http://dx.doi.org/10.18623/rvd.v16i35.1499

THE EMPLOYER'S STRICT LIABILITY IN LIGHT OF THE CONSTITUTIONAL PROTECTION GRANTED TO THE WORKPLACE ENVIRONMENT

Pastora do Socorro Teixeira Leal[1]

Instituto de Ciências Jurídicas (ICJ)

Igor de Oliveira Zwicker[2]

Universidade Federal do Pará (UFPA)

ABSTRACT

The importance of social rights is unquestionable, whether because they are the very reason for the Federative Republic of Brazil to exist, which is founded on citizenship, human dignity, and social values of work and free initiative, whether because of its fundamental objectives of building a free, fair and supportive society, eradicating poverty and marginalization, reducing social and regional inequalities and promoting the wellbeing of all people; also because it acknowledges, on a worldwide level, the prevalence of human rights and the duty of cooperation among peoples for the advancement of humanity. Labor-environmental protection, understood based on the higher principle of dignity of human individuals, must find ways to ensure accountability of employers regarding workplace environment effects on people in all its aspects. In this sense, we propose an adequate understanding of the constitution in order to recognize, based on the scientific autonomy of Environmental Labor Law, a micro-system of strict liability in tort capable of making polluter-employers accountable when pollution of the labor environment is verified. We have

1 Post-Doctor by Universidad Carlos III de Madrid (UC3M). Doctor in Law by Pontifícia Universidade Católica de São Paulo (PUC-SP). Master in Law by Universidade Federal do Pará (UFPA). Bachelor in Law by UFPA. Undergraduate and Graduate (Mater's and Doctorate) Courses Professora for UFPA and Universidade da Amazônia (UNAMA). Labor Appellate Judge of Regional Labor Court (TRT) of the 8th Region (PA/AP). ORCID: https://orcid.org/0000-0001-5265-483X / e-mail: pastoraleal@uol.com.br

2 Doctoral Student in Law by Universidade Federal do Pará (UFPA). Mater in Fundamental Rights by Universidade da Amazônia (UNAMA). Specialist in Labor Economy and Unionism by Universidade Estadual de Campinas (Unicamp), in Labor Law and Work Process by Universidade Candido Mendes (UCAM), and in Public Service Management by UNAMA. Bachelor in Law by UNAMA. Law Professor. Court Analyst (Judiciary Area) and Legal-Administrative Advisor for the Regional Labor Court (TRT) of the 8th Region (PA/AP). ORCID: https://orcid.org/0000-0001-7554-5126 / e-mail: igor.zwicker@uol.com.br

adopted the critical-methodological and legal-propositional methods from a hermeneutic standpoint for a critical analysis capable of guiding the proposed micro-system. In the end, we have concluded that there is a practical need for its application as a way to protect and promote the dignity of human individuals.

Keywords: effectiveness; Environmental Labor Law; labor-environmental pollution; labor-environmental protection; strict liability in tort.

A RESPONSABILIDADE OBJETIVA DO EMPREGADOR À LUZ DA PROTEÇÃO CONSTITUCIONAL CONFERIDA AO MEIO AMBIENTE DO TRABALHO

RESUMO

A importância dos direitos sociais é inquestionável, seja na razão de existir da República Federativa do Brasil, fundada na cidadania, dignidade humana e nos valores sociais do trabalho e da livre iniciativa; seja em seus objetivos fundamentais, de construir uma sociedade livre, justa e solidária, erradicar a pobreza e a marginalização, reduzir as desigualdades sociais e regionais e promover o bem de todos; seja em reconhecer, em nível global, a prevalência dos direitos humanos e o dever de cooperação entre os povos para o progresso da humanidade. A tutela labor-ambiental, lida a partir do macroprincípio da dignidade da pessoa humana, deve garantir a responsabilidade do empregador quanto às afetações ocorridas no meio ambiente do trabalho, em todos os seus matizes. Nesse sentido, propõe-se uma leitura constitucional adequada para se reconhecer, a partir da autonomia científica do Direito Ambiental do Trabalho, um microssistema de responsabilidade civil objetiva apto a responsabilizar o empregador-poluidor quando se verificar a prática de poluição labor-ambiental. No que diz respeito à metodologia, adotou-se linha crítico-metodológica e jurídico-propositiva, do olhar hermenêutico a uma análise crítica capaz de orientar o microssistema proposto. Conclui-se, ao final, pela necessidade prática de sua aplicação, como forma de resguardar e promover a dignidade da pessoa humana.

