http://dx.doi.org/10.18623/rvd.v18i41.1857

CORONAVIRUS IN THE WORKPLACE: HOW TO FACE THE PANDEMIC AS A REAL ENVIRONMENTAL RISK

Guilherme Guimarães Feliciano[1]
Universidade de São Paulo (USP)

Paulo Roberto Lemgruber Ebert[2]
Universidade de São Paulo (USP)

ABSTRACT

This article aims to demonstrate that the new coronavirus pandemic and its spreading turned it as a real environmental risk capable for harming the wellness of the community, since any person can carry the virus to any space and get infected. Since workplaces are part of the environment, the New Coronavirus spreading in these spaces are classified, in a pandemic context, as workplace pollution, because the risk of being contaminated brings to the workplace a state of imbalance potentially harmful to the worker health, which contradicts the contents of Brazilian Federal Constitution, specially its articles 7, XXII, 193, 200, VIII, and 225. Thus, we demonstrate that those constitutional commandments, allied with the solidarity principle (contained in its 3rd Article), combined with the ILO Convention n. 155 in its articles 16 to 19 impose to the workplace risk managers, such as the employers, the duty to implement all the measures available and capable to protect workers from the risk to be contaminated with the New Coronavirus, far beyond the strict and literal commandments contained in the federal, states, and cities existing ordenances.

Keywords: environmental risk; new coronavirus; pandemic spreading; workplace pollution.

1 Associate Professor in Labor Law and Doctor in Criminal Law from FDUSP. Ph.D. in Legal Sciences from the Faculdade de Direito de Lisboa. Associate Professor II at the Department of Labor Law and Social Security at the Faculdade de Direito da USP. Head Judge of the 1st Labor Court of Taubaté (SP). ORCID: https://orcid.org/0000-0003-2845-5966 / e-mail: dunkel2015@gmail.com

2 Ph.D. in Labor Law and Social Security from USP. Specialist in Constitutional Law from the Universidade de Brasília (UnB). Specialist in Labor Law and Procedure at the Centro Universitário de Brasília (UniCEUB). Attorney. ORCID: https://orcid.org/0000-0003-3853-8861 / e-mail: paulo@mauromenezes.adv.br

CORONAVÍRUS E MEIO AMBIENTE DE TRABALHO: AINDA A PANDEMIA, A PANTOMIMA E A PANACEIA

RESUMO

O presente artigo pretende demonstrar que a pandemia do novo coronavírus e sua transmissão comunitária fizeram que o referido agente biológico se tornasse um efetivo risco ambiental passível de prejudicar a qualidade de vida da coletividade, na medida em que qualquer pessoa pode transportar o agente transmissor para outros espaços e com ele se contaminar. E uma vez que os locais de trabalho integram o conceito de meio ambiente, a circulação do novo coronavírus em tais espaços constitui, nesse contexto, um nítido suposto de poluição labor-ambiental, porquanto tal possibilidade acaba por instituir no meio ambiente do trabalho um estado de desequilíbrio sistêmico atentatório aos arts. 7º, XXII, 193, 200, VIII, e 225, da Constituição Federal. Nessa toada, demonstrar-se-á que os referidos dispositivos constitucionais, aliados ao princípio da solidariedade (art. 3º, da CF) e combinados com os arts. 16 a 19 da Convenção n. 155 da OIT impõem aos gestores dos riscos das atividades econômicas a implementação das medidas que se mostrem necessárias, diante dos casos concretos, para evitar as situações de potencial contágio dos trabalhadores, para muito além das determinações legais e regulamentares expedidas pelos governos federal, estadual, municipal e/ou distrital e daquelas constantes na MP n. 927/2020.

Palavras-chave: *meio ambiente do trabalho; novo coronavírus; risco sistêmico; transmissão comunitária.*

INTRODUCTION

In early 2020, the world has learned about the endemic outbreak of a new Coronavirus – SARS-CoV-2. At the time, the outbreak was restricted to Wuhan, the capital of the province of central China, intersected by the Yangtze and Han rivers. Unlike its analogs already described (SARS and MERS, for example[3]), the symptoms of the disease caused by SARS-Cov-2 – known as COVID-19 – include more intense and lasting rhinitis, fever, diarrhea, vomiting, lack of appetite, loss of smell and taste, acute respiratory distress, and body aches that can progress to severe pneumonia.

Since the epidemic stage, combating the spread of the disease has become the priority concern of the World Health Organization, which promptly classified it as a "public health emergency of international concern, or PHEIC", in the highest alert level of the International Health Regulations. According to Tedros Adhanom Ghebreyesus (director-general of the WHO) and Roberto Azevêdo (director-general of the WTO),

> The purpose of the International Health Regulations is to prevent, protect against, control and provide a public health response to the international spread of disease in ways that are commensurate with public health risks, to minimize interference with international traffic and trade. WTO rules provide governments with the flexibility they may need to address essential medical supply shortages and/or public health challenges. But any measure taken to promote public health that restricts trade should be "targeted, proportionate, transparent and temporary", consistent with recent calls from world leaders. Governments need to avoid measures that can disrupt supply chains and negatively impact the poorest and most vulnerable, notably in developing and least developed countries that are typically reliant on imports of medicines and medical equipment (AZEVÊDO; GHEBREYESUS, 2020).[4]

The acronym COVID-19 combines the expression Coronavirus disease with the year of onset of the disease (2019). In the weeks and months that followed, the outbreak gained the status of an epidemic, reaching the other Chinese metropolises and extrapolating the country's borders towards Japan and South Korea, then dispersing throughout the world, in the wake of the frantic transit of people and goods that characterizes the globalized economy of the 21st century. On March 11, 2020, it was recognized as a pandemic: a highly contagious disease, which spreads quickly

3 By March 2020 (PAHO, 2020), seven varieties of human coronaviruses (HCoVs) had been identified, including SARS-COV (causing SARS, or Severe Acute Respiratory Syndrome), MERS-COV (causing MERS, or Middle Eastern Respiratory Syndrome) and SARS-CoV-2 (the virus that causes COVID-19).

4 The joint statement was published after recognition of the global pandemic status.

along national borders, reaches several national states. and tends to global contamination (GREENBERG *et al.,* 2005, p. 18).[5]

At the end of February, after COVID-19 had spread on European soil, the first cases were registered in Brazil. During March, there were already thousands of infected individuals and hundreds of deaths. Thus, the Ministry of Health had to recognize – and announce – the occurrence of community transmission throughout the national territory. In epidemiological terms, this stage is characterized by the autonomous spread of the disease in a certain geographic region and by the impossibility of identifying and controlling its chain of contagion (BRASIL, 2020).[6] By the time this article is finished (June 14, 2021), Brazil has surpassed the mark of four hundred and eighty-seven thousand deaths from the new coronavirus (in the world, there are more than 3.81 million deaths).

1 CORONAVIRUS AND LABOR-ENVIRONMENTAL POLLUTION: THE PANTOMIME (PM 927/2020)

From the moment that community transmission was nationally recognized, the spread of the new coronavirus reached another level. It effectively became an environmental issue, as the circulation of the microorganism in natural and artificial spaces that house the population became a systemic and aggravated biological risk (SOARES, 1995In the community transmission stage, any individual is subject, to a greater or lesser degree, to acquire COVID-19 in the places where he/she frequents, and to transport the transmitting agent to other spaces. Therefore, the virus became a biological vector with an anthropogenic basis (because it is disseminated by humans) capable of negatively interfering in the quality of life of the community and its members.[7]

5 Pandemics – such as the Black Death (which occurred in the 14th century, decimating about 200 million people in 10 years), the Spanish flu (which killed approximately 50 million people between 1918 and 1920) and AIDS itself (a "lasting pandemic" that has infected 38 million people worldwide) – conceptually differ from epidemics, endemics, and outbreaks. The *epidemic* spreads within the borders of the same country, surpassing the ordinary numbers of contagion expected by national health organizations. The *endemic* frequently affects a certain region (the "endemic range"), affecting the inhabitants of that region, often under seasonal conditions (e.g., yellow fever in municipalities in the North region of Brazil); pursuant to art. 20, II, § 1, d, of Law n. 8.213/1991, and mischaracterizes the pathology as a work-related illness, "unless it is proven that it is the result of exposure or direct contact determined by the nature of the work" (= demonstration/presumption of an etiological link). Finally, the *outbreak* extrapolates the ordinary numbers of contagion, but reaches only geographically restricted spaces and tends to be short-lived, without seasonality (e.g., a measles outbreak in a particular school group).

