



OPEN LETTER IN DEFENSE OF THE JURISDICTION OF LABOR COURTS TO GRANT WORK AUTHORIZATIONS TO CHILD ATHLETES AND ARTISTS

The National Association of Labor Magistrates - ANAMATRA, a representative entity of more than 4,000 Labor Judges from all corners of Brazil, with intense action in the fight against child labor and the eradication of all kinds of exploitation of labor, considering the upcoming IV World Conference on the Sustained Eradication of Child Labor to be held on November 14-16, 2017, in Buenos Aires, Argentina, has resolved to publish this open letter to express its deep concern with the attempts to undermine the authority of Labor Courts in child labor issues, and particularly of its jurisdiction to grant work authorizations for child artists and athletes, for the reasons below:

As mentioned in the Public Motion issued by the National Forum for the Prevention and Eradication of Child Labor (FNPETI), attached, the Brazilian Association of Radio and Television Broadcasters (ABERT) has filed a Direct Action for Declaration of Unconstitutionality (n. 5326/DF) before the Brazilian Federal Supreme Court in the first half of 2015 aiming to question the constitutionality of administrative acts that recognized the material jurisdiction of Labor Courts to adjudicate requests to grant work authorizations for the participation of children and adolescents in artistic presentations, acts that were issued without any controversy between all branches of Brazilian Courts and of the Public Prosecution Service involved in the matter. In its decision, the rapporteur of the aforementioned action voted for the unconstitutionality of the aforementioned acts and for the material non-jurisdiction of Labor Courts in these matters, refusing the admission as *amici curiae* of the National Association of Labor Court Magistrates (ANAMATRA) and the National Association of Labor Prosecutors (ANPT) and subsequently granting a preliminary injunction to rule out the jurisdiction of Labor Courts to grant such authorizations.

ABERT's main argument is that there is no employment relationship in shows and other artistic manifestations in question, but rather the mere participation of children and adolescents in such events. The claim is not grounded in reality and brings undeniable harm to the physical, mental and intellectual health of children and adolescents, as evidenced by empirical research and academic studies related to the subject.

In practice, what happens is that children and adolescents are exposed to situations of risk and extreme violence in some artistic productions, in addition to being subjected to strict requirements regarding schedules, rehearsals and other commitments that involve labor, with clear damage to the healthy and playful development of the child and adolescent actors participating in such activities.



One of the major issues regarding artistic child labor lies in the judicial authorizations for work¹, often granted without strict consideration of the protection of children and adolescents principle.² ANAMATRA sustains that the jurisdiction to decide on these matters lies with the Labor Courts, because labor judges, given the specificity of the issues, are the adjudicators with the best possible means to properly assess whether an activity may or may not bring risk to children under the age 16. Article 7.XXXIII of the Brazilian Constitution of 1988 and Convention 138/1978 of the International Labor Organization (ILO) both generally prohibit the employment of children under 16 years of age. However, the Convention, ratified by Brazil, does allow for child labor on an exceptional basis, subject to authorization of a competent authority. Such authorization must be granted on a case-by-case basis, specifically for a given artistic event, and by a magistrate. However, this understanding is not uniform throughout the country.

These concerns have become even graver with the submission to the Senate of Bill No. 231 of 2015, which proposes to amend Article 60 of the Children and Adolescent Statute³ to make specific provisions for the participation in artistic, sporting and similar events. Should the bill be approved, the Statute would include an exception to the prohibition of labor for minors under 16 years of age in cases of alleged participation in artistic, sporting and related events, which would require the mere express authorization of the holders of parental power for children aged 14 to 18 (subsection I), and, for children under 14 years of age, the same authorization and the presence of said parents in said event, or, only if said responsible person cannot attend, judicial authorization (subsection II)

ANAMATRA understands that although it is necessary to regulate the artistic and sporting activities of children and adolescents, there is no way of conceiving the execution of this type of activity without relying, in all cases, on the existence of authorization by a competent authority. Authorization by a competent authority in any circumstance (and not only in case of absence of the holder of parental power) is essential for the validity of the act, allowing for the full control of the activities of the child and the adolescent.