Palavras-chave: *Direito Ambiental do Trabalho; efetividade; poluição labor-ambiental; responsabilidade civil objetiva; tutela labor-ambiental.*

FOREWORD

The Democratic State of Law of the Federative Republic of Brazil is based on popular sovereignty, which is the basis for the Original Constituent Power, according to which the 1988 Constitution – called Citizen's Constitution – *opted* for the principle of non-obviation of jurisdiction, so that to the Judiciary Branch, in any and every situation, has the final word on a decision.

As a word it is a *sign* open to interpretation, also by *mutation*, where the semantics of the text is altered, the meaning is changed without the words being actually changed, so the judges in general had to create a suitable hermeneutics to protect and promotes the dignity of the human individual.

The Labor Court, by constitutional delegation, is responsible for prosecuting and judging actions arising from labor relations. However, in cases of damage to the workplace environment, labor judges have not given adequate hermeneutics, especially in cases where it is attempted to make the employer-polluter accountable on a civil and labor basis.

Thus, based on the methodological criteria of a critical-methodological and legal-propositional approach, this paper analyses at the hermeneutics of legislation, based on the Constitution of the Federative Republic of Brazil and international human rights treaties ratified by Brazil, to propose an autonomous and independent micro-system of Environmental Labor Law, with particularly environmental content and particularly labor-related content, in intersection with social-environmental rights, capable of acknowledging the employer's strict liability in tort for damages to the workplace environment.

As already acknowledged by STJ (Brazilian Superior Court of Justice) in environmental matters, liability for damage to the workplace environment is strict, according to the full risk liability theory, the causal nexus being the binding factor that allows the risk to be integrated into the unity of the act, waiving of civil liability to remove their obligation to indemnify not being admitted.

In protecting the victim, this interpretation is better suited to the fundamental objective of the Republic of building a just, fraternal and supportive society and meets the power/duty of the judge to safeguard and promote the dignity of the human individual.

1 THE HERMENEUTIC PROBLEM

Environmental Law is a complex science. According to Krell (2013, p. 2078), this is due to "scientific dependency and interdisciplinarity, in addition to the massive incidence of conflicts of interest, economic and political motivations in its formulation, and even more in its application".

Although the Constitution grants to the environment the status of a fundamental right and, at the same time, includes the workplace environment in its protection scope, the interpretation given within Labor Law is not adequate to this assumption, especially when one finds that material-procedural analysis does not adequately addresses the environmental outlook.

Common law will be a subsidiary source of material labor law (Article 8, § 1, CLT – Brazilian Labor Regulations); on matters on which the law is silent[3], common procedural law shall be a subsidiary source of procedural labor law, except insofar as it is incompatible with it (Article 769 of the CLT).

This material-procedural gap in CLT was intentional. Arnaldo Süssekind[4] argued that CLT, forged in the light of the Brazilian Civil Code of 1916 and CPC (Code of Civil Procedure) of 1939, was not intended to be complete in itself, but to have loopholes based on common law and is interaction with other sources.

In fact, normativity in general will inevitably contain gaps; "even a very carefully thought-out law cannot contain a solution for every case; it needs regulation attributable to the scope of regulation of the law" (LARENZ 1997, p. 519).

Of course, however, this conclusion must work toward the improvement of the social condition of workers and promote social advancement, coupled with the principle of the dignity of the human individual – as provided for in Arts. 1, III, and 7, heading, of the Brazilian Constitution itself.

In addition, Art. 5 of LINDB (Introductory Law to Brazilian Legal Norms, enacted in 1942, prior to the CLT itself) says that judges, when applying the law, *shall meet* – from the verb in the imperative mode, it

3 Although it is not the focus of this paper, it should be noted that the "omission" (gap) may be merely legislative, given a lack specific rulemaking in labor legislation; however, it can also be ontological or axiological, when labor law is outdated, or even because it does not live up to justice value criteria.