6 According to the epidemiological concept defined by the Ministry of Health, community transmission comprises "[the] inability to relate confirmed cases through chains of transmission to a large number of cases or by the increase in positive tests through sentinel samples (routine systematic testing of respiratory samples from established laboratories)".

7 About the correlation between environment and quality of life, Michel Prieur asserts that "today we

In this context, the work environment, defined as the system formed by the physical, psychological, and organizational conditions that surround individuals in the performance of their professional activities, became a possible space for installation and circulation of the new coronavirus, so that aggravated risk, present in the most natural and artificial spaces, came to integrate them and decisively condition the quality of life of the workers who occupy these spaces.[8]

We can state that, in a context of anthropogenic-based community transmission (that is, through human beings), the installation and circulation of the new coronavirus in workspaces constitutes a clear assumption of labor-environmental pollution, to the extent that this possibility ends up establishing a state of "systemic imbalance in the arrangement of working conditions [and] the organization of work" in these spaces, causing "intolerable risks to safety, and to physical and mental health […] thus, the healthy quality of life" (MARANHÃO, 2017, p. 234). Or, according to Law 6.938/1981[9], a state of "degradation of environmental quality resulting

are in the process of consolidating the reflections have long been formulated by naturalists, about man as a living species is part of a complex system of relationships and of interactions with their natural environment. As a result, every human action has the power to bring about direct and indirect effects. Thus, the environment is the set of factors that influence the environment in which man lives. […] This generic term, however, needs to be perfected and complemented by a series of other words usually used in often close meanings, namely, *ecology*, *nature*, *quality of life*, and *place of life*

[…] The expression [*quality of life*] has become a kind of necessary complement to the very definition of the *environment*. It wants to express the desire to pursue the qualitative aspects of life at the expense of the quantitative aspects (standard of living) and express, clearly, that the concept of environment is not only related to *nature*, but also to man with regard to his social, work and leisure relationships" (PRIEUR, 2004, p. 1-4). In the original: "Aujourd´hui éclate au grand jour ce qui résultait depuis fort longtemps des réflexions des naturalistes et écologues, à savoir que l´homme comme espèce vivante fait partie d´un système complexe de relations et d´interrelations avec son milieu naturel. Il en résulte que toute action humaine a des effets directs ou indirects insoupçonnés. De ce fait, l´environnement est l´ensemble des facteurs qui influent sur le milieu dans lequel l´homme vit. […] Ce terme général mérite cependant d´être précisé et complété par une série d´autres vocables couramment utilisés dans sens souvent voisins : écologie, nature, qualité de la vie, cadre de vie. […] La formule [qualité de la vie] est devenue une sorte de complément nécessaire à l´environnement. Elle veut exprimer la volonté d´une recherche du qualitatif après les déceptions du quantitatif (niveau de vie) et bien marquer que l´environnement concerne non seulement la nature mais aussi l´homme dans ses rapports sociaux, de travail, de loisirs".

8 According to the concept formulated by Norma Sueli Padilha, "[the] work environment comprises the *working* habitat where the working human being spends most of his productive life providing what is necessary for his survival and development through the exercise of a working activity; [It] covers the safety and health of workers, protecting them against all forms of degradation or pollution generated in the work environment. […] In the principiological reading of the values protected by art. 225 of the Constitution, there is no doubt that among 'all', the human being is included in his capacity as a worker, because in the exercise of this condition, the worker daily submits his health and vital energy to an environment that, although artificially constructed, it must also provide them with a healthy quality of life, through the control of degrading agents that can affect their health in all its multiple aspects" (PADILHA, 2010, p. 373-375).

9 It is objected, in relation to Ney Maranhão's concept, that the "intolerability" of risks cannot be an element of the *concept* of labor-environmental pollution; rather, it is a consequence of the configuration of the labor-environmental state of anthropogenic degradation, insofar as there can be labor-environmental imbalance, with the effects of art. 14, sole paragraph, of Law 6.938/1981 –

from activities that directly or indirectly […] harm the health, safety, and well-being of the population [and] create adverse conditions for social and economic activities" (art. 3, III, *a* and *b*).

In the Brazilian legal system, the right to a balanced environment, as provided for in art. 225, *caput*, of the Constitution, covers all-natural, artificial, and cultural aspects – therefore, physical and immaterial aspects – that surround human beings and interfere with their healthy quality of life including those who integrate and condition the of their work. Hence, the Federal Supreme Court itself has already had the opportunity to expressly recognize that "the dignified existence […] necessarily permeates the defense of the environment (art. 170, VI, of CRFB/88), including the work environment (art. 200, VIII, of the CRFB/88)".[10]

And as a corollary of the right to a balanced work environment ("ex vi" of art. 225, *caput*, c.c. arts. 193 and 200, VIII, of the Federal Constitution), *Lex legum* devoted, in its art. 7, XXII, the fundamental social right to "*reduce the risks inherent to work*", which (a) carries out in the labor plan the legal-environmental principle of continuous improvement or *regressive minimum risk* (OLIVEIRA, 2011, p. 148), (b) is held by all workers active in the national territory (or, outside it, if in connection with the Brazilian legal system[11]), whether they are subordinate or not, and (c) translates, for business owners, into the duties of anticipation, planning, and prevention of labor-environmental risks. In summary, these duties require the adoption of all measures and instruments available on the market, in accordance

objective civil liability –, *even in cases where the employer strictly observes the tolerance limits of the legislation on health and safety at work* (CLL, decrees, RNs, etc.), in case the artificially created risks are added, for example, external risks of natural origin (*e.g.*, in the deleterious combination between the substances released or the materials supplied, on the one hand, and the atmospheric conditions of the place, on the other). As an example, we can mention the case judged by the 1st author of this article, with the 1st Labor Court of Taubaté/SP, in which a certain guard had been hit by an atmospheric electrical discharge, during an external night patrol, on account of – among other factors –boots with steel toe caps provided to him by his employer. In this example, it cannot be stated that the supply of boots has engendered, on the part of the business owner – the "polluting subject" to whom the harmful result is attributed – an "intolerable" risk for the employee or for the environment. However, because there was a degradation of the conditions of labor-environmental safety with the *combination* of internal and external risks – and, therefore, there was the state of pollution –, it is possible to say, "*a posteriori*" (and not "*a priori*"), that the *combined* risks were legally intolerable. This objection was presented to Maranhão during the defense of his Doctoral Thesis (which originated the book), in a qualified thesis committee composed by the University of São Paulo.

10 BRASIL: SUPREMO TRIBUNAL FEDERAL. RECURSO EXTRAORDINÁRIO N. 664.335/SC. RELATOR: Ministro Luiz Fux. Plenário. DJ: 12.2.2015.

11 V., *e.g.*, Law 7.064/1982, art. 3º, II. *In verbis*: "The company responsible for the employment contract of the employee transferred [abroad] will ensure, regardless of compliance with the legislation of the place where the services are performed: […] II – the application of the Brazilian labor protection legislation, insofar as is not incompatible with the provisions of this Law, when more favorable than territorial legislation, in the set of rules and in relation to each matter".

with the state of the art, that are economically viable and technologically capable of promoting the elimination or mitigation of threats to life, psychophysical integrity, and workers' health, to prevent the occurrence of any vicissitudes (WERNER, 2001, p. 335-340).

