

CIVIL RESPONSIBILITY IN THE FIELD OF PRODUCTIVE CHAINS IN SITUATIONS OF CONTEMPORARY SLAVE LABOR

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ABSTRACT

Slavery was abolished in Brazil in 1888, but persists under new contours, within a panorama of structural discrimination that shapes the contemporary form. This study seeks to propose measures of civil liability in the scope of production chains as a result of the use of contemporary slave labor. For that, the work included the exhibition of historical and normative events; the delimitation of the legal content of contemporary slavery; the exposure of the ways in which the phenomenon presents itself in urban and rural activities; and, finally, the identification of civil liability alternatives within the value chains that uses this form of degrading the dignity of the worker. The research uses the method of inductive approach and presents itself as exploratory as to the objectives, of a qualitative nature and based on bibliographic and documentary procedures. It is concluded that there is a need for investment in the identification of legal parameters of accountability in the context of slave labor, in line with the nature and

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severity of the offense, based especially on the risk-benefit theory; alienation, alienation or otherness; the risk created; and integral risk.

Keywords: civil responsibility; contemporary slave labor; productive chain.

*RESPONSABILIDADE CIVIL NO ÂMBITO DAS CADEIAS
PRODUTIVAS EM SITUAÇÕES DE TRABALHO ESCRAVO
CONTEMPORÂNEO*

RESUMO

A escravidão foi abolida em 1888, mas persiste sob novos contornos, dentro de um panorama de discriminação estrutural que configura a forma contemporânea. O estudo objetiva a proposição de medidas de responsabilização civil no âmbito das cadeias produtivas em decorrência da utilização de trabalho escravo contemporâneo. Para tanto, o trabalho compreendeu a exposição de eventos históricos e normativos; a delimitação do conteúdo jurídico da escravidão contemporânea; a exposição das maneiras como o fenômeno se apresenta nas atividades urbanas e rurais; e, por fim, a identificação de alternativas de responsabilidade civil dentro das cadeias de valor que se utilizam desse tipo de aviltamento da dignidade do trabalhador. A pesquisa emprega o método de abordagem indutivo e apresenta-se como exploratória quanto aos objetivos, de natureza qualitativa e com base nos procedimentos bibliográfico e documental. Conclui-se que há necessidade de investimento na identificação de parâmetros jurídicos de responsabilização em contexto de labor escravo, em consonância com a natureza e a gravidade da ofensa, com base especialmente nas teorias teoria do risco-proveito; alienation, alheamento ou alteridade; risco criado; e risco integral.

Palavras-chave: cadeia produtiva; responsabilidade civil; trabalho escravo contemporâneo.

INTRODUCTION

Although it was formally abolished in 1888 in Brazil, the continuation of contemporary slavery, under new and different contours, was facilitated by the structural causes related to the meeting of poverty and land ownership concentration. It is a phenomenon still present in the Brazilian reality, so that the spread of the illegal practice led the State to officially recognize it in 1995, especially after the institution of the Special Group on Mobile Inspection (GEFM).

Therefore, the legislative abandonment of classical slavery, in which the property of one individual over the other was recognized, had repercussions only on the formal level. In practical terms, the capitalist system demanded the liberation of slaves for insertion in the cycle of world consumption and production, and encouraged a new conception, now associated with social and economic factors linked to the lack of expectations of enjoying a dignified life.

The challenges for the end of the exploitation of contemporary slave labor include the study of the nature and extent of the responsibility of the agents involved, either directly in the appropriation of the human labor of the enslaved person, or indirectly, but with immediate benefits, as it occurs in the succession of chained contracts of outsourcing within the scope of value chains, in which different actors come together for the performance of economic activity in a collaborative regime.

In this sense, the study aims to propose measures of civil accountability within the scope of production chains as a result of the use of contemporary slave labor, in order to assist in the search for effective instruments of prevention and repression.

The initial part of the work comprises the presentation of a synthesis of historical and normative events, which covers the process of migration from the classic to the contemporary slavery regime; the effects of the development of the capital accumulation regime, the integration of markets and the modification of economic structures in the patterns of production and consumption; the greater vulnerability of socially excluded populations; the number of rescues, activities and states most impacted; as well as the defense of work as an instrumental right to professional, family and community achievement.

Subsequently, the conceptual delimitation of contemporary slavery is sought, by making compatible the social values of work and free enterprise,

both at a constitutional level; the detailed treatment of the configuring elements of work in a condition analogous to that of a slave, based on international and internal normative parameters, in search of the scientific precision necessary to approach the theme in different fields, notably in Criminal, Administrative, Environmental, Labor and Civil Law.

More specifically, as regards the contexts in which slave workers were found and rescued, we begin to study the ways in which the phenomenon is currently present in urban and rural activities. At this moment, the activities that stand out for the number of rescues, the predominant characteristics, and the recurrence of situations related to contracting in the form of a productive chain, such as working in charcoal production (rural areas) and in the sweatshops (urban areas) are presented.

Finally, in search of normative and theoretical support for the visualization of possibilities of civil liability within the value chains sustained in the debasing appropriation of the worker's dignity, considerations are made about the need for the adoption of legal parameters of civil responsibility aimed at effectiveness of prohibitive precepts of the slavery practice, which demand – especially from judicial bodies – attitudes consistent with the seriousness of the offenses against human and fundamental rights most dear to society.

1 CONTEMPORARY SLAVERY IN THE BRAZILIAN TERRITORY

The beginning of colonization occurred through the exploitation of indigenous labor, with the aim of exporting wood and spices to the European continent, as from the arrival of the Portuguese. The option for the slavery system is justified due to the low cost, as payment was made through barter. However, in view of the difficulty of exploiting indigenous labor in servile activities, an alternative was sought to use trafficking black people from the African continent (TOLEDO; BIZAWU, 2018).

In this sense, the slave trade, which considered the enslaved person as property, impacted the configuration of capitalism, integrating Europe, Africa and America, and moved the Brazilian economy, in the sugarcane fields of the Northeast, in the extraction of precious stones in Minas Gerais and in coffee plantations of São Paulo and Rio de Janeiro states (FERRARO, 2019).