4 The source is not mentioned because it is a quote from memory of an interview witnessed by the celebrated lawmaker, at some point in his life.

must be understood that this entails a power/duty[5] – the social purposes that law is intended to fulfill and the demands of the common good.

Perfecting Art. 5 of LINDB, Art. 8 of the CPC goes on to say that judges, when enforcing the legal order, *shall meet*_social purposes and the requirements of the common good, *thus safeguarding and promotion* of the dignity of the human individual, in keeping with proportionality, reasonableness, legality, publicity and efficiency.

Didier Júnior (2016, p. 76-77) posits well that there is, in the verb *to promote*, provided in Art. 8 of the CPC, "the requirement for a more active behavior by the magistrate", so that in some situations, the judge may take, even *ex officio*, measures to enforce the dignity of the human individual and "for the implementation of the fundamental right to dignity". In fact, this promotion is ultimately carried out by the judge, who has sole jurisdiction (Article 5, XXXV of the Constitution).

Moreover, after its enactment and legal and social effectiveness, the norm "radiates an action that is peculiar to it, which transcends what the legislator had intended". As the rule "intervenes in various and changing life relations, which the lawmaker could not have covered as a whole, and answers questions that the lawmaker had not yet put to themselves," it "increasingly acquires, over time, something of a life of its own and thus moves away from the ideas of their authors" (LENZ, 1997, p. 446). This rule, of course, pervades the non-obviation of the jurisdiction.

The judicial interpretation must be *creative* to the point of indicating possible solutions to labor conflicts, forged in the protection of the dignity of the human individual, and this will only be possible in the light of an adequate interpretation of the Environmental Labor Law and the Constitution.

The proposal for this paper is based on these reflections.

Civil-labor liability – the rule – is commonly subjective, given the wording of Art. 7, XXVIII, of the Constitution, according to which the employer is obliged to make reparation for the damage that, by an unlawful act, they should cause to the employee, *when he or she is guilty of willful misconduct*.

Exceptionally, Labor Courts have acknowledged strict liability in tort in the labor area, but limited to the norm-rule of Art. 927, sole paragraph, of

5 The expression "power/duty" is redundant, because with every power there comes a duty, a corresponding function. Power for power sake, in itself, is incompatible with the Democratic State of Law.

the Civil Code; that is to say, the obligation to repair damages, *regardless of fault*, in cases where the activity normally carried out by the employer entails, by its nature, a risk to the employee's rights.

The so-called "Labor Reform", through the enactment of Law 13,467/2017, by including Title II-A in the CLT, which deals with extrapatrimonial damage, did not alter this format.

However, it is equally common that, in the old solution to the apparent antinomies of norms, the specialty (*lex specialis derogat legi generali*) exudes the premise that a special rule revokes a general norm, which demands a specific analysis of labor-environmental issues, mainly because they are treated in the Constitution in different ways (Arts. 6, 200, VIII, and 225).

On the other hand, the Constitution itself, when it is established in a Democratic State of Law to ensure the exercise of social rights, welfare, equality and justice as supreme values, forbidding social retrogression and based on a social progress clause, with the continuous and unceasing pursuit of improvement of the social condition of workers, did not *limit* civil-labor liability to cases where there is willful misconduct or guilt; it rather only provided that civil reparation constitutes a minimum requirement, without prejudice to other formats that add civility to the human condition.

Proof of this is that the application of Art. 927, sole paragraph of the Civil Code, which establishes strict liability in tort, is *unquestionably* applicable to Labor Law.

In this context of ideas, we propose rather a micro-system – considering the several micro-systems of strict liability in tort – that is specific to the protection of the workplace environment and intended to adequately protect the working environment, given, in Oliveira's words (2011, p. 142), the impossibility of achieving a minimum civilized level of quality of life without the corresponding quality of life at the workplace.

