concubine cannot be classified as a dependent of the deceased insured person, the full benefit must then be left to the widow.

COMPENSATION WAS GRANTED FOR EXTRA HOURS DURING LABOR BREAK-TIME

The 5th Group of the Superior Labor Court has condemned a Company in the payment of compensation to an ex-employee due to the lack of the 15-minute-break granted to all women before the start of the extra hours of work, as it is determined by the Labor Code of Law (CLT) in its article 384.

The Company has appealed, arguing a discriminatory nature of the benefit which is applied to women only. The appeal was dismissed on the claim that women have less physical attributes than men, therefore should be treated differently, and thus protected by the CLT.

According to the arguments of the decision, the judicial and intellectual equality between man and women does not repel the physiological and psychological differences between the two of them; that is the reason why granting such break-time is due.

BEARER OF MONOCULAR VISION MAY APPLY FOR JOB POSITIONS RESERVED TO DISABLED PEOPLE IN PUBLIC TENDERS

Docket number 377 was issued by the Third Group of the Superior Court of Justice (STJ). It rests stated that the bearer of visual disability in only one eye shall be categorized as physically impaired people, with the right to apply for job positions reserved to disabled people in public tenders.

Furthermore, such decision had already been the mainstream understanding within the Groups in that Court. In September, 2008, judges from the third group of the STJ decided to accept the Writ of mandamus, granting to the bearer of monocular vision the right to be recruited to a health surveillance position in the Ministry of Agriculture, Livestock and Supply.

On the other hand, article 4, III, of Decree 3298/99, which defines the hypothesis of visual impairment, does not exclude the monocular disabled people from running to positions reserved to physically impaired people, the only requirement was that such disability should result in an actual reduction of the individual's capacity for social integration, with need of special equipments, adaptations, facilities or resources in order to allow this disabled people to receive or transmit information deemed necessary for their well-being and performance of the position or activity to be exercised.

MANDATORY INSTALLATION OF ANTI-THEFT DEVICE IN VEHICLES WAS REJECTED.

Judge Douglas Camarinha Gonzáles, of the 7th Federal Civil Court of the State of São Paulo, issued a decision stating that the installation of anti-theft devices in vehicles shall not be mandatory as of August, 2009, as provided by Resolution 245/07 issued by the CONTRAN (National Counsel of Traffic).

The obligation was considered unconstitutional because the surveillance system works disregarding the owner's consent, violating the rights to privacy and property. The decision in the first level of jurisdiction of the Federal Court made it optional to the consumer, purchase of a vehicle with or without the tracking system.

The National Department of Traffic (DENATRAN) stated that there will be an appeal. There is still another project being assessed by CONATRAN, which determines the use of a chip in every vehicle in the Country; the technology to be used in the National System for Vehicles Identification shall be defined until the end of the year.

RULES TO DEBTOR'S INFORMATION SYSTEM

The National Revenue General Attorney's Ordinance number 810, May 13, 2009, was issued to regulate the inclusion, reactivation, suspension and exclusion of debtors from the Informative Register of non-paid credits to federal institutions and entities - Cadin.

According to this Ordinance, in its 2nd paragraph, people and Companies with debts under R\$ 1.000,00 (one thousand reais) may not be registered in such informative system. In that value, we stress it, the total amount of interest, penalties and monetary adjustment over the main value must be already added.

The Ordinance states that to be included in the Cadin, the debtor must be first communicated and the registry may only be made after 75 (seventy five) days after that. The communication shall be deemed received within 15 (fifteen) days after its mailing.

The registry in the Cadin shall be suspended for the maximum period of 5 (five) week-days counted as of the proved day when the lawsuit was filed in order to argue the chargeability of the debt, the suspension of the chargeability of the debt due to payment, moratorium or granting of preliminary injunction, for example. If the suspension cannot be made within the stated limit of time, the institution shall be obliged to issue a certificate of tax regularity to the taxpayer.

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