Subsequently, the adoption of industrial capitalism resulted in legal

texts prohibiting the slave trade, and in the gradual process of manumission. Without disregarding the performance of popular movements and the resistance promoted by the victims in this direction, abolitionism arose as a result of predominantly economic interests, as a necessary measure for the transformation of social relations, from slavery to work considered free or paid, with a view to expanding potential consumers of industry products and of goods that circulated in the commerce (TREVISAM, 2015).

Motivated by the British commercial pressure, the Brazilian process of abolition took place in phases. At first, there was the policy of imprisoning slave ships, which resulted in the enactment of Law 581 (BRASIL, 1850), prohibiting the importation of slaves, and Law 2,040 – Free Womb Law (BRASIL, 1871), which granted freedom for the children of slaves born from then on, remaining under the tutelage of the masters until the age of majority (TREVISAM, 2015). After investing in abolitionist movements, there was the enactment of Imperial Law 3,353 – Golden Law (BRASIL, 1888), which instituted the formal prohibition of slavery.

Thus, this set of normative acts and the end of trafficking did not result solely from a revolution of social classes or from the realization of an ideal for the distribution of rights and income. In fact, abolition emerged as a necessity imposed by trade restrictions and stimulated a policy of migration of Europeans and Asians to provide services through the partnership colonies model to the detriment of free and abandoned former slaves (PEDROSO, 2011).

As a result, the formal elimination of slavery as a property right did not mean interrupting the practice. Now with a new guise, the condition analogous to that of slave still permeates Brazilian society and makes it feasible for the economically disadvantaged to have fundamental rights violated (PEDROSO, 2011), within the scope of the opposition of interests intrinsic to the capitalist system.

Although the formal abolition of slavery is one of the fundamental transformations in Brazil at the end of the 19th century, the establishment of a competitive formal labor market based on the contract allows, under new guises, important continuities in relation to the previous period. In this context, the so-called modernization has sophisticated the reality of denial and camouflage of the forms of domination over black people (SOUZA, 2017), who are no longer considered objects in a property relationship, and are now supposed to be considered equal subjects in a contract labor bias.

In effect, the integration of markets and the modification of economic

structures have had an impact on production and consumption patterns. The productive policies of cost reduction and increase of profits demand continuous adaptations in the mechanisms of production and, consequently, in the industrial relations, and provoke social transformations that, in extreme cases, imply demeaning working regimes. Notwithstanding Toyotism translates striking characteristics, such as the notions of lean production and minimum stock, the sharp fragmentation of the organization of work results from this productive conception, which caused the proliferation of networks of related companies, to the detriment of the complete company pattern, productive chain that enhances job insecurity at the base.

In this scenario, the entrepreneur ceases to consider workers as a factor of production and as a consumer (Fordism), and starts to consider them simply as a productive element, the cost of which must be reduced for the sake of international competitiveness. In this way, the fear of loss of occupation and the proliferation of precarious jobs reduce the quality of life of the worker, in a context of irregularities in the work hours and in issues of health and safety at work, which result in an increase in accidents at work, occupational illnesses and stress (TEITELBAUM, 2000).

It is noted that the use of slavery in the productive process is linked to the economic aspect, inasmuch as the reduction of production costs and the maximization of profits are objectives aimed at by the beneficiaries of the debasing exploitation of workers. In addition, social elements facilitate the denial of fundamental labor rights, given the precarious living conditions in the victims' regions of origin, abandoned in terms of public policies. Without a decent work alternative and in search of their own and family subsistence, victims are compelled to provide long hours, perceived negligible wages and submission to unworthy and discriminatory treatments (CIDH, 2016).

Therefore, slave labor affects socially vulnerable groups – women, girls and Afro-descendants – and, in the Brazilian context, socially excluded populations. The dichotomy between developed and developing countries reinforces the need for greater international cooperation and a more ethical and supportive relationship, considering the greater concentration of the problem among the poorest countries (PIOVESAN, 2011).

The reversal of this situation depends on the adoption of strategies as broad and complex as the causes that feed back into the exploitation cycle, above all the guarantee of the right to decent work, through the preservation of the conquered social rights, despite the advance of capitalist

globalization as a model of totalitarian and exclusive economic, political and cultural domination. Therefore, there is a need for social, political and cultural movements that intensify the exchange of experiences, the commitment to overcoming inequalities and the strengthening of the democratic perspective within civil society (GADOTTI, 2000).

Along these lines, in 1995 Brazil officially recognized the persistence of the slavery practice in the country and instituted the GEFM, which until 2020 promoted the rescue of more than 55 thousand workers, in addition to the actions of national and local inspection teams. Among the hundreds of operations in rural and urban environments, there are records of slave labor in farms of cattle, soy, cotton, coffee, orange, potato and sugar cane, but also in charcoal producers, construction sites, sewing workshops, brothels, among other productive units (SAKAMOTO, 2020).

As an example, 404 rescues of workers were registered in the year 2017, marked by the budget constraint and the attempt to empty the fight against slave labor through conceptual changes and the imposition of new rules for inspection. Although expressive, the number is 46% lower than that registered in 2016, when 751 workers were rescued. In 2017, there were 107 rescues in the urban space (26%), notably in civil construction (60) and in the textile sector (27). In rural areas, the most striking segments were agriculture, livestock and forestry production. Among the states, Mato Grosso (78), Pará (72) and Minas Gerais (68) topped the list (MARIZ, 2018).

Contemporary slavery occurs both in rural and urban areas. As for the first, the panoramic view of the outlines of the illicit in the rural environment indicates the existence of a criminal picture that involves the figure of the *gato* (cat, in portuguese), as the labor intermediary is called, who represents the employer and offers the victim false promises of favorable conditions of employment and remuneration, in addition to guaranteed return to origin. The worker accepts the service, but the reality found in the workplace differs from the promise narrated at the time of the offer (CALVET; GARCÍA, 2013).