In line with the constitutional directive, Convention n. 155 of the ILO, ratified by Brazil (Decree No. 1,254/1994) – and internalized with the force of supra-legality (thanks to the understanding of RE n. 466,343 and RE n. 349,703, among others[12]) –, establishes in its arts. 16 to 18 that companies are required to ensure the safety of their operational processes in relation to the psychophysical integrity of their workers, as well as to implement all appropriate measures, according to the best available technique, to eliminate or minimize the risks existing in their work environments, including the elaboration of procedures to deal with urgent situations (BECHARA, 2019, p. 143).[13]

Therefore, in light of the concept of the work environment contemplated by the Federal Constitution of 1988, as well as the constitutional and conventional provisions that ensure its health to safeguard the life, health, and safety of workers, it is worth mentioning: the entry of new coronavirus in the workplace, in a context of community transmission, represents an effective risk to destabilize the balance of working conditions and the quality of life of workers, configuring a typical hypothesis of labor-environmental pollution (FC, art. 200, VIII, cc Law 6.983/1981, art. 3, III, *a* and *b*), once the internal contamination is consummated.

It should also be noted that, according to the Law n. 6.938/81, the polluter is classified in its art. 3, IV, objectively, as "*an individual or legal entity, governed by public or private law, directly or indirectly responsible for an activity causing environmental degradation*". Thus, when *providing*

12 Both gave rise to Binding Precedent n. 25, by which "[it is] unlawful the civil arrest of an unfaithful depositary, whatever the type of deposit". As in art. 5th, LXVII. However, art. 7, XXII is also found in Title II of the Constitution and contains a fundamental human right. In the first of the cited judgments (winning vote), we read the following: "[…] given the unequivocal special character of international treaties that address the protection of human rights, it is not difficult to understand that their internalization in the legal system, through the procedure of ratification provided for in CF/1988, has the power to paralyze the legal effectiveness of any and all infra-constitutional normative discipline conflicting with it. […]" (RE 466.343, referee. Min. Cezar Peluso, vote of Min. Gilmar Mendes, Plenary, j. 3-12-2008, DJE 104 of June 5, 2009, Item 60).

13 "Art. 16 – 1. Employers shall be required, as far as is reasonable and possible, to ensure that workplaces, machinery, equipment and operations and processes under their control are safe and do not involve any risk for the safety and health of workers.

Art. 17 – Whenever two or more companies simultaneously develop activities in the same workplace, they will have the duty to collaborate in the application of the measures provided for in this Convention.

Art. 18 – Employers should provide, where necessary, measures to deal with emergencies and accidents, including adequate means for administering first aid*"*.

opportunities for the enthronement and circulation of the new coronavirus in the artificially organized environment, under conditions of community transmission, there is a *prohibited* or "*intolerable*" *risk* – that is, a risk not inherent to the activity and disapproved by the legal system – that converts the employer into *polluter*, for the purposes of art. 3rd, IV (although *indirectly*, such as by the financing entities, licensors, or "opportunizers" in general[14]), there is or is not "fault" for the internal contamination. Hence, service takers, in general, are obliged, under arts. 7, XXII, and 225, *caput*, of the Federal Constitution and arts. 16 to 18 of Convention n. 155 of the ILO, to implement concrete prevention programs and measures aimed at eliminating or minimizing the threats derived from the new coronavirus.

And, in this precise order of ideas, they appear unconstitutional, due to infringement of art. 7, XXII, of the Federal Constitution (minimum regressive risk), arts. 15, 16, 17, 29, and 31 of Provisional Measure n. 927, of 22.Mar.2020. Art. 29 of PM 927/2020, in particular, was the most glittering of the pearls that crowned the pantomime rehearsed in that diploma, regarding the purpose of protecting the worker (since the objective of preserving employment, expressed in the *caput* of article 1, is necessary to preserve decent employment[15]) and respect for the constitutional order (since article 2 states, as a validity perimeter for written individual agreements – and, presumably, for all possibilities engendered by the provisional measure – "*the limits established in the Constitution*").

Indeed, if in early March 2020 the Ministry of Health publicly recognized the state of community transmission of the new coronavirus throughout the national territory, how could it be reasonable for the Federal Executive Branch to issue, at the end of the same month, a normative act able to suspend "*the obligation to carry out occupational, clinical and complementary medical examinations, except for dismissal examinations*" (and the latter, moreover, only if there has been no dismissal examination

14 Indirect polluter refers to someone who "does not perform the activity directly causing the damage", but contributes to the injury, as long as they are bound by a necessary "duty of safety"; and this will be the case, if we understand that the employer does not "cause" the contamination (because the virus is already circulating externally, under conditions of community transmission), but *gives it opportunities*, since the work environment becomes a infecting "resonance box" (or, in the expression that later became popular, a "*covidary*").

15 And "decent work", according to the International Labor Organization, is all productive and quality work, equally accessible and adequately remunerated, performed in conditions of freedom, equity, **security**, and human dignity, able to contribute, in a fundamental condition, to overcome poverty, reduce social inequalities, guarantee democratic governance and sustainable development. The concept was formalized in the international legal order in 1999, and then reaffirmed in 2008, at the 97th International Labor Conference, with the approval of the "ILO Declaration on social justice for a fair globalization" (ILO, 2020).

carried out for less than one hundred and eighty days), pursuant to art. 15, *caput* and § 3, of PM 927/2020? How this suspension – which significantly increases the risks of internalization of the new coronavirus in corporate environments (when the constitutional command is directed towards risk *reduction*) – could contribute to the flattening of the contamination curves, which are increasingly exponential throughout the country (FELICIANO; TRINITY, 2020)? What can we say, in this context, of the responsibility of the employer who, dispensing with the admission medical examination – as authorized by art. 15 – come to include in their staff a worker contaminated by SARS-Cov-2 who, at the time of admission, presented a good part of the symptoms of COVID-19? Will it later be able to exempt itself from civil liability arising from the contamination of other employees?

The answer is negative (and, for this reason, the importance of PCMSO coordinators making large use of the hypothesis of article 15, § 2). PM 927/2020 does not introduce any "immunity" against civil liability, unlike the recent PM 966/2020; and, in our view, it could not even do it, from a constitutional point of view, thanks to the rule of art. 7, XXVIII, 2nd part, of the CRFB ("[…] *insurance against accidents at work, borne by the employer, without excluding the indemnity to which the latter is obliged* […]"). Furthermore, if civil liability is established due to the degradation of the hygiene and biological safety conditions of the work environment – by the furtive introduction of the new coronavirus, made possible by the absence of pre-employment or even periodic medical examinations –, it will not be appropriate to discuss the fault of the employer, "*ex vi*" of art. 14, § 1, of Law 6.938/1981.[16] It will be of no use to the employer to state, therefore, that it only waived medical examinations due to "the law" – *rectius*: PM 927/2020 – authorized it to do so (although authorizing it, in fact and in law, for administrative purposes). After all, according to Leme Machado, "*there may be pollution even if environmental standards are observed*", that is, even if the subject strictly adheres to the limits of the law (MACHADO, 1996, p. 358).

The illegality of pollution – including labor-environmental pollution – derives from degradation (Law 6.938/1981, art. 3, II: "*adverse alteration of the characteristics of the environment*"), not only from non-compliance with laws, normative acts, or regulatory and administrative postures. And,

16 *In verbis:* "Without preventing the application of the penalties provided for in this article, the polluter is obliged, regardless of the existence of fault, to indemnify or repair the damage caused to the environment and third parties affected by its activity. The Federal and State Public Prosecutor's Office will have the legitimacy to file civil and criminal liability action for damages caused to the environment".

by enhancing the contexts of degradation of the work environment – diametrically opposing the normative guidelines of arts. 7, XXII, and 225, *caput*, of the CRFB –, the aforementioned articles of PM 927/2020 (15, 16, 17, 29, 31) would, *tout court,* suffer from unconstitutionality (or, at least, would challenge interpretations in accordance with the Constitution).