In fact, when it comes to the *adequate* protection of the workplace environment, this *adequacy* includes the "repressive aspect of the workplace environment protection", which has, among its various aspects, compensation due and resulting from moral damages caused to the worker, "the latter being the result of the evolution of the institute of liability in tort" (CUNHA, 2015, p. 227). And the right to health, in its broadest sense of a healthy quality of life, includes the full protection of the worker in their human condition, the violation of which characterizes extrapatrimonial damages[6].

6 "Promotion of health is the name given to the process of empowering the community to act to improve their quality of life and health, including a greater participation in the control of this process.

2 SOCIAL RIGHTS AND ENVIRONMENTAL LAW

The 1988 Constitution was revolutionary[7]. Unlike the ones that came before it, it made an option and wanted to show, from the outset, the ideals and supreme values that should outline and shape the legal conception of the Democratic State of Law, considered "not as an apposition of concepts, but rather under a content of its own, which democratic achievements, juridical-legal guarantees and social concern are a part of" (STRECK; MORAIS, 2013, p. 113).

Attuned with that, Title I lists those that will be its fundamental principles. The importance of social rights is unquestionable, whether in the very reason for the Republic to exist, which is founded on citizenship, human dignity, and social values of work and laissez-faire; whether in its fundamental objectives of establishing a free, fair and united society, eradicating poverty and marginalization, reducing social and regional inequalities, and promoting the good of all; or in the recognition, on a worldwide level, of the prevalence of human rights and of the duty of cooperation among peoples for the progress of humanity (Arts. 1, II, III and IV, 3, I, III and IV, and 4, II and IX of the Constitution).

In essence, social rights are emphasized in Chapter II of the Constitution, noting that, because they are part of Title I, they are also considered – at the same valuation level of Art. 5 – *fundamental rights and guarantees* of immediate application (Article 5, paragraph 1), "in such a way that all categories of fundamental rights are subject, in principle, to the same legal regime" (SARLET, 2013a, p. 515).

The Constituent Power put "social protection as one of the human rights whose guarantee is the Law itself" (BALERA, 1989, p. 17).

Social rights have in their favor the principle of forbidding social retrogression, clearly stated in the heading of Art. 7 of the Constitution, "to restrain retrogressive measures" that "would void or seriously affect the degree of actualization already attributed to a given fundamental (and

To reach a state of complete physical, mental and social well-being, an individual or group must be able to identify and to realize aspirations, to satisfy needs, and to change or cope with the environment. Health is, therefore, seen as a resource for everyday life, not the objective of living. Health is a positive concept emphasizing social and personal resources, as well as physical capacities. Therefore, health promotion is not just the responsibility of the health sector, but goes beyond healthy life-styles to well-being". *(Ottawa Charter – 1st International Conference on Health Promotion).*

7 Revolutionary, but late in coming. In commenting on the Declaration of the Rights of Man and of the Citizen (France, 1789), Jellinek (2015, p. 95), in line with other constitutional acts of the time, said: "In all these Constitutions, the Bill of Rights ranks first. The plan or the government framework always come second".

social) right, which would amount to a violation of the Federal Constitution itself" (SARLET, 2013b. p. 542-543).

However, the legal-constitutional order does not limit itself to merely forbidding social retrogression, as it considers the urgent need for life, of moving forward, of evolving, of acting, of actualizing the constitutional promise of a free, just and supportive society. In this sense, Art. 7 of the Constitution includes an authentic "social advancement clause", when it lists minimum rights *in addition to others* aimed at improving the social condition of workers.

According to STF, "in the area of fundamental rights of a social nature, the principle of prohibition of retrogression prevents that what was already achieved by the citizen or by the social formation in which they live from being annulled"[8].

This is also the idea enshrined in the International Covenant on Economic, Social and Cultural Rights, which holds a hierarchical-normative position of supralegality in the Brazilian legal system and both formally and materially includes the notion of progressive social rights.

With the ratification of the Pact (Decree 591/1992), "Brazil committed itself to *progressively* and to the maximum extent of its available resources implement rights related to equality", to extract from the principle of prohibition to social retrogression "a dynamic and unidirectional positive vector, capable of preventing the reduction of the level of protection already conferred on the human individual" (BONNA, 2008, p. 60).