In terms of the number of workers rescued, the exploitation of slave labor in the countryside covers notably deforestation. The removal of wood is destined to commercialization, especially in the area known as the *circle of fire* or *arc of deforestation*, which bypasses the eastern and southern limits of Pará and proceeds to the borders of Amazonas with Rondônia and Acre; the use in the charcoal manufacturing process, which supplies

companies in the steel industry (ROCHA; GÓIS, 2011); and also to the opening of an area for cattle breeding, since Brazil is one of the main meat exporters in the world; and the implantation of monocultures (soy and corn) (OBSERVATÓRIO DA ERRADIÇÃO..., 2017).

As an example of the occurrence of slave labor in the countryside, there is the case of the extraction of piassava in the region of the middle Rio Negro, in the state of Amazonas, an economic activity developed more than a century ago and consisting of one of the main sources of income for a significant portion of the local population (KALIL, 2016). Between April and May 2014, labor inspection rescued thirteen workers in a condition similar to that of a slave in the region between the municipalities of Barcelos and Santa Isabel do Rio Negro, due to the finding of degrading conditions and debt bondage.

The situations found at the site involve the restriction of freedom based on illicit indebtedness from the need to provide services until the settlement of debts established and improperly collected from workers. This violation can be seen in the charge for work tools, protective equipment and hygiene materials, which should be provided free of charge by the employer; and in the full cost of food, in amounts higher than that practiced in commerce, despite the legislation restricting the discount to 25% of the minimum wage. While illicit debts were not paid, workers were compelled to return to the work fronts and extract greater amounts of fiber.

Degrading conditions were also found, due to the non-compliance with the minimum obligations provided for in the legislation, in terms of the working environment. There was inadequacy of accommodation, consisting of boats or shacks exposed to the weather, as they were built on unpaved soil, without lateral protection and covered with dry straw from the trees from which the piassava is extracted; without sanitary facilities nor supply of toilet paper, workers were forced to fulfill their physiological needs in the bushes; in addition to the precarious food, deficient in nutritional terms and prepared in improvised places, there was no drinking water available, only the water coming from rivers and streams close to the shacks and workplaces. In addition, there was neglect of protective equipment and first aid. There was also a set of unlawfulness related to the lack of registration in a book, record or system and notation of the Work Permit; payment of salary without observance of formality and deadline; absence of concession of weekly paid breaks; and provision of services on holidays.

As a second example of contemporary slavery in the countryside, the work done in charcoal kilns is mentioned in general lines. The pig iron productive chain generates socio-environmental impacts, by using vegetable charcoal from illegal deforestation and the use of slave labor in production. During the charcoal manufacturing cycle, employees are exposed to risks in the activities of cutting wood, transporting firewood, furnishing the kiln, lighting the fire, monitoring the cooking and removing the charcoal. Throughout this process, the worker is subjected to toxic gases, soot, ash, dust and high temperatures, which can cause dehydration, burns, severe muscle injuries, inguinal and scrotal hernias and fractures or cuts in the event of an accident. These are irregularities that, as in the previous example, involve disregard for basic conditions of hygiene and comfort, related to safety and health at work (OJEDA, 2014).

As for the areas or activities typically associated with the urban environment, the panorama of non-compliance with labor legislation and the omission or failure of state actions does not differ substantially (MELO, 2001). Although not restricted to this reality, the improvement of inspection techniques in the sectors of construction and textiles has resulted in an exponential increase in the rescues of workers activated in such productive activities.

The practice demonstrates that rescues in civil construction comprise characteristics such as long distances in commuting from the municipality of residence to the workplace; accommodation with precarious beds, bathrooms, food and water, and lack of adequate ventilation; delays in payment of wages; extensive work days; and ignored health and safety conditions, including the absence of adequate protection for work at height, with the risk of falling, electric shock, crushing, burying and loss of limb.

In the civil construction sector, there is a significant number of accidents and deaths linked to work, notably involving the outsourced work regime, in addition to being the branch of activity that registers the largest number of enslaved workers. Contrary to the ideals of social justice, the social values of work and the health of the working environment, the statistics related to the sector demonstrate a perspective of disdain for such dictates (BARROS; SILVEIRA; DINIZ, 2016).

Indeed, the civil construction sector has the highest incidence of deaths in Brazil. Information registered with the National Social Security Institute (INSS) shows that, since 2010, more than 16% of deaths have affected construction workers. Including non-fatal occupational accidents,

there are more than sixty thousand occurrences in the INSS, since 2011, and the sector numbers mean 8% to 9% of the annual average of approximately seven hundred thousand occupational accidents (FILGUEIRAS, 2015). According to the INSS (2015), civil construction accounted for 333 of the 2,502 fatal accidents that occurred in Brazil in 2015 (13.31%), against 453 of the 2,819 in 2014 (16.06%), and 459 of the 2,841 in 2013 (16.15%). These are official data, derived from spontaneous or provoked notifications, which disregard the expressive volume not covered in Work Accident Communication.

In addition, deaths at work affect the category of outsourced workers more than that of direct employees, which reinforces the idea that productive outsourcing generates the socialization of occupational risks, passed on to providers with the worst conditions to support the investments necessary for workers' health and security, a set of essentially economic factors that explains, but does not justify, the greater accidentality among outsourced workers. If the hiring of third parties by the borrowers may result in the imposition of conditions that increase accidentality – increased working hours, remuneration for production, intensification of the work pace and lack of concession of intra- and inter-work breaks, paid weekly rest or holidays off, for example –, there is no excuse for responsibility for the damage caused, especially when the context of careless environmental work implies submission to degrading conditions and exhaustive working hours, which characterize slave labor (FILGUEIRAS, 2015).

In addition to civil construction, slave labor in urban areas is evident in the clothing sector, especially in workshops without an adequate structure (PYL; HASHIZUME, 2011). Violations involve dark places, lack of access to daylight, exposed electrical installations, imminent fire risk, lack of fire extinguishers and training of personnel to deal with accidents, obstructed circulation areas and escape routes, absence of training and qualification for the function, children in the workplace, lower rests and working hours above the maximum allowed, and undocumented immigrants, a term that identifies people from other countries who remain in the national territory without a temporary or definitive visa, which makes them a prime target for slave labor in the textile sector.