Nevertheless, the Federal Supreme Court – which has the maximum function of guarding the integrity of the constitutional text –, urged to rule on all those provisions, recognized unconstitutionality only in the texts of arts. 29 and 31; not in the other precepts. Indeed, on April 29, 2020, when judging the Precautionary Measure in ADI 6342-MC/DF (filed by the Democratic Labor Party), the FSC Plenary decided to suspend only the effectiveness of arts. 29 and 31 of PM 927/2020; as for the others, it endorsed the rejection of the injunction, as pronounced by Justice Marco Aurélio Mello on March 26, 2020. Thus, "*omnium earum iudicium habemus*". Months later, PM 927/2020 expired, more precisely on July 19, 2020, according to the Declaratory Act of the President of the Board of the National Congress n. 92, of July 30, 2020.

A little over a year later, the Federal Government issued PM 1,045, dated 4.27.2021, again "on complementary measures to address the consequences of the public health emergency of international importance arising from the coronavirus (covid-19) within the scope of labor relations", reinvigorating several provisions of PM 927/2020. However, as to the aspects mentioned above, it was more parsimonious and avoided reproducing the constitutionally flawed texts.

2 ABANDONING THE GRAMMATICAL RESTRICTIONS AND THE SEMANTIC CAVES: THE TRINARY LEGAL PANACEA (HOLISM, PREVENTIONISM, SOLIDARISM)

As anticipated – and also in light of Convention n. 155 of the ILO –, the measures that must be implemented by business owners, in safeguarding the working environment, and the psychophysical integrity of workers, are not limited to legal and regulatory determinations issued by the federal, state, municipal or district governments, which cover the concrete measures expected for this critical moment. Nor is there a full exoneration of responsibilities (especially administrative and civil ones) just because these determinations have been complied with. In other words, any attachment to strict formal legalism will be mistaken – giving rise to a

reprehensible legal reductionism. Moreover, it would also be mistaken to propagate that only the positive behaviors expressly in the normative texts would be required, or even to advocate the lack of legal support to impose any other prevention/precautionary conducts that are more comprehensive than those described (actually, *not* described) in PM 927/20202 and related legislation to employers and service providers. A similar understanding, typical of the "ostrich syndromes" that seasonally affect Brazilian leaders, does not make any sense in a legal system that recognizes the normative force of the principles.[17]

On the contrary, arts. 16 to 19 of Convention n. 155 of the ILO (which is also a "law" in a material sense) imposes on business owners – also supported by arts. 7, XXII, and 225, *caput*, of the Federal Constitution – the duty to protect, to prevent (= prevention/precaution) or to provide environmental indemnity. Through these duties, the risk managers of economic activities (that is, business owners and the like) must plan, anticipate, and implement the measures that prove necessary, in the face of concrete cases, to avoid or minimize situations of potential contagion of workers by the new coronavirus.[18] Furthermore, these obligations derive from the constitutional principle of solidarity, which generates reciprocal responsibilities between people (FC, art. 3, I and IV, 1st part), from universal duties of protection in relation to vulnerable subjects (FC, art. 3, III, 1st part), and the recognition of diversity and social plurality (FC, art. 3rd, III, 2nd part, and IV); in the legal-environmental plan, this is expressed as sharing the

17 As Gustavo Zagrebelsky points out, "[l]os principios […] no imponen una acción conforme con el supuesto normativo, como ocurre con las reglas, sino una <<toma de posición>> conforme con su *ethos* en todas las no precisadas ni predecibles eventualidades concretas de la vida en las que se puede plantear, precisamente, una <<cuestión de principio>>. Los principios, por ello, no agotan en absoluto su eficacia como apoyo de las reglas jurídicas, sino que poseen una autónoma razón de ser frente a la realidad. […] La realidad, al ponerse en contacto con el principio, se vivifica, por así decirlo, y adquiere valor. En lugar de presentarse como materia inerte, objeto meramente pasivo de la aplicación de las reglas, caso concreto a encuadrar en el supuesto de hecho normativo previsto en la regla – como razona el positivismo jurídico – , la realidad iluminada por los principios aparece revestida de cualidades jurídicas propias. El valor se incorpora al hecho e impone la adopción de <<tomas de posición>> jurídica conformes con él (al legislador, a la jurisprudencia, a la administración, a los particulares y, en general, a los intérpretes del derecho. El <<ser>> iluminado por el principio aún no contiene en sí el <<deber ser>>, la regla, pero sí indica al menos la dirección en la que debería colocarse la regla para no contravenir el valor contenido en el principio" (ZAGREBELSKY, 2005, p. 118).

18 In the words of Carlos Hugo Preciado Domènech, "[n]o sólo la libertad de organización del empresario, sino que también la libertad de emprender actividades peligrosas y la libertad de especificación de la prestación laboral y el poder de dirección del empresario se ven fuertemente limitados por la normativa de prevención de riesgos laborales.

[…] La prevención de riesgos se integra de esta forma en la adopción de toda decisión empresarial […], y a todos los niveles de decisión y gestión de la empresa […], por lo que se integra – limitándola – en el núcleo mismo de la libertad organizativa de la empresa" (DOMÈNECH, 2018, p. 534).

duties of defense and preservation of the environment – including work – for present and future generations, in which the Public Power and the community are solidary (FC, art. 225, *caput*), including employees and employers (CASALI, 2006, p. 236-237).

Having formulated these assumptions, we can state that, in general terms, the first obligation of business owners, given the risks of introduction and proliferation of the new coronavirus in the workplace, consists in drawing up a comprehensive plan, within the scope of the respective PCMSO, capable of (i) anticipating and register the possibilities of entry of that microorganism in their establishments; and (ii) provide for collective and individual emergency measures that will be implemented in the production units to eliminate or minimize the possibility of contagion by SARS-Cov-2 by workers, in line with the provisions of art. 18 of Convention no. 155 of the ILO.

In this direction, the RN-1 of the extinct Ministry of Labor (and, currently, "of the" Special Secretariat for Social Security and Labor of the Ministry of Economy), with the new wording given by Ordinance n. 6.730, published in the Official Gazette of the Federal Government of March 9, 2020, establishes in its item 1.4.1 that business owners are obliged to adequately and realistically assess and anticipate the environmental risks present in the workplace, as well as the concretely act to eliminate or minimize such risks, through (i) the reorganization of production factors; (ii) the establishment of collective protection measures, and (iii) the provision of personal protective equipment.[19]

Second, the general duty of labor-environmental indemnity underlying the aforementioned constitutional and conventional provisions imposes on business owners the intramural implementation of standard emergency planning measures nationally recommended for the entire population, in compliance with the technical recommendations issued by the health authorities to fight the proliferation of the new coronavirus. This means adapting, to the needs and concrete work-environmental conditions, the guidelines aimed at the general public, since the general risks of contamination (= general risk of life) increase in collective workspaces, where individuals share the same space and use equipment and inputs collectively

19 "1.4.1 The employer is responsible for: a) complying with and enforcing legal and regulatory provisions on occupational health and safety; […] e) determine procedures that must be adopted in the event of an accident or illness related to work, including the analysis of its causes; […] g) implement prevention measures, after hearing the workers, according to the following order of priority: I. elimination of risk factors; II. minimization and control of risk factors, with the adoption of collective protection measures; III. minimization and control of risk factors, with the adoption of administrative or work organization measures; and IV. adoption of individual protection measures".

for long periods. In this regard, some universally applicable health guidelines that are fully valid for the workplace include:

a) the use of collective and individual biological safety equipment specific to the risks of the pandemic, such as, notably, the installation of fixed or mobile alcohol gel containers (for collective use) and the provision of protective masks (not necessarily surgical masks) for group interaction;
b) the minimum distance of approximately two meters between workers, to avoid the aspiration of saliva and coryza droplets excised in coughing, sneezing, or even in air exhalation;[20]
c) the massive installation and availability of equipment and supplies for frequent hand washing (basically sinks, taps with running water, soap, and disposable towels);
d) the ventilation of environments and the optimization of air circulation, avoiding the confinement of individuals in enclosed spaces;
e) the constant cleaning of benches, equipment for collective use, and individual instruments used in performing regular activities;[21]
f) the immediate removal of subjects belonging to "risk groups" (people with comorbidities, people over 60 years old, pregnant women, diabetics, etc.);[22] and
g) the immediate isolation of subjects with symptoms that reasonably allow the assumption of contamination by SARS-Cov-2 (and that is why admission, periodic and complementary medical examinations would be so necessary, as mentioned above).[23]

20 Note that these first two measures constitute, for the Centers for Disease Control and Prevention of the United States of America (CDC), the main measure to combat the new coronavirus, as read in its respective portal: "There is currently no vaccine to prevent coronavirus disease 2019 (COVID-19). […] The best way to prevent illness is to avoid being exposed to this virus. […] The virus is thought to spread mainly from person-to-person. Between people who are in close contact with one another (within about 6 feet). Through respiratory droplets produced when an infected person coughs or sneezes. These droplets can land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs" (CDC, 2020).

