

## PUBLIC MOTION

The **NATIONAL FORUM FOR THE PREVENTION AND ERADICATION OF CHILD LABOR - FNPETI**, an autonomous body of social control that congregates social and institutional stakeholders involved in policies and programs for the prevention and eradication of child labor in Brazil, created in 1994 with the support of the International Labor Organization (ILO) and the United Nations Children's Fund - UNICEF, by unanimous deliberation of its members, hereby **publicly states** the following.

**1.** The **FNPETI** is comprised of twenty-seven State Forums for the Prevention and Eradication of Child Labor and forty-nine entities that represent the Federal Government, workers, employers, civil society organizations (NGOs), the justice system and international organizations (ILO and UNICEF). Per Article 1 of its Internal Rules, the Forum has the following purposes: protect the fundamental rights of children and adolescents with emphasis on the prevention and eradication of child labor and the protection of working adolescents, including by supporting public or private sector entities working in the formulation, orientation, coordination and execution of policies related thereto; promote further engagement between the public and private sectors as a means to combat child labor and protect adolescent workers; and sensitize, mobilize and foster the integration of different sectors of society around the struggle for the eradication of child labor and the protection of adolescent workers.

**2.** As is well known, the Brazilian Association of Radio and Television Broadcasters (ABERT) has filed an **Indirect Action for the Declaration of Unconstitutionality** (No. 5326/DF) with the purpose of questioning the constitutionality of Joint Recommendation No. 01/2014-SP, Joint Recommendation No. 01/2014-MT, GP Act No. 19/2013 and GP/CR Provision No. 07/2014, in their entirety. Such administrative acts have administratively recognized the substantive jurisdiction of the Labor Courts to adjudicate requests to authorize children and adolescents to participate in artistic representations, without any disputes on the matter between the courts and branches of the Public Prosecution Service directly involved. Nevertheless, the rapporteur of the aforementioned indirect action has delivered a vote supporting the unconstitutionality of the aforementioned acts and the material non-jurisdiction of Labor Courts, first 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.

**3.** Among the arguments put forward by ABERT, a noteworthy one denies that artistic and child labor would enjoy the same classification of "work", presuming that it constitutes mere artistic participation, posing no harm to the education and development of the child and adolescent, and as such representing one of the hypotheses included on Article 406 of the CLT [*Consolidation of Labor Laws, Brazil's Labor Code*] - which was not covered by Constitutional Amendment No. 45/2004 - and Article 149.II.a of the ECA [*Statute of Children and Adolescents*]. Such a distinction, however, deserves forceful rebuttal by the **FNPETI**, as demonstrated below.

**4.** Statistical and empirical evidence clearly reveals that such "participation", notably in theatrical spectacles or television or film productions, due to the fact it absorbs many hours of the day over extended periods of time, results in physical and mental fatigue, in addition to exposing the child and adolescent to a typically adult social life. This absorption of useful time ends up denying child artists their inalienable right to childhood and adolescence, depriving them of hours of fun, study, and rest. On the other hand, such events are essentially subordinated to economic interests that dictate the model and extent of the work to be performed, defined according to the interests of their sponsors. It is not, therefore, a matter of purely playful participation, nor of creativity-fostering contexts that can be defined by the interest of promoting art for the sake of art or the interest of art education.

**5.** On the other hand, speaking strictly of legal provisions on the matter, the **FNPETI** highlights and argues that, since the advent of Constitutional Amendment No. 45, dated 30/DEC/2004, the Labor

Courts have been given jurisdiction to consider applications for authorizations of children and adolescent labor, granted by virtue of Article 114.I of the Federal Constitution. It also reiterates that the hypothesis of 'participation' by young artists in artistic performances and productions inevitably constitutes an employment relationship, whether subordinated or otherwise, as such entirely subject to the effects of Article 114.I of the Constitution - from which derives, in fact, the Labor Courts' jurisdiction even for pre-contractual legal relationships leading to the establishment of a typical working relationship (see, for example, Superior Labor Court Appeal No. 49600-82.2002.5.22.0001, 5<sup>th</sup> Chamber, rapporteur EMMANOEL PEREIRA, judged on 12/MAR/2008 and published on the Official Gazette of the Justice System on 28/MAR/2008). Moreover, Convention 138 of the International Labor Organization itself, in providing for exceptional permissions to participate in artistic performances and productions (Article 8.I), textually addresses the right to admission to employment or work.

6. In addition, judicial permission is demanded only after the selection of the child or adolescent for the respective casting. The practice, in the artistic field, is the immediate signature of a contractual legal instrument (often referred to as the "authorization and agreement for participation in a show"), whereby the artist is subordinated to a variety of obligations, related, for example, to their aesthetic condition, future dates and times of rehearsals and performances, transfer of property and image rights, and other items concerning their future work commitments; these agreements similarly determine rights, such as remuneration. Hence, even from this angle, at the time of request for judicial authorization, a perfect and complete legal relationship, with civil and labor rights and obligations, has already been established, indelibly constituting a matter under material jurisdiction of the Labor Courts.

7. In light of the aforementioned arguments, the **NATIONAL FORUM FOR THE PREVENTION AND ERADICATION OF CHILD LABOR - FNPETI** - hereby publishes this public **motion**, through which it **vehemently defends** the recognition of the jurisdiction of Labor Courts for the adjudication of requests for judicial license for children and adolescents, both so that it may provide legal certainty for the judicial model of authorization and to ensure the steadfast commitment, at one and the same time, with the integral protection of persons in their formative stage of life and the social value of human labor.

8. By determination of the **FNPETI**, the present motion will be submitted to all the Honorable Justices of the Federal Supreme Court and to the presidencies of the Association of Brazilian Magistrates (AMB), the Association of Federal Judges of Brazil (AJUFE), the National Association of Labor Magistrates (ANAMATRA) and the National Association of Labor Prosecutors (ANPT).

Brasília-Federal District, Brazil, 15 October 2015.

**NATIONAL FORUM FOR THE PREVENTION AND ERADICATION OF CHILD  
LABOR - FNPETI**