The return of past practices, such as *putting out*, expands significantly in the textile and clothing sector and, as a result, worsens job insecurity. The form of contracting services reveals the conditions of slave labor in garment workshops, which generate products to be sold by major brands

in the fashion market. The extreme precariousness at the base of the productive chain is mainly linked to the extensive network of subcontracting, which results in an increase in the heterogeneity and fragmentation of the working class, divided between the central and peripheral workforce (ANTUNES, 2005).

It is possible to observe the existence of larger companies at one end of the productive chain, responsible for the idealization of products and the transfer of demands to clothing workshops, companies that have a reasonable size to guarantee the delivery of a certain quantity of contracted parts. From the moment the orders exceed this productive capacity, there is a transfer to smaller workshops, subcontracted companies in which the rescue actions of people subjected to conditions similar to slavery are concentrated. To guarantee the profit margin, the owner of the small workshop reduces labor costs, a decision that leads to the practice of debt bondage, degrading conditions, exhausting working hours and, especially in the case of immigrant workers, retention of documents.

The Zara Case (PYL; HASHIZUME, 2011; OJEDA, 2014), in the midst of judicial and administrative actions, such as infraction notices, hearings and the proposal to sign a conduct adjustment term – alternative means of resolving conflicts within the extrajudicial scope (FERREIRA; SIMÕES; AMORAS, 2017) – and inclusion in the Register of Employers caught using labor in conditions similar to slavery (*dirty list*), resulted in the commitment to conduct frequent audits in the supplying workshops and investment in the training of workers and providers. The repercussion of cases of other major brands adds relevance to the need for civil liability in the productive chains.

There is no way to deal with outsourcing without mentioning Law 13,429 (BRASIL, 2017a) and Law 13,467 (BRASIL, 2017b), which sought primarily to authorize outsourcing in the core activity, in addition to the non-core activity, previously contemplated by Summary 331 of the TST. Attempts have also been made to regulate situations in which the liability is subsidiary or jointly between the borrower and the provider or exclusive thereof. These are issues that directly impact the rights of workers involved in the outsourcing process, both in terms of the discharge of labor costs routinely due in the course of work, and with respect to the responsibility for ensuring the minimum standard of health and safety in the work environment.

In this aspect, it is understood that regardless of the normative

possibility of outsourcing services in the non-core activity or in the core activity, or even material outsourcing, the sharing of responsibility for the occurrence of contemporary slave labor in the chain of successive hires is defended, even when it is not the case that such instruments are used for masking or fraudulent employment.

The changes that imply an affront to the basic constitutional precepts need firm action by the legal professionals working in the field, especially regarding some of the precepts arising from Law 13,467 (BRASIL, 2017b), the Labor Reform. It is necessary to continuously evaluate and rethink the advance of institutes such as intermittent work, poor regulation of teleworking and the unconditional use of outsourcing, just to mention some of the points that facilitate the process of job insecurity.

After drawing the general lines regarding the continuity of the practice of labor enslavement in the country and the exposure of the main economic activities in which such forms of exploitation occur, it is important to deepen the understanding of the conducts that result in the configuration of modern slavery, in search for conceptual precision.

2 CONFIGURATING HYPOTHESES AND CONCEPTUAL DESIGN

At the international level, since the beginning of the 20th century, there has been a commitment to the elimination of the degrading exploitation of human labor. As the first and classic configuring element of the penal type under study, the *requirement for forced labor* is contained in ILO Convention No. 29 of 1930. According to art. 2.1 of the document, except for the specific situations listed in art. 2.2, forced or compulsory labor can be understood as any work or service required of an individual under threat of any penalty and for which one did not willingly offer oneself.

In homage to scientific precision, the normative concept of labor is adopted in a condition analogous to that of a slave, along the lines of art. 149 of the Penal Code (BRASIL, 1940), corresponding to that in which the worker is subjected, in an isolated way or together, to forced labor; exhaustive working hours; degrading work condition; restriction, by any means, of locomotion due to debt contracted with employer or agent, at the time of hiring or in the course of the employment contract; and retention in the workplace by restricting the use of any means of transport, maintaining overt vigilance, or seizing documents or personal objects.

The classic ways of carrying out the crime are physical coercion, sexual abuse, abandoning the worker in an isolated place and armed surveillance (FLAITT, 2014), in which the presence of the violation of the victim's freedom of movement is evident; however, there is no need to offend this legal asset in the other forms of the offense, as legal protection is directed at human dignity.

In effect, *forced or compulsory labor* is understood as that demanded under the threat of sanction and for which one has not offered oneself spontaneously (GUNTHER, 2011), considering as a valid manifestation of the will that exercised freely, without the person being in a condition of social, economic or legal vulnerability. Crime is not removed only by the absence of supervised work, under mistreatment, with tortured people, in chains, under threat of physical aggression or death, or even with the presence of armed people preventing the escape of the exploited, because rather, human dignity is protected. Especially after the normative detailing promoted by Law 10,803 (BRASIL, 2003), there was a specification of the protective spectrum, in order to provide more clarity to human dignity and protection against reification (BRITO FILHO, 2017).

Debt bondage is also a typical conduct. Omitted in ILO Convention No. 29, the express mention of this type of use of slave labor only appeared with the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery of 1956, a document that expanded and specified the concept. Article 1.2 of this document thus considers the state or condition resulting from the commitment assumed by the debtor to provide, as a guarantee for a debt, his/her own personal services or that of someone over whom he/she has authority, based on a value that is not equitably assessed nor of a limited duration and a defined nature.

This configuring hypothesis generates psychological imprisonment, insofar as the workers feel obliged to pay the imputed debt, despite being abusive, unreasonable or illegitimate. Asked about the legality of indebtedness, few workers consider themselves free to make the payment (FIGUEIRA, 2004), which contributes to the situation of violation of rights. Although present in all Brazilian regions, the modality of debt bondage stands out as an Amazon peculiarity, through the payment system, which consists of granting a kind of credit without money, which emerged in the 19th century and practiced in the rubber trees, chestnut, garimpos (mining), livestock and logging farms, the worker's removal from the site

being dependent on the repayment of the debt, which is normally illegal (MELO, 2001).