21 The preventive guidelines of the Oswaldo Cruz Foundation (FIOCRUZ) for combating the new coronavirus (in relation to the general population) recommends: "- Wash your hands, especially before eating and after coughing or sneezing; – If you don't have soap and water, use alcohol-based hand sanitizer; – Avoid touching eyes, nose and mouth with unwashed hands; – Use a disposable handkerchief for nasal hygiene; – Cover your nose and mouth when sneezing or coughing with a disposable tissue or the inside of your elbow (never your hands); – Do not share objects of personal use, such as cutlery, plates, glasses or bottles; – Keep environments well ventilated; – Clean and disinfect frequently touched objects and surfaces, such as cell phones; – Avoid contact with people who show signs of the disease; – Avoid leaving the house; – Avoid crowded places; – Sick people should stay at home and, if the disease gets worse, look for the basic health unit; – Vulnerable groups, such as the elderly, children, pregnant women, people with chronic diseases or with immunodeficiency, should be more attentive to clinical manifestations; – Health professionals must use standard precaution, contact and droplet measures (surgical mask, gloves, non-sterile gown and protective glasses)" (COMO SE PREVENIR…, 2020).

22 See footnote n. 27, *below.*

23 See footnote n. 27, *below.*

Regarding this range of indispensable labor-environmental care (and, in particular, regarding the necessary regular cleaning of collective and individual work equipment), the International Health Organization, in its publication dedicated to adapting workplaces to the risks arising from the new coronavirus (*Getting your workplace ready for COVID-19*), highlights that people can become infected, in the work environment, from droplets of saliva or runny nose deposited on machinery and furniture in common use or simply by breathing them in the air, which reinforces the need for a safe distance between workers.[24]

In support of the impositions described above – which, we emphasize, are no longer mere sanitary "recommendations" and become genuine legal obligations for the employer[25], due to the professional risk engendered in the interest of economic activity (principle of alterity: CLL, art. 2º, *caput*) and its duty to guarantee the labor-environmental balance (CRFB, arts. 7, XXII, 225 and 200, VIII) –, the International Labor Organization recently published the report entitled *Las norms de la ILO y el COVID-19 (Coronavirus)*, in which it reiterates the obligations for business owners arising from Convention n. 155, which include the duties to: (i) implement all possible measures, according to the best technique, to minimize the risks inherent to occupational exposure to the new coronavirus, including through the provision of personal protective equipment; (ii) provide workers with adequate information about such risks; (iii) establish emergency procedures for the general situation of the pandemic (or for specifically identified special cases of internal community contamination);

24 "**How COVID-19 spreads**. When someone who has COVID-19 coughs or exhales they release droplets of infected fluid. Most of these droplets fall on nearby surfaces and objects – such as desks, tables or telephones. People could catch COVID-19 by touching contaminated surfaces or objects – and then touching their eyes, nose or mouth. If they are standing within one meter of a person with COVID-19 they can catch it by breathing in droplets coughed out or exhaled by them. In other words, COVID-19 spreads in a similar way to flu" (WHO, 2020).

25 This statement should be understood as follows: although there is no provision of law establishing verbatim that workplaces must contain sinks with running water and soap or equivalent for workers to carry out hand hygiene, or imposing the employer's obligation to provide protective masks against saliva droplets, cases of contamination by SARS-Cov-2 in the work environment – which may even be presumed (thus, for example, in view of the existence of other employees already contaminated in the same environment), notably after the timely suspension of the effectiveness of art. 29 of MP 927/2020 in the records of ADI 6342-MC/DF – will possibly lead to **civil liability of the employer** for moral and material damages arising from that contamination. Upon recognizing it, the Labor judges will be stating that, between the lines of their judgments – or even verbatim, as seems to be the case – it is *that the general duty of protection* ***included*** *such obligations*, although not expressed in specific legislation, as accessory duties of the individual employment contract (like many others that doctrine and jurisprudence are already well aware of, for employee or employer, although they are not contained in contractual clauses or legal provisions: the duty of information, the duty of loyalty, the duty of not competition etc.).

and (iv) notify cases of contamination to health authorities.[26]

Similarly, the Occupational Safety and Health Administration (OSHA-US), the agency responsible for occupational health and safety policies in the United States of America, has published guidelines designed to promote the organization of workplaces in light of the occupational hazards posed by the new coronavirus. It is important to note that the agency appoints, as steps for prevention, exactly (i) the "*development of an infectious disease preparedness and response plan*" and (ii) "the implementation of basic infection prevention measures" based on the guidelines issued by the health authorities, [27] in line with what was discussed above, as a

26 "**Seguridad y salud en el trabajo.** ¿Qué deberían hacer los empleadores durante el brote? […] Los empleadores tendrán la responsabilidad global de asegurarse de que se adopten todas las medidas de prevención y protección factibles para reducir al mínimo los riesgos profesionales (Convenio sobre seguridad y salud de los trabajadores, 1981 (núm. 155). Los empleadores tienen la responsabilidad de suministrar, cuando sea necesario y en la medida en que sea razonable y factible, ropas y equipos de protección apropiados sin costo alguno para el trabajador. Los empleadores tienen la responsabilidad de proporcionar información adecuada y una formación apropiada en el ámbito de la SST; de consultar a los trabajadores sobre aspectos de SST relacionados con su trabajo; de prever medidas para hacer frente a situaciones de urgencia; y de notificar los casos de enfermedad profesional a la inspección del trabajo" (OIT, 2020).

27 According to OSHA guidelines: "If it does not already exist, [the employer should] develop an infectious disease preparedness and response plan that can help guide actions to protect against COVID-19. […] Stay abreast of guidelines from federal, state, local, tribal, or territorial health agencies and consider how to incorporate these recommendations and resources into workplace-specific plans. […] Follow federal and state, local, tribal, and territorial (SLLT) recommendations regarding the development of contingency plans for situations that may arise as a result of outbreaks such as: Increased employee absenteeism;
The need for social distancing, staggered work shifts, downsizing operations, remote service delivery and other exposure reduction measures. Options for conducting critical operations with a reduced workforce, including cross-training workers on different tasks in order to continue operations or provide peak services. Interrupted supply chains or delivery delays. […]
For most employers, worker protection will depend on an emphasis on basic infection prevention measures. As appropriate, all employers shall implement good hygiene and infection control practices, including: Promoting frequent and thorough hand washing, including providing workers, customers and workplace visitors with a place to wash their hands. If soap and running water are not readily available, provide alcohol-based hand wipes that contain at least 60% alcohol. Encourage workers to stay home if they are sick. Encourage respiratory etiquette, including coughs and sneezes. Provide customers and the public with tissue and trash receptacles.
Employers should explore whether they can establish policies and practices, such as flexible workplaces […] and flexible working hours (e.g., staggered shifts), to increase the physical distance among employees and between employees and others if state and local health authorities recommend the use of social distancing strategies. […] Maintain regular housekeeping practices, including routine cleaning and disinfecting of surfaces, equipment, and other elements of the work environment. […] Products […] are expected to be effective against SARS-CoV-2 based on data for harder-to-kill viruses. Follow the manufacturer's instructions for use of all cleaning and disinfecting products (eg concentration, application method, and contact time, PPE). […] Employers must develop policies and procedures for employees to report when they are ill or have symptoms of COVID-19. Where appropriate, employers should develop policies and procedures for immediately isolate people who exhibit signs and/or symptoms of COVID-19 and train workers to implement them. […] Take steps to limit spread of respiratory secretions of a person who may have COVID-19. Provide a face mask, if feasible and available, and ask the person to wear it. […] Protect workers in close contact (i.e., within six feet of) a sick person or who has prolonged/repeated contact with such persons. […] Installating high-efficiency air filters. Increasing ventilation rates in the work environment.
Installating physical barriers such as clear plastic sneeze guards" (OSHA, 2020, p. 9-14).

result – between us – of arts. 7, XXII, and 225, *caput*, c.c. art. 200, VIII, of the Federal Constitution or, yet, of Convention n. 155 of the ILO.