According to Art. 225, heading of the Constitution, everyone is entitled to an ecologically balanced environment, a common good for the use of the people and vital to a healthy quality of life; so, the Government and the collectivity have the duty of defending and preserving it for both the present and future generations.

It is a settled matter that it is a genuine fundamental right (KRELL, 2013, p. 2078), including by virtue of Art. 5, paragraph 2, of the Constitution – clause of material liberalization – that states that the rights and guarantees expressed there do not exclude others arising from the regime and the principles adopted by it; this allows the constitutional hermeneutician to – in a systematic and systemic interpretation fitting the dignity of the human individual – to acknowledge that the list of fundamental rights is

8 Special Appeal Bill 639.337 AgR/SP, Rapporteur: Justice Celso de Mello, Appellate Court: 2nd Panel, Trial: 23.Aug.2011, Published on: DJe divulged on 14.Sep.2011 and published on 15.Sep.2011; along the same lines, Special Appeal 581.352 AgR/AM, Rapporteur: Justice Celso de Mello, Appellate Court: 2nd Panel, Trial: 29.Oct.2013, Published on: DJe divulged on 21.Nov.2013 and published on 22.Nov.2013.

not exhaustive, *numerus clausus*, but merely provides examples and is open, *numerus apertus*.

The object of protection under Art. 225 of the Constitution is not only revealed in its natural (air, water, soil, flora, fauna), artificial (landscape aesthetics and the man-made environment) and cultural aspects (KRELL, 2013, p. 2079), but also the workplace environment, as the Constitution itself wished, which states, in its Art. 200, VIII, that "the workplace" is included in the protection of the environment.

The Constitution "expressly laid down that the economic order must comply with the principle of the protection of the environment" (OLIVEIRA, 2011, p. 142), following Art. 170, VI, where the economic order – which is based on valuing human labor and laissez-faire[9] – is intended to guarantee a dignified existence to everyone based on the principles of social justice, without prejudice to the principle of protection of the environment, including that of the workplace.

Along these lines, having adopted an interventionist State structure, the Constitution – as the origin of Brazilian Environmental Law – "aims at the effective achievement of an economy based on the valuation of human labor", which in itself is not merely a descriptive statement, "but rather a conditioning norm that lays down the bases, the foundations of the Brazilian economic order" (FIORILLO, 2013, p. 1815).

If Art. 170, VI of the Constitution lays down the defense of the environment (including of the workplace) as a "general principle of economic activity" and seeks "the satisfaction of the fundamental precepts" described in Art. 1 (FIORILLO, 2013, p. 1815), certainly, besides Art. 5, § 2 (material liberalization of the Constitution), the fundamental nature of the (workplace) environment is clear, and is intertwined with the social rights exemplified, in Arts. 6 and 7 of the Constitution.

In fact, "it is impossible to achieve quality of life without quality of work [and] equally impossible to achieve a balanced and sustainable environment if one ignores the workplace environment" (OLIVEIRA, 2011, p. 142). Along those lines, "the problem of legal protection of the environment shows up from the moment that degradation threatens not only the well-being, but the quality of human life and the very survival of human beings" (SILVA , 2000 apud OLIVEIRA, 2011, p. 142).

9 Although Art. 170, heading of the Constitution speaks only of "laissez-faire", it must be pointed out that Art. 1, IV states that the Republic, when established into a Democratic State of Law, is based, among other things, on the social values of work *together with* laissez-faire. It does not say social values of work *and* laissez-faire, which leads one to conclude that, by using the prepositional phrase, the Constitution intended to render *ineffective* that laissez-faire that provides void of social values.

In fact, it is impossible to improve the social condition of workers, preserving and expanding social rights, without adequate hygiene of the work environment, which is directly linked to the human condition. It is also about the "cross-border" outlook of the biopsychosocial aspect[10]: the work environment is a matter of public order, of interest to the whole community, and has repercussions inside and outside the workplace environment.