From the amendment promoted by Law 12,803/2003, the concept of slave labor expressly started to cover the exhaustive working hours and degrading conditions. An exhaustive journey is understood as any form of work, of a physical or mental nature, which, due to its extension or intensity, causes a violation of the worker's fundamental right, notably those related to safety, health, rest and family and social life. A degrading condition is understood as the denial of human dignity due to the violation of the worker's fundamental right, especially those provided for in the rules of work protection and safety, hygiene and health. Such provisions are found in art. 7, 2 and 3, of Normative Instruction 139 (BRASIL, 2018a), and in art. 2, 2 and 3, of Ordinance 1,293 (BRASIL, 2017d), of the extinct Ministry of Labor, a rule that undid the misunderstanding promoted by Ordinance 1,129 (BRASIL, 2017c), which unduly intended to modify the concept of slave labor in force in the country.

Within or without the quantitative limit established in the legislation, there is an exhaustive journey when it is imposed on the worker in such a way as to cause damage to life or physical and mental health, which exhaust the worker and result from a situation of subjection established in a forced way or by circumstances that annul the victim's will. The uniqueness and qualitative aspects of work performance can encompass situations that, combined, harm the person's health and the exhaustion associated with work in such conditions can even result in the employee's death. Therefore, in addition to the number of hours, the specific characteristics of the work can lead to the same conclusion. Finally, the degrading conditions can result from the imposition of the provision of services that entails the restriction or the annulment of the victim's will, to the detriment of freedom and that imply the denial of minimum rights and the instrumentalization of the worker (BRITO FILHO, 2016).

In effect, accountability may arise from the characterization of the exhaustive journey or from degrading conditions, even though the other conducts defined in the penal type are absent, as they are disjunctive, that is, they do not require the occurrence of other configuring situations for the consummation of the crime. Despite the advent of Law 10,083 (BRASIL, 2003), there is still resistance in the Judiciary regarding the application of the penal rule in such a context, especially when the attack on individuals' freedom of movement is not clearly and simultaneously

shown (MESQUITA, 2016). This short-sighted view of the legislation is not compatible with the protection of human dignity and the unnecessary combination of conduct listed in the penal type.

In addition to the four modalities present in the *caput* of art. 149 of the Penal Code, § 1 of the provision provides for similar conducts, thus typifying the practices of *restraining transport* with the aim of retaining the workplace, *maintaining ostentatious vigilance* in the workplace and, furthermore, *retaining documents or personal objects* of the worker. The finding of any of the aforementioned conducts, even if in isolation, configures the person's submission to a condition similar to that of a slave. As causes of increased sentence, § 2 points to the finding of a child or adolescent as a victim of the crime; and the motivation resulting from prejudice of race, color, ethnicity, religion or origin, a norm that aims to repel discriminatory behaviors and confer more firm treatment when the person assaulted is in a peculiar condition of development.

Although the normative provision is contained in the Penal Code, the effort to understand the legal content of contemporary slavery has repercussions in the other fields, due to the impacts of environmental, administrative, labor and civil bias. Notwithstanding the scope of this study, it does not allow further study of the theme, an important advance regarding the repression of modern slave labor in Brazil consists in the approval of Constitutional Amendment no. 81, of June 5, 2014, known as PEC of slave labor, which gave new wording to art. 243 of the constitutional text, in order to allow the expropriation of rural or urban property used for the purpose of exploiting slave labor.

Especially regarding the focus promoted in this study, business activity impacts the work environment and the reflexes are felt directly by the individual and indirectly by society. Certainly, work cannot be understood as a simple commodity, as it considers values that shape the human being in the social, psychological and cultural context. Employers must be guided by the guarantee of a lasting future (CIRINO, 2014), along the lines of the sustainable development tripod, composed of social relevance, ecological prudence and economic viability.

It happens that, from the systemic perspective of the work environment, the economic subsystem only directs greater attention to the safety, health and quality of life of the worker when there are losses resulting from exposure in the media, outbreaks of environmental strikes, application of administrative fines, determination of embargoes and interdictions or

indemnities arising from judicial convictions. But labor protection must be understood as an investment, not a cost (PRATA, 2013). Among the fields of investigation of Environmental Labor Law, attention is needed on vulnerable segments impacted by the devastation of natural resources, local economies and territories, especially traditional communities (ROCHA, 2013).

At this point, it deals more specifically with aspects of civil liability in the productive chain, insofar as they can be skillful instruments for adapting working conditions, especially when associated with labor exploitation similar to slavery.

3 ASPECTS OF CIVIL RESPONSIBILITY IN THE PRODUCTIVE CHAIN

Regarding civil liability in contemporary slave labor situations, it is important to highlight that, despite the productive chain referring to the relationship established within a consumption relationship, in which there is a set of productive stages comprised from the planning to the manufacture of the product, the perspective that is intended to be defined in the scope of this work considers the employee's point of view in relation to the beneficiaries of the personal provision of services, not the relationship with the consumer.

In this sense, the National Pact for the Eradication of Slave Labor in Brazil (INSTITUTO ETHOS *et al.*, 2005) brings together efforts to dignify and modernize labor relations in the productive chains of the sectors included in the *dirty list*. This document allows adherence by social actors committed to human dignity, the formalization and modernization of labor relations and the eradication of slave labor. The Pact comprises preventive and repressive measures, through the definition of goals in the scope of the productive chains, the fulfillment of labor and social security obligations and actions on health and safety at work.

In addition, commercial restrictions were foreseen for companies and people using slave labor; support for the social and productive reintegration actions of workers subjected to such conditions, to overcome the level of social exclusion, through partnerships with different spheres of government and non-profit organizations, in order to provide training and professional improvement of freed workers, and thus avoid reintegration into the cycle of contemporary slavery.