If these essential obligations are not complied with by the business owners, there will be the installation of a prohibited risk in the work environments they manage, with environmental degradation of an anthropogenic basis that allows them to be considered polluted – including for the purposes of Law n. 6.938/1981 – potentially compromising the life, health, psychophysical integrity, or well-being not only of workers (subordinate or not) but also of the entire surrounding community, especially in the current context of community transmission of the new coronavirus.[28] Business establishments cannot be transformed into infectious "resonance boxes" (see footnote 19 above); or neither in "virus breeding ground", in the most common expression of sanitarists (v., *e.g.*, GONTIJO, 2020). And the primary responsibility for this general condition of asepsis, especially from a legal point of view, lies precisely with the business owner (or whoever is equivalent to him: art. 2, § 1, of the CLL).

In this regard, employer omission regarding the anticipation, prevention, and effective combat of the risks represented by the enthronement of the new coronavirus in their establishments – and this applies to all activities involving workers, whether business workers or not[29] – subject them under the terms of art. 14, § 1, of Law n. 6.938/81, to strict liability (that is, regardless of the existence or proof of subjective fault of the employer's agents) for all physical and psychological damage that, on behalf of COVID-19, may affect workers infected with SARS- Cov-2, including due to non-compliance with widely publicized sanitary guidelines for the containment of contagions.

A relevant obstacle to the assessment of this responsibility presented itself with the content of art. 29 of PM 927/2020, establishing that "cases of contamination by the coronavirus (covid-19) will not be considered

28 Regarding the general duty to prohibit the exposure of third parties to risks, Karl Larenz defines it as follows: "A la transgresión de un derecho ajeno, particularmente a la lesión corporal o de la salud de otro (mediante acto positivo) se equipara la *no evitación de un daño* cuando se da o existe un deber jurídico de evitar su causación […]. El daño producido ha de imputarse objetivamente al obligado, como ´consecuencia´ de su inactividad, siempre que hubiese podido evitarse si él hubiese actuado conforme a su deber. No existe un deber general a preservar a otros ante daños posibles, ya que un deber tan amplio no podría prácticamente cumplirse; sería ilimitado. […] En cambio, sí existe un deber de evitar un riesgo allí donde alguien está obligado por la ley (p. ej., al cuidado de ciertas personas) o por medio de contrato a la protección y vigilancia de otro (como, p. ej, el profesor de natación, el enfermero, la directora de un colegio de párvulos)" (LARENZ, 1959, p. 591-592).

29 The ILO Convention n. 155 applies to all areas of economic activity (art. 1.1); and, pursuant to its art. 3.a, "the expression 'areas of economic activity' covers all areas in which there are employed workers, including public administration".

occupational, except upon proof of the causal link". An inexplicable reversal of the burden of proof was created to the detriment of the worker, contrary to the universal trend of Social Security Law (increasingly permeable to presumptions of causality, as seen, for example, in art. 21-A of the Law 8.213/1991, which deals with the technical epidemiological nexus). But, as explained, its effectiveness was suspended by Excelso Pretorio, in a session last April 29, exactly because it would escape the greater purpose of PM 927/2020 – in the words of Minister Alexandre de Moraes, "to make the social value of work compatible, perpetuating the employment relationship, with free enterprise, maintaining, even if shaken, the financial health of thousands of companies" – and would engender unjustifiable difficulties for workers from the most diverse segments, including those engaged in essential activities (Decree No. 10.282/2020), constantly exposed to intense risks of contamination. In conceptual and practical terms, however, art. 29 would in no way impede the application of art. 14, § 1, of Law n. 6.938/1981 since this last provision addresses the forensic unenforceability of demonstrating the subjective element of the defendant's action or omission (= intent or fault for negligence, malpractice or imprudence), not the question of causality (or, more broadly, with the nexus of normative imputation) (JOSSERAND, 1897, p. 7-53).

As for the causal link itself, once the effectiveness of art. 29, the previous probationary regime remains, which, in our view, may well be linked to art. 20, § 1, *d*, of Law 8.213/1991, for social security or labor effects. By this last provision, it is not considered a work-related illness, for the purposes of art. 20, II, of Law 8.213/1991, "the endemic disease acquired by an insured person living in the region in which it develops, unless there is proof that it is the result of exposure or direct contact determined by the nature of the work".

The premise has full application to the case of pandemics, which, after all, do not differ ontologically from endemic ones, if not for the geographic and temporal dimensions (see footnote 5 above): "*ubi eadem ratio ibi idem ius*". Hence, with evidence that the worker infected with SARS-Cov-2 was exposed to contamination as a result of their work – think, eg, in the condition of physicians, nurses, and technicians or nursing assistants, in the front line of combating the new coronavirus (Decree No. 10.282/2020, art. 3, § 1, I), or even in the situation of workers activated in companies in which intramural community contamination has already been detected –, one can immediately assume the causal link between the affection and the work

activity (CLL, art. 818, § 1), and the employer is responsible for providing the opposite proof.

On the other hand, the lack of objective care on the part of business owners can subject them, on a personal level, even to criminal liability, for offenses, e.g., in the criminal types of articles 267 and 268 of the Penal Code, which deal respectively with the crimes of "causing an epidemic, through the propagation of pathogenic germs" and "infringing a determination of the public authority, aimed at preventing the introduction or spread of a contagious disease" or, even, in criminal misdemeanor of art. 19, § 2, of Law n. 8.213/1991 ("[…] failing the company to comply with occupational safety and hygiene standards") (FELICIANO, 2009, p. 339-375). In these hypotheses, of course, the criminal conviction is preceded by some typical guarantees of Criminal Law and Criminal Procedure, such as criminal taxation ("*nullum crimen, nulla poena sine lege certa*"), the prohibition of analogy in malam partem ("*nullum crimen, nulla poena sine lege stricta*") (TOLEDO, 1991, p. 171), of the personality of the penalty and "in doubt, for the accused" (*in dubio pro reo*, including in the evidentiary field: CPP, art. 486, VII). But even so, the legal possibility of criminal reprimand is undeniable, for extreme cases in which business owners intentionally refuse to implement simple measures designed to minimize the risks of spreading the new coronavirus or to provide for the compulsory closure of their establishments in hypotheses of serious and imminent risk.