According to the biopsychosociality trifecta – biology, psychology and sociality – the workplace environment must be considered from a multidimensional view, capable of understanding all its causalities, the fruit of the principle of "primacy of contextual analysis of causalities". In this vein, the process of collectivization of rights not only pervades social rights of the second generation, but also "continues to manifest itself down to the acknowledgment of rights of a diffuse nature, such as the right to the environment" (PADILHA, 2011, p. 238).

2.1 Interdependence between social and environmental rights

As supported by Sarlet and Fensterseifer (2012 apud BRITO; ZUBERI; BRITO, 2018, p. 71), the constitutional approach to environmental law has two functions, which Sampaio (2016 apud BRITO; ZUBERI; BRITO, 2018, p. 71) calls the second cycle of ecological constitutionalism, "since it surpasses the traditional programmatic nature of the constitutional environmental norm and adds the fundamental meaning to it".

According to Fensterseifer (2008 apud BRITO; ZUBERI; BRITO, 2018, p. 71), the fundamental material scope of environmental law is provided by its direct link to the dignity of the human individual; the right to the environment is not formally inserted in the list of fundamental rights and guarantees in the Constitution, but still carries the (material) dimension of a fundamental right.

In the wake of ecological constitutionalism, "questions about the construction of a Socio-Environmental Law State arise as a worldwide and existential demand," forged from the "axiological compatibility between

10 According to the preamble to the WHO Constitution, health is not merely the absence of disease or infirmity, but a complete state of physical, mental and social well-being, hence its biopsychosocial aspect. This precept is formally reiterated in Art. 3 (e) of Convention 155 of the ILO, which holds a hierarchical-normative position of supralegality, so that any infraconstitutional/legal legislation that opposes it has its effectiveness canceled.

man and the environment, intertwined in a common future" (MORAIS, SARAIVA, 2018, p. 13).

This intertwining "makes it indispensable to align the social matter and the environmental matter" (MORAIS, SARAIVA, 2018, p. 17). According to Ulrich Beck, "environmental problems are – in both their origin and results – social, human problems, part of human history, their living conditions, their relationship with the world and reality, their economic, cultural and political constitution" (LEAL, ROCHA, 2018, p. 267).

In fact, one of the normative pillars representing human rights that came out of the postwar period in order to normalize the Universal Declaration of Human Rights and to make it binding was the International Covenant on Economic, Social and Cultural Rights of 1966. This international human rights treaty, ratified by the Brazilian Government via Decree 591/1992, holds a hierarchical-normative position of supralegality.

The Pact recognizes the right of every person to enjoy the highest attainable standard of physical and mental health and, to this end, imposes measures that the Member States must adopt in order to ensure the full exercise of this right, including the improvement all aspects of *workplace hygiene and environment* (Article 12).

Law 6,938/1981, which provides for the National Policy on the Environment, its purposes and mechanisms for drafting and application, and other provisions, states (Article 3) that the environment is "the set of conditions, laws, influences and physical, chemical and biological interactions that allows for, shelters and governs life in all its aspects;" degradation of environmental quality is "the adverse change in characteristics of the environment" and *pollution*, among other things, is "the degradation of environment quality resulting from activities that directly or indirectly create adverse conditions for *social* and economic *activities*".

In this sense, the *polluter* is the individual or public/private legal entity directly or indirectly responsible for an activity that causes environmental degradation, including the workplace environment (article 3, IV of Law 6,938/1981).

Senator Cristovam Buarque put it well when he filed the Constitutional Amendment Bill (PEC) 16/2012, which proposed to change the wording of Art. 6 of the Constitution to expressly include a "healthy environment" among social rights, as has already been mentioned here:

> In Article 225 and other constitutional norms, either expressly or implicitly, from the point of view of Environmental Law, this matter is interpreted as one of the fundamental rights of the human individual and an asset for the common use of the people and essential to a healthy quality of life of everyone, which reinforces the position that the matter is also about human and social rights. For this reason, it is of course natural to make it clear that a healthy environment is also listed as a Social Right guaranteed by the Federal Constitution (BRASIL, 2012).