In the line advocated by the Pact, the success of the sanctioning bias depends on the identification of the relevant economic power, which imposes the functioning of an entire network or productive chain, organized and structured to serve the main establishment. Therefore, civil liability, in addition to considering the immediate cause of the legal injury, must promote the reach of the main claimants for the services, who should control and demand compliance with labor legislation throughout the contractual chain.

As a result of the influence of the predominant productive formats in the current economy, there is a strong relationship between the lack of supervision of the main beneficiaries of the productive chain, at one end, and the submission of workers to precarious working conditions, at the other. In addition, the successive outsourcing, in the search for cost reduction, generates wage reductions, retraction of labor rights and increased fragmentation, which undermines the union organization and other forms of collective solidarity of the working class. Finally, reduced wages, long hours and high turnover rates denote a process of corrosion of work that enhances enslavement (ANTUNES; DRUCK, 2014).

In co-participation and co-responsibility regimes in job insecurity, in addition to the immediate causes of the violations, the confluence of interests and the communion of participants in the process are factors that reinforce the need to identify the relevant economic power, the main responsible for the formation and continuous functioning of the productive chain. There are associated factors that guide the investigative activity in the search for the greatest beneficiary of the contracting network, among which the distortion of material outsourcing stands out – in contrast to internal outsourcing, which focuses on the provision of services, material or external outsourcing goes beyond this scope and is concerned with the final product (VIANA, 2012) –, economic dependence or legal subordination (subjective/classic, objective, integrative, structural or algorithmic) and precarious working conditions.

There is abundant jurisprudence in the sense of establishing subjective civil liability when talking about contemporary slave labor in the work environment⁴. However, as for the theoretical construction that allows the

⁴ For all, see: WORKING IN DEGRADING CONDITIONS. INDEMNITY FOR MORAL DAMAGE. CHARACTERIZATION OF CIVIL RESPONSIBILITY. According to the art. 186 of the CC, the configuration of subjective civil liability depends on the demonstration of the illegal act, the damage experienced by the victim and the causal link. In the hypothesis, it emerges from the elements of the dispute that the Defendants submitted their employees to the provision of services in degrading conditions, in view of having disregarded basic rules of health and hygiene at work that compromise

recognition of objective civil liability, the situation changes. Although little represented in the jurisprudence, it is a plausible legal possibility, insofar as the causer's obligation is considered to be reparation for environmental pollution at work. In other words, it is incumbent on the policyholder and the service provider that uses labor similar to slavery to indemnify the damages suffered by the enslaved people within a contractual chaining process that affects the health of the work environment.

In this sense, among the various theoretical currents that support the objective accountability of the employer or claimant within the design of a value chain, the following stand out: i) risk-benefit theory; ii) theory of *equity*, alienation or alterity; iii) theory of created risk; and iv) full risk theory.

Developed on European soil, the risk-benefit theory arose from the increase in the number of cases that started to increase in the courts, of people who were victims of accidents resulting from the progress of the industry and the advance of its importance in European society, being necessary to guarantee the greatest satisfaction of the victims, that the notion of guilt be replaced by that of risk. As Alvino Lima (1998, p. 124) rightly added regarding the risk-benefit theory: "it is not fair, nor rational, nor equitable and human, that the victim, who does not reap the benefits of the risk-creating activity and that for such risks one did not compete, support the misfortunes of the activity of others". This theory is supported by the consumerist perspective in arts. 12 and 18 of Law 8,078 (BRASIL, 1990) and is manifested when the person who seeks profit from the exercise of a certain economic activity is placed in the condition of guarantor in relation to the physical and psychological damage suffered by employees.

Therefore, the risk-benefit theory is presented as an intermediate path between subjective and objective responsibility, making it feasible for those who aspire to profit from the exercise of a given economic activity to indemnify the physical and psychological damages that these people suffer as a result of their functions (FERNANDES, 2019). It is argued that the extension of this responsibility reaches both direct and outsourced employees, insofar as they mutually benefit from the result of the work, even though they subsequently resolve among themselves the degree of contribution to the harmful result.

In turn, the theory of the *ajenidad* of alienation or alterity, based on minimum guarantees of a dignified and healthy life, in order to reveal an unlawful attitude violating the worker's dignity. Therefore, due to indemnity for moral damages. Feb 28, 2016. 294 (BRASIL, 2015, our translation).

the doctrine in art. 2 of the CLT, establishes the assumption of risks by the borrower of the workforce, responsible for the direction of the enterprise and for the positive or negative results that result from it. In the context of value chains, this theory is associated with the configuration of structural subordination, “which is manifested by the insertion of the workers in the dynamics of the taker of their services, regardless of whether they receive (or not) taker’s direct orders, but structurally embraces this organization and functioning dynamics” (DELGADO, 2006). That is, instead of the direct order of the employer, the production and quality of the work result are controlled, according to the standards expected by the claimant, who dictates the rules and plays the economic power in the scope of the productive chain.

With regard to the activity risk theory, this stems from the sole paragraph of art. 927 of the Civil Code (BRASIL, 2002) and is linked to the exercise of risky activities, which acts as a causal link and results in the unnecessary guilt assessment (FERNANDES, 2019). According to Facchini Neto (2003, p. 159): “Within the theory of activity risk, therefore, responsibility is no longer the counterpart of a particular profit, but the inevitable consequence of the activity in general”. The idea of risk loses its economic, professional aspect. Its application no longer supposes an entrepreneurial activity, the exploitation of an industry or a commerce, being linked, on the contrary, to any act of man that is potentially harmful to the legal sphere of others. If this potential is realized, with damage to the worker who is degraded in their dignity, the obligation to indemnify would arise⁵. However, in certain situations, this risk theory proved to be insufficient and, at first, unfair, even in the face of the new model of responsibility in which the correct compensation of the victim was sought, in view of the existence of unforeseeable circumstances, force majeure or the victim’s exclusive fault, developing the full risk theory in the legal field.