¹ According to data from the Ministry of Labor and Employment, more than 33,000 judicial permits authorizing the hiring of minors under 16 years of age were issued between 2005 and 2010 based on false or misleading information provided by companies throughout the country through their Annual Social Information Report (RAIS). Available at: <<http://www.infomoney.com.br/mercados/noticia/2430892/empresas-que-derem-informacoes-falsas-rais-podem-ser-penalizadas>> Accessed on: Nov 06, 2017 (link in Portuguese).

² Accidents in the workplace have victimized 8,179 children and adolescents aged 10 to 17 in the state of São Paulo between 2006 and 2013. Of the total number of occurrences, 28 led to deaths and three to mental disorders, according to data from the State Department of Health. São Paulo is the state with the highest number of reported accidents with children under 18 years of age. The majority of accidents in child labor environments happen to children and adolescents who had received judicial authorization to work before the age of 16. Available at: <<http://www.redebrasilatual.com.br/trabalho/2013/10/acidentes-de-trabalho-atingem-8-mil-criancas-adolescentes-em-sp-desde-2006-9778.html>> Accessed on: Nov 06, 2017 (link in Portuguese).

³ Article 60 of the Statute of Children and Adolescents (ECA) reads as follows: “Article 60. Any work under the age of fourteen, except as an apprentice, is hereby prohibited.”



Current legislation provides support for this requirement for authorization. Convention No. 138, in addition to mentioning the age limitation for work, specifically provides for the participation of a competent authority in the granting of authorizations in these circumstances.⁴ Similarly, Article 406⁵ of the Brazilian Labor Code (CLT) and Article 149.II⁶ of the Children and Adolescents Statute (ECA) both indicate the need for authorization by a judicial authority for all artistic activities to be conducted by children and adolescents.

Jurisprudence is equally clear in reinforcing the obligation to issue a judicial permit authorizing sporting and artistic work.⁷

In summary, ANAMATRA argues that no judicial authorization may be granted for work before the minimum age foreseen in Article 7.XXXIII of the Brazilian Federal Constitution⁸, except in the hypotheses provided in Article 8.I of ILO Convention 138. In such cases, authorization must be granted on a case-by-case basis, in an extraordinary and exceptional fashion, only for the specific performance at hand, and only when the role performed cannot be played by a person older than 16. The work must also be undertaken in compliance with the requirements that limit working hours and mandate protective breaks, including minimum school attendance, and without prejudice to other protections available for children and adolescents.

⁴Article 8 of ILO Convention 138 reads as follows: "After consultation with the organisations of employers and workers concerned, where such exist, the competent authority may, by permits granted in individual cases, allow exceptions to the prohibition of employment or work provided for in Article 2 of this Convention, for such purposes as participation in artistic performances."

⁵ Article 406. A Juvenile Court Judge may authorize a minor to perform the work referred to in Article 405.3.a-b, provided that: I - the presentation has an educational purpose and/or the artistic performance at hand is not detrimental to their moral formation; II - it is assured that the minor's hiring is indispensable to their own financial support of that of their parents, grandparents or siblings, and does not cause any harm to their moral formation.

⁶ Article 149. It is the responsibility of the judicial disciplinary authority, through decree, to grant permits authorizing: [...] II - the participation of children and adolescents in: a) public performances and their rehearsals; (...)."

⁷ **"ADMINISTRATIVE LAW. NOTICE OF INFRACTION. PARTICIPATION OF MINOR IN PUBLIC PERFORMANCE. PRIOR JUDICIAL AUTHORIZATION. LEGAL REQUIREMENT. APPLICATION OF ARTICLE 149.II.A OF THE ECA. FINE PER ARTICLE 258 OF THE ECA. PRECEDENTS.** 1. The understanding is clear in this Court that television programs have the nature of a public performance, and are therefore subject to Article 149.II.a of the ECA. As such, judicial authorization is required for the participation of minors therein, even if they are accompanied by their parents and/or guardians, under penalty of the infraction established in Article 258 of the ECA" (Appeal No. 545737/RJ, 1st Panel, Justice Teori Albino Zavascki, published in the Official Gazette of the Justice System of 28/MAR/2005).

⁸ Article 7.XXXIII of the Constitution reads as follows: "prohibition of night, hazardous or unhealthy work for minors under eighteen and of any work under the age of sixteen, except as an apprentice from the age of fourteen; (...)."