And, in the same vein, in the face of critical frames of clear internal community contamination or of serious and imminent risk to the life, health, or physical integrity of workers, the suspension of business activities, imposed administratively (CLL, art. 161, *caput*) or even judicially (Statement No. 60 of the I Conference on Material and Procedural Labor Law[30]) is a measure that is strictly necessary. It finds support not only in consolidated art. 161, but also in art. 14, IV, of Law n. 6.938/81 and, above

30 PROHIBITION OF ESTABLISHMENT AND RELATED DIRECT ACTION IN LABOR JUSTICE. DYNAMIC ALLOCATION OF THE BURDEN OF PROOF. I – The interdiction of establishment, service sector, machinery or equipment, as well as the embargo of work (art. 161 of the CLL), may be requested in the Labor Court (art. 114, I and VII, of the CRFB), in head office or injunction, by the Public Ministry of Labor, by the professional union (art. 8, III, of the CRFB) or by any person specifically legitimated for collective judicial protection in labor-environmental matters (arts. 1, I, 5 and 21 of the Law 7347/85), regardless of the administrative instance. II – In such cases, the measure may be granted [a] "inaudita altera parte", in case there is a preliminary technical report or prior proof equally convincing; [b] after a prior justification hearing (art. 12, *caput*, of Law 7347/85), if there is no preliminary technical report, but the allegation is credible, inverting the burden of proof, in light of the dynamic apportionment theory , to entrust the company with demonstrating good safety and risk control conditions". The original wording of the statement was proposed, at the time, by the 1st Author of this article.

them, in art. 170 of the Federal Constitution, which structures the Brazilian economic order on the principles of the "social value of work", the "social function of property" and the "protection of the environment", and attributes to it, as a primary aim, not the mere attainment of financial results at the expense of the life and safety of workers and the community in general, but the dignified existence of all.[31]

Finally, it is worth mentioning that Convention n. 155 of the ILO, in safeguarding the very relevant legal assets protected by it (and equally protected by articles 7th, XXII, and 225, *caput*, of the Federal Constitution), legitimizes the work stoppage by the workers themselves, *ex vi* of their arts. 13 and 19, *f*, given the finding of a serious and imminent risk to their life or health. The same is provided for in the State of São Paulo, article 229, § 2, of the state Constitution. This is precisely the case when workers are facing the imminent risk of community transmission of the new coronavirus in the work environment, given the undeniable severity of COVID-19 (whether due to the very high rates of transmission or the relative lethality – especially in risk groups–, or because of the lack of known vaccine).

This right of resistance, if exercised collectively, will constitute a clear hypothesis of an environmental strike, to which the rule of art. 7, *caput*, in fine, of Law 7.783/1989, as workers are guaranteed the full labor rights of the period ("without prejudice to any rights"), regardless of collective bargaining or the exercise of the normative power of the Labor Court. Thus, the environmental strike is the collective manifestation of a constitutional right of resistance that "has the purpose of protecting the safety, health, and hygiene of workers in the face of environmental degradation" (ARAÚJO; YAMAMOTO, 2017, p. 296).

FINAL CONSIDERATIONS

Contagion by SARS-Cov-2 and the consequent involvement by COVID-19 indeed configure, in the current context of community

31 Regarding this constitutional provision, Ana Frazão points out that "[the] social function of the company is a concept that was consolidated not only to prevent the anti-social exercise of business activity, but to direct it towards meeting social purposes, including through the imposition of duties on the company. […] The company's social function brings with it a proposal for rehumanization, so that individuals can be recognized as supreme values and not as mere instruments of economic activity. […] The company's social function is the corollary of an economic order that, although made up of several principles, has the common purpose of assuring everyone a dignified existence, in accordance with the dictates of social justice. That is why it concerns the company's responsibility not only towards its competitors and consumers, but also towards society as a whole" (LOPES, 2006, p. 183-281).

transmission and unrestricted circulation of the virus, a new biological and social risk, which systematically interferes with the balance of the human environment, both in its natural and artificial dimension (and, therefore, also in the work environment). This new reality demands from employers, managers of their own productive spaces, the implementation of all anticipatory measures aimed at neutralizing or minimizing the impacts of the new coronavirus. This is their duty of labor-environmental indebtedness, together with individual employment contracts.

On the other hand, internalizing SARS-Cov-2 in the work environment, transforming the establishment into an infectious resonance box, configures a state of labor-environmental degradation, caused by the human element (= anthropic base), defined as pollution by legislation (Law 6.938/1981, art. 3). In such circumstances, the employer becomes civilly liable for damages experienced by its workers if they develop COVID 19, regardless of the existence or proof of lato sensu fault (= objective civil liability, ut art. 14, § 1, of Law 6.938/ 1981); and, in the event of intent or guilt, the employer may be personally liable even for criminal offenses. Moreover, in the administrative sphere, the possibility of interdiction of the establishment arises (CLL, art. 161); and of an environmental strike, in the collective sphere (ILO Convention n. 155, arts. 13 and 19, f).

To avoid such consequences, employers, in general, must resort to planning and action measures as exceptional and important as the pandemic itself, transcending the cost-benefit logic (monetization) to, above all, aim to protect the health and psychophysical integrity of its workers to the greatest extent possible (WALKER, 2020)

We conclude with a quote from John F. Kennedy, who on one occasion attributed to Dante Alighieri – mistakenly – the assertion that, in the architecture of hell, "the hottest places are reserved for those who chose neutrality in times of crisis". There is not, in The Divine Comedy, a passage with these exact characteristics; there is, rather, reference to the vestibule containing those who, in the episode of Lucifer's rebellion, neither rebelled nor were faithful to God ("*non furon ribelli né fur fedeli*"). Nevertheless, the phrase passed to posterity and deserves our reflection.

Faced with the secular nature of the State, citizens must above all be faithful to the Constitution; and, based on it, understanding the laws and deontologically organize reality. Families around the world are currently mourning more than three million deaths. In some countries – such as Brazil – the pandemic has not even surpassed its "peak". Thousands of

more deaths will come. Right now, no shortcuts to neutrality are suitable. The primary will of democratic constitutions is the promotion of human dignity; and therefore the preservation of life. Times of crisis are not times for the cooling of fundamental rights; rather, it's time to reinforce its statement.[32] Jurists and courts must understand this fateful truth because the ultimate utility of Law is indeed the perpetuation of life and our way of being. And the alternative for those who resist will be, more often than not, the premature retreat into the vestibules of obsolescence.

REFERENCES

ARAÚJO, F. S.; YAMAMOTO, P. C. Greve ambiental e direito de resistência: a autotutela dos trabalhadores em defesa da sanidade no ambiente de trabalho. *In:* FELICIANO, G. G. *et al. Direito ambiental do trabalho:* apontamentos para uma teoria geral. v. 3. São Paulo: LTr, 2017.

AZEVÊDO, R.; GHEBREYESUS, T. A. Joint statement. *World Health Organization*, 20 abr. 2020. Available from: https://www.who.int/news-room/detail/20-04-2020-joint-statement-by-wto-director-general-roberto-azevêdo-and-who-director-general-tedros-adhanom-ghebreyesus. Access on: May 15, 2020.

BANDEIRA DE MELLO, C. A. *Curso de Direito Administrativo*. 22. ed. São Paulo: Malheiros, 2007.

32 "[…] It is noteworthy that, although the government and certain economic sectors' insistence on accelerating individual agreements is understood, overestimating supposed harmful consequences arising from the injunction granted, in particular the "rigidity" of negotiations, the fact is that it would constitute a very dangerous precedent to remove the validity of constitutional norms that guarantee fundamental rights and guarantees, given the moment of public calamity we are going through. This could only happen – and even so on a limited scale and under the supervision of the National Congress – during the decree of the States of Defense or Siege, scrupulously defined in art. 136 and 137 of the Major Law. […] Now, experience has shown that it is precisely in times of adversity that constitutional norms must be given maximum effectiveness, under penalty of serious and often irrecoverable setbacks. Sadly recurrently, the history of humanity has revealed that, precisely on these occasions, the temptation arises to suppress – even before any other measures – rights hard won during multi-secular struggles. First collective rights, then social rights and finally individual rights. Then we plunge into chaos! […] The Constitution – of course – was not designed to be in force only in good times. On the contrary, its faithful fulfillment is even more necessary in crisis situations, in which, in Jon Elster's happy metaphor, it serves as the pole to which Ulysses was attached so that he would not get lost in the mermaids' song, because it represents the ultimate barrier to protect society's basic values against the passions or interests of an occasional (Ulisses liberto: estudos sobre racionalidade, pré-compromisso e restrições. São Paulo: UNESP, 2009)" (STF, ADI 6363 MC-ED/DF, ref. Min. Ricardo Lewandowski, j. 13.4.2020 – *g.n.*).