According to the theory of full risk, in the face of proven environmental damage, it is enough to demonstrate that the polluter undertaking has the risk of causing environmental damage to support the cost of the repair. Due to the theory of full risk, environmental damage cannot be externalized to the community, but must be internalized in the costs of potentially polluting activities. Its foundation is found in art. 225, § 3, of the Constitution of the

⁵ According to ‘Enunciado 38 das Jornadas de Direito Civil: “the responsibility based on the risk of the activity, as provided for in the second part of the sole paragraph of art. 927 of the new Civil Code, it is configured when the activity normally carried out by the perpetrator of the damage causes the determined person a greater burden than the other community members”. This seems to be the case when it comes to workers subjected to degrading working conditions.

Republic (BRASIL, 1988) and in art. 14, § 1, of Law no. 6,938 (BRASIL, 1981), which supports the objective responsibility and the environmental principle of the polluter-pays.

This theory removes the need to demonstrate the guilt of the aggressor and the victim, since the analysis is restricted to the other parameters – conduct, damage and causal link. Due to the theory of full risk and the unavailability of the environment, externalization and the transfer to society of the costs resulting from the non-compliance with environmental labor standards, as in the serious context of contemporary slave labor, are not appropriate. In fact, it is up to the direct beneficiaries to bear such burdens, which must be internalized in the costs of activities that are potentially and effectively polluting the work environment (LEAL; ZWICKER, 2019).

According to the thirtieth edition of Jurisprudence in Theses, prepared by the Jurisprudence Secretariat of the Superior Court of Justice (STJ, 2015), there is understanding that liability for environmental damage is objective as informed by the theory of full risk, “being the causal link the binding factor that allows the risk to be integrated in the unity of the act, and it is unreasonable to invoke, by the company responsible for the environmental damage, exclusions from civil liability to remove their obligation to indemnify”.

Therefore, with a link between the activity carried out and labor-environmental damage, it is imperative to recognize full objective civil liability (material, moral, aesthetic, collective morals, homogeneous and collective individual material damages). Therefore, applying the aforementioned theory to similar cases of slavery removes the burden of proof from the employee’s shoulders and hands it over to those who have a duty to ensure that their activity is in accordance with national and international production *standards*, avoiding the duty to indemnify only if one proves that one did not compete in any way for that harmful event.

In the risk society, the prevention of damage and side effects on the environment and human health are a more relevant objective than the attempt to repair. Therefore, the identification, tracking and removal of the causes of the problems that threaten the environmental balance are especially relevant (THOMÉ, 2014), a context of uncertainty management that values the precautionary principle and specific safeguards.

However, when the damage is perpetrated, it is up to the determination of the fair and full indemnity borne by the responsible. The reparation of

the damage caused can result from the imputation of material and off-balance sheet damages, in individual and collective modalities, including with regard to social damages (social *dumping*). As a consequence of the actions of the Tax Audit of Labor and the Public Prosecution Service of Labor, Labor Justice has issued important condemnations in the scope of slave labor, which converges to the increase in the amount of indemnities (ABRAMO; MACHADO, 2011).

Environmental injuries can give rise to indemnity for moral, individual or collective damage. If the rights and interests of a group are attained, the defense of the collective material and immaterial heritage may occur in the midst of a single process, due to the applicability of the collective procedural microsystem, which enables access to justice, through the technique of dialogue of sources between the constitutional text, consumer legislation and the regulation of public civil action. The collective moral damage results from any abusive or unlawful conduct that constitutes an injury to the dignity of the community, which secures violated fundamental rights – meta-individual interests, which exceed the limits of individuality and are designed in favor of a group of people (CORTEZ, 2015).

As for the allocation of amounts resulting from indemnities for collective moral damage, compliance with the legal purpose of restoring injured assets must be observed. Art. 13 of Law 7,347 (BRASIL, 1985) is applied, so that, in the absence of a specific fund, another form of application that promotes due compliance with the end of the rule is accepted. As an example, mention is made of the promotion of campaigns, scientific, educational and cultural events, as well as the modernization of equipment and work instruments for public agencies operating in the area. The amounts may also be allocated to private entities aimed at protecting and defending victims of injuries to the work environment or violated meta-individual rights and interests. In any case, it is important that there is a reversal of the amounts to the benefit of the damaged community (CORTEZ, 2015).

Among the factors considered for the purpose of defining collective moral damage in terms of civil liability for the configuration of slave labor, unfair competition and loss of competitiveness among companies that assume the financial burden of complying with the legislation are included; and the constitutional offense to the fundamental objective of building a free, just and solidary society (art. 3, 1), whose violation affects legal assets dear to society and entails the duty to indemnify – arts. 186 and 927 of the Civil Code (BRASIL, 2002) and art. 3 and 13 of Law 7,347 (BRASIL, 1985).

Furthermore, along the lines of item 2 of Edition 125 of the Jurisprudence in Theses of the Superior Court of Justice, the theory of *damnum in re ipsa* applies, which dispenses with the need to demonstrate collective moral damage, due to the severity of the offending fact, and the arbitration of the indemnity follows the criteria of the extent of the damage, degree of compromise of the assets involved, financial profiles of the perpetrator and the victim, in addition to other secondary aspects pertinent to each case.

Specifically regarding the clothing sector, Matos and Matias (2019) studied the condemnatory court decisions referring to four cases of great repercussion and concluded that outsourcing presents the bias of helping in the efficient management of the business, but also facilitates a series of abuses committed against the workers involved, by creating a complex network of successive subcontracting and weakening the ties between the actors involved, a productive strategy that enhances offenses to basic human rights (STÜRMER, 2016).

The authors identified a pattern composed of seven general criteria used by decisions that recognize the joint and several liability between the borrower and the subcontracted garment workshop and factories, namely: i) effective control of production by the contractor; ii) lack of autonomy of the subcontractors; iii) exclusivity of the production destined to the contractor; iv) the principle of deliberate blindness, consisting of the omission regarding the general duty of supervising the supply chain; v) verification of the suitability of suppliers; vi) low cost of parts; and vii) financial capacity of the main company.