ANAMATRA further argues that it is the jurisdiction of Labor Courts to hear and adjudicate requests for the authorization of child and adolescent labor, as clearly prescribed by Article 114.I of the Constitution, as amended by Constitutional Amendment 45/2004, both due to the nature of these claims (subordinate labor provided to the benefit of others and which may, in theory, constitute an employment relationship) and given the notorious and desirable specialization required of those who will decide on such matters. In this case, the judicial authority for the issuance of authorization orders must unequivocally lie with the Labor Courts. It is incumbent upon labor judges to assess these matters, be it due to the facts of reality (outlined above), the aforementioned thematic specialization or the particular humanistic training of labor judges, which has led the labor judiciary to be recognized as having a genuinely protective role.

Article 227 of the Constitution provides for the integral and priority protection of children and adolescents, and the Brazilian legal system still needs to be modified to ensure the actual support thereof in situations of high specificity, such as artistic and sports work, to prevent children from suffer harm due to performing work at an inappropriate age.

Brazil has undertaken the commitment to prioritize the eradication of the so-called "worst forms of child labor" (ILO Convention 182), including child labor in illicit/criminal activities and child labor that is especially harmful to psychosomatic health and/or the formation of children and adolescents - the so-called HCL (Hazardous Child Labor) List; nevertheless, although there has been a marked evolution in this aspect, the country is still very far from its goal, faced with difficulties of all sorts - to which is added, it must be said, a backwards culture of appropriation of the life time of children and adolescents for the immediate economic interests of their families.

It is undeniable that the Federal Constitution assigned to Labor Courts and Judges the responsibility to review all matters related to human labor provided under conditions of technical or psychological hyposufficiency and other shortcomings, as prescribed in Article 114.I thereof, and it is equally certainly the most reasonable interpretation that such authorities, and not any others, are responsible for adjudicating such complex matters. The sensitivity of Labor Judges to such issues can also undeniably be perceived in the intense engagement of these judges, both institutionally (i.e. through the courts) and through their professional associations, in the struggle for the promotion of human rights in labor relations, and in particular in the struggle to eradicate child labor. These efforts clearly demonstrate the understanding by labor judges that children and adolescents are subjects of right entitled to special constitutional protection - and not potential offenders - who, because of their underprivileged social status, require paid employment that can allow them to help their families. It is essential that we understand, as a principle, that supporting a family is a task that cannot, constitutionally and decisively, be attributed to them.

The efforts of Labor Judges have been focused (also in the eyes of all civil society) on reducing the massive amount of judicial authorizations granted for child labor, often granted by judicial authorities who, for various reasons, are not imbued with the understanding that children and adolescent are aprioristically recipients of constitutional protection, and not a source of economic salvation for their respective families. As an example of the above engagement, we cite the Third Global Conference on Child Labor, held in Brasilia in October 2013.



ANAMATRA not only attended the event, but also led the initiative that resulted in the publication of the Declaration on Child Labor, signed at the event and disseminated throughout the Brazilian judicial system. The Declaration stated the renewal of its signatories' express commitment to eradicate child labor, and

especially of the worst forms thereof, both to achieve compliance with international standards and as an ethical imperative for action.⁹

In light of all of the above, ANAMATRA has decided to publish this open letter to request the support of the international community for the recognition of the competence of labor courts and judges to adjudicate requests for the authorization of work for child artists and athletes, an extremely necessary and relevant measure for the integral and priority protection of Brazilian children and adolescents.

14 November 2017

A handwritten signature in blue ink, appearing to read 'Guilherme Feliciano', with a long horizontal flourish extending to the right.

Guilherme Guimarães Feliciano
President of ANAMATRA

A handwritten signature in blue ink, appearing to read 'Noemia Garcia Porto', with a long horizontal flourish extending to the right.

Noemia Aparecida Garcia Porto
Vice-President of ANAMATRA

A handwritten signature in blue ink, appearing to read 'Luciana Paula Conforti', with a long horizontal flourish extending to the right.

Luciana Paula Conforti
Director of Citizenship and Human Rights at ANAMATRA

⁹ Available at: <<https://www.anamatra.org.br/imprensa/noticias/21505-anamatra-magistrados-e-procuradores-do-trabalho-firmam-compromisso-pela-erradicacao-do-trabalho-infantil>> Accessed on: Nov 06, 2017 (link in Portuguese).