BECHARA, E. A responsabilidade civil do poluidor indireto e a obrigação propter rem dos proprietários de imóveis ambientalmente degradados. *Cadernos Jurídicos da Escola Paulista da Magistratura,* São Paulo, year 20, n. 48, p. 137-165, mar./apr. 2019.

BENJAMIN, A. H. Responsabilidade pelo dano ambiental. *Revista de Direito Ambiental*, São Paulo, n. 9, p. 44, jan./mar. 2019.

BRASIL. Ministério da Saúde. Secretaria de Vigilância em Saúde. Centro de Operações de Emergência em Saúde Pública (COE COVID-19). *Boletim Epidemiológico*, n. 5*,* de 14 de março de 2020. Available from: http://maismedicos.gov.br/images/PDF/2020_03_13_Boletim-Epidemiologico-05.pdf. Access on: Mar. 28, 2020.

CASALI, G. M. O princípio da solidariedade e o artigo 3º da Constituição da República Federativa do Brasil. *Revista Eletrônica Direito e Política,* Itajaí, v. 1, n. 1, p. 220-238, sep./dec. 2006. Available from: http://siaibib01.univali.br/pdf/guilherme%20%20machado%20casalli%20revista%20de%20direiro.pdf. Access on: May 16, 2020.

CDC – CENTERS OF DISEASE CONTROL AND PREVENTION. *Disease or condition of the week:* Covid-19. Available from: https://www.cdc.gov/dotw/covid-19/index.html. Access on: Jun. 14, 2021.

COMO SE PREVENIR contra o coronavírus? *Fiocruz,* 16 jun. 2020. Available from: https://portal.fiocruz.br/pergunta/como-se-prevenir-contra-o-coronavirus. Access on: Mar. 27, 2020.

DINIZ, M. H. *Curso de Direito Civil Brasileiro.* v. 7. 7. ed. São Paulo: Saraiva, 1993.

DOMÈNECH, C. H. P. *Teoría general de los derechos fundamentales en el contrato de trabajo.* Pamplona: Aranzadi, 2018.

FELICIANO, G. G. Meio ambiente do trabalho: aspectos gerais e propedêuticos. *Revista do Tribunal Regional do Trabalho da Décima Quinta Região,* São Paulo, n. 20, 2002.

FELICIANO, G. G. Saúde e segurança no trabalho: o meio ambiente do trabalho e a responsabilidade civil patronal. *In*: THOME, C. F.; SCHWARZ, R. G. (orgs.). *Direito Individual do Trabalho:* curso de revisão e atualização. São Paulo: Elsevier, 2011.

FELICIANO, G. G. Refundando o Direito Penal do Trabalho: primeiras

aproximações. *Revista da Faculdade de Direito da Universidade de São Paulo*, São Paulo, v. 104, jan./dec. 2009.

FELICIANO, G. G.; TRINDADE, R. COVID-19 e direitos humanos: sob as luzes de Filadélfia. *Migalhas,* 10 maio 2020. Available from: https://www.migalhas.com.br/depeso/326480/covid-19-e-direitos-humanos-sob-as-luzes-de-filadelfia. Access on: May 15, 2020.

GONTIJO, J. Em tempos de pandemia do coronavírus, tapete por ser criadouro do microorganismo. *Estado de Minas,* 7 apr. 2020 (atualizado em 9.4.2020). Available from: https://www.em.com.br/app/noticia/bem-viver/2020/04/07/interna_bem_viver,1136140/em-tempos-de-pandemia-do-coronavirus-tapete-pode-ser-criadouro-do-mic.shtml. Access on: May 15, 2020.

GREENBERG, R. S. *et al*. *Epidemiologia clínica.* 3. ed. Porto Alegre: Artmed, 2005.

JOSSERAND, L. *De la responsabilité du fait des choses inanimés.* Paris: Arthur Rousseau, 1897.

LARENZ, K. *Derecho de obligaciones.* Tomo II. Madrid: Revista de Derecho Privado, 1959.

LOPES, A. F. A. *Empresa e propriedade:* função social e abuso de poder econômico. São Paulo: Quartier Latin, 2006.

MACHADO, P. A. L. *Direito Ambiental Brasileiro.* 6. ed. São Paulo: Malheiros, 1996.

MARANHÃO, N. *Poluição labor-ambiental.* Rio de Janeiro: Lumen Juris, 2017.

OIT – ORGANIZAÇÃO INTERNACIONAL DO TRABALHO. *Declaração da OIT sobre a Justiça social para uma Globalização Equitativa.* Genebra: OIT, 2008. Available from: https://www.ilo.org/wcmsp5/groups/public/---americas/---ro-lima/---ilo-brasilia/documents/genericdocument/wcms_336918.pdf. Access on: May 15, 2020.

OIT – ORGANIZACIÓN INTERNACIONAL DEL TRABAJO. *Las normas de la OIT y el COVID-19.* Ginebra: OIT, 2020.

OLIVEIRA, S. G. *Proteção jurídica à saúde do trabalhador*. 6. ed. São Paulo: LTr, 2011.

OPAS – ORGANIZAÇÃO PAN-AMERICANA DA SAÚDE. *Histórico da pandemia de COVID-19*, 2020. Available from: https://www.paho.org/pt/covid19/historico-da-pandemia-covid-19. Access on: Jun. 14, 2021.

OSHA – OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION. *Diretrizes para a preparação dos locais de Trabalho para o COVID-19.* Brasília, DF: SINAIT, 2020.

PADILHA, N. S. *Fundamentos constitucionais do direito ambiental brasileiro.* Rio de Janeiro: Elsevier, 2010.

PRIEUR, M. *Droit de l´environnement.* 5.ªd. Paris: Dalloz, 2004.

QUEVEDO, L. F. A contenção ao coronavírus e o factum principis no direito do trabalho. *Consultor Jurídico,* 4 abr. 2020. Available from: https://www.conjur.com.br/2020-abr-04/contencao-coronavirus-ofactum-principisno-direito-trabalho. Access on: May 16, 2020.

ROCHA, J. C. S. *Direito Ambiental do Trabalho:* mudanças de paradigma na tutela à saúde do trabalhador. 2. ed. São Paulo: Atlas, 2013.

SALEILLES, R. *Les accidents de travail et la responsabilité civile :* essai d´une théorie objective de la responsabilité délictuelle. Paris: Arthur Rousseau, 1897.

SOARES, G. F. S. *As responsabilidades no direito internacional do meio ambiente.* Campinas: Komedi, 1995.

TOLEDO, F. A. *Princípios básicos de Direito Penal.* 4. ed. São Paulo: Saraiva, 1991.

WALKER, P. *et al*. The global impact of COVID-19 and strategies for mitigation and suppression. *Science*, v. 369, n. 6502, p. 413-422, jul. 2020. Available from: https://science.sciencemag.org/content/369/6502/413. Access on: Jun. 14, 2021.

WERNER, S. *Das Vorsorgeprinzip: Grundlagen, Maßstäbe und Begrenzungen. In: Umwelt- und Planungsrecht.* Heidelberg: Verlagsgruppe Hüthig Jehle Rehm, 2001. Band 21. n. 9.

WHO – WORLD HEALTH ORGANIZATION. *Getting your workplace ready for COVID-19.* Genève: WHO, 2020. Available from: https://www.who.int/docs/default-source/coronaviruse/getting-workplace-ready-for-covid-19.pdf. Access on: Mar. 24, 2020.

ZAGREBELSKY, G. *El derecho dúctil. Ley, derechos, justicia.* 6. ed. Madrid: Trotta, 2005.

Article received on: 05/19/2020.
Article accepted on: 07/07/2021.

How to cite this article (ABNT):
FELICIANO, G. G.; EBERT, P. R. L Coronavirus in the workplace: how to face the pandemic as a real environmental risk. *Veredas do Direito*, Belo Horizonte, v. 19, n. 41, p. 89-113, may/aug. 2021. Available from: http://www.domhelder.edu.br/revista/index.php/veredas/article/view/1857. Access on: Month. day, year.