When evaluated together, these criteria reveal the perception regarding the sphere of influence in outsourced productive chains, consistent with the ability of a company to determine the behavior of other organizations, companies or suppliers with which it maintains relations. The commitment to an ethical performance has the ability to maintain outsourced chains that protect the labor involved, which is a useful criterion for justifying convictions under the civil liability of the main beneficiaries in the context of a productive chain, notably as the dynamics of hiring, remuneration and working conditions of the demanded personnel (MATOS; MATIAS, 2019).

Accountability in value chains is in line with the development of international law, with regard to the institute of due diligence (BIGNAMI, 2020), expressed in the Organization for Economic Cooperation and Development – OECD Guidelines for multinational companies, in the

guiding principles on companies and human rights of the United Nations – UN, in the Additional Protocol to the ILO Convention No.29 on forced labor and in other documents, in the sense that the basic parameters of respect for human rights in the supply chains be observed, be they regional or global. In this field, negotiations based on economic restrictions within the UN system are advancing, in binding terms. In Brazil, Decree no. 9,571/2018 establishes the national guidelines on companies and human rights, but does not have a cogent character (BRASIL, 2018b).

In fact, there are basic precepts of social justice that are reached by the exploitation of slave labor, since work consists of human rights and a condition for access to important goods necessary for life with dignity, so that the guidelines of the International Labor Organization (ILO) and the internal legal system place in the dignified and socially inclusive work the instrumental mission of enabling the qualitative and fulfilling enjoyment of professional, family and community life (DELGADO; RIBEIRO, 2014).

The continuity of offenses against this strain undermines the greater end of the Law, which consists in the social pacification of conflicts. In addition to abstaining from abusive behavior, the fundamental value of human dignity requires protection and promotion by public and private authorities. The prohibition of slave labor translates a legal norm of a cogent nature, which has a unifying function, of conferring unity of meaning to the constitutional order, and hermeneutic, functioning as a starting point and arrival of legal norms aimed at regulating social relations, thus influencing the creation, interpretation and normative application (BEL-TRAMELLI NETO, 2014).

The social values of work and free enterprise need to be made compatible, since they are positioned on the same plane in the Constitution of the Republic (BRASIL, 1988) – art. 1st, 4. If the natural person seeks material, moral and spiritual fulfillment in their work (SILVA NETO, 2005), economic development should not consider the human being as a mere productive factor and disregard the constitutional level of human dignity, whose aggression occurs in the configuring behaviors of reducing the condition to that similar of a slave.

CONCLUSION

The proposition of measures of civil liability in the scope of the productive chains as a result of the use of contemporary slave labor contributes

to the elimination of this practice, whose effects persist and are manifested within a context of structural discrimination. Although formal abolition occurred more than a century ago in Brazil, effective instruments for prevention and repression are still being sought.

The transformation of the slavery culture, previously supported by the exploitation of the labor of black and indigenous peoples, is now guided by the debasement associated with social and economic factors linked to the lack of professional options and valid expectations of enjoying a dignified life, from suitable means to achieve self-support and social insertion.

Therefore, it is confirmed that the legislative abandonment of classic slavery, in which the State recognized the property of one individual over the other, had repercussions only on the formal level. In practical terms, the capitalist system demanded the liberation of slaves for insertion in the world consumption and production cycle and encouraged a new conception of slave labor.

In the context of the Fazenda Brasil Verde Workers' Case, which was processed before the Commission and the Inter-American Court of Human Rights, a context was portrayed in which tens of thousands of workers are subjected to slave labor annually, a practice that finds roots in a framework history of discrimination and social exclusion. As a result, the responsibility of the Brazilian State for the offense against art. 6.1 of the American Convention on Human Rights, which prohibits slave labor, a situation that reveals the need for investment in preventive and repressive measures.

This protective panorama includes the visualization of legal parameters of accountability aimed at the effectiveness of the prohibitive precepts of the practice of slavery. Therefore, we sought to identify mechanisms of civil liability within the value chains based on the debasing appropriation of the dignity of the worker, consistent in the most fragile part of a successive contractual chain.

Notwithstanding the dirty list, it functions as an important instrument to repress slave labor, either due to the damage to the image of related employers, or due to the restriction of access to loans and financing with public money from state banking institutions, labor dignity and the modernization of labor relations in the productive chains depends on firmer judicial action, in line with the modern concept of the phenomenon, in the search for accountability of the main beneficiaries.

In this sense, it is necessary to be more effective in civil liability resulting from the identification of the relevant economic power, based on

the investigation of the establishment that works as the main demander in the productive network. Therefore, both the immediate cause of the legal injury and the claimants for the services, from whom control and collection are expected, are to be held responsible for the faithful compliance with labor legislation within a logic of contractual linkage, notably when the lack of inspection is associated with configurations of contemporary slave labor.

The substantial implementation of the measures exposed can have a positive impact on the breaking of the slavery cycle and make it possible to meet the commitments assumed internationally by the Brazilian State, so that economic growth is linked to human development, based on the joint performance of public power and society to ban this practice from the Brazilian reality.

In addition to exercising the repressive role of indemnities for damages caused by judicial convictions, it is understood that the change in posture may generate a change in the pattern of performance and in social responsibility actions of companies regarding the network of suppliers, in favor of a collective and coordinated strategy, of a private nature, with the involvement of those responsible for the operation of the subcontracting chain.

Therefore, the development of the theoretical lines analyzed in this study aims to discuss – without exhausting – the conditions that authorize the reach of civil liability of the actors that combine efforts within a coordinated relationship that shapes the functioning within the same value chain, sustained based on labor relations that configure the submission of people to contemporary slave labor, a situation absolutely repelled by the Brazilian legal system.

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Article received on: 05/29/2020.

Article accepted on: 03/17/2021.

How to cite this article (ABNT):

BRAGA, M. A. P. L.; SÁ, E. V. H. C.; MONTEIRO, J. R. Responsabilidade civil no âmbito das cadeias produtivas em situações de trabalho escravo contemporâneo. *Veredas do Direito*, Belo Horizonte, v. 18, n. 40, p. 79-111, Jan./Apr. 2021. Available from: <http://www.domhelder.edu.br/revista/index.php/veredas/article/view/1855>. Access on: Month Day, Year.