His Honor did well in mentioning that Chapter VI, which deals with the Environment, is part of Title VIII, which deals with the Social Order, "which leads one to conclude that the environment is also a social right of man" (BRASIL, 2012).

Regrettably, the Bill was shelved at the end of the 2018 Term of Office.

However, the environment remains, implicitly, a part of the contents of Art. 6 of the Constitution.

Law 9,795/1999, which provides for environmental education, lays down the National Policy on Environmental Education and other measures, poses the matter under discussion here in a precise way, showing the interdependence between social and environmental rights in a communion of protection of the workplace environment.

According to Art. 4 of the aforementioned law, the humanistic, holistic, democratic and participative approaches are basic principles of environmental education, the *view of the environment as a whole*, considering the interdependence between the natural, socioeconomic and cultural environments from a sustainability point of view, and the link between ethics, education, *work and social practices*.

2.1.1 Natural, artificial and cultural (and work) environments

According to Silva (1998), the environment can be conceptualized as "the interaction of the set of natural, artificial and cultural elements that propitiate the balanced development of life in all its forms", and can be classified into a *natural* environment – which includes water, soil, air, flora, fauna and other representations of nature –, *artificial* environment – such as streets, squares and open and closed urban spaces subject to creation, alteration, modification or beautifying through human activity –, *cultural* environment – which includes our historical, artistic and landscaping heritage –, and finally, the *workplace environment*, which is representative of the relationships between workers and the physical environment, including the workplace, work tools and physical, chemical and biological agents to which the worker is exposed.

Already in the 1950s, with scientific environmentalism (BIRNFELD, 1998), the environmental issue was born from the consequences of industrial revolutions and the labor revolution itself. Over time, scientific evolution and social refinement have made it unquestionable that the workplace environment should be included in the labor-environmental scope.

Maranhão (2018, p. 291) teaches about the legal-environmental importance laid down by the Constitution of the Federative Republic of Brazil itself – as an "expression of popular sovereignty", as already stated – of providing "dogmatic autonomy to workplace environment entity" and validate "the legal integration of the labor environment to the human environment, inserting it among the aspects that can be identified in the environmental sphere:

> Environmental protection, in essence, is directly linked to the double and integrated commitment to safeguard the ecological balance and protect human life. In this view, the natural environment – which includes a primary concern with the exhaustion of its natural components – is protected because it is the very core of this desired ecological balance. The artificial environment, on the other hand, causes a concern primarily linked to the safeguarding of the usefulness of components created to facilitate safe and healthy human habitation and movement; therefore, it is linked rather to the matter of quality of human life. The same can be said of the cultural environment, the preservation of the singularity of the psychosensorial and social exteriorization of the creative human spirit of which is a decisive factor of concern.
>
> In this context, the workplace environment comes up as a very differentiated environmental aspect, inasmuch as it is able to, at the same time, provide the protection of the ecological balance and the preservation of human life. Actually, the protection of the workplace environment is a measure that achieves both objectives at the same time, that is, it serves both the protection of the human being invested in the social role of worker and the protection of the neighboring population and the ecological balance that surrounds them. It is this broader and more integrated vision that needs to permeate the mind of the environmental scholar, as it grants the issue of public health status of a genuine primary public interest.

It is this concern with this "hermeneutic outlook" that informs this paper, as it is able to foster the scientific autonomy of Environmental Labor Law and the actualization of the liability of the employer-polluter of the workplace environment from the perspective of Labor Law and Environmental Law.

3 MICROSYSTEMS OF STRICT LIABILITY IN TORT

The legal system must be conceived from a rule of justice of a value-imparting king, so that the system that corresponds it (the legal system) can only be an axiological or teleological system.

One does not get only the basic meaning of the term "teleological", that is, its strict meaning of a mere connection between means and ends, based on a merely Cartesian thinking (what is the posited norm and what are its purposes). From the term *teleological*, we can also take its broader meaning of the realization of scopes and values (CANARIS, 2002, p. 66--67).

In this context, strict liability is an important instrument for the realization of scopes and values, especially in our Democratic State of Law, where to build a free, fair and supportive society (article 3, I, of the Constitution) it a fundamental objective of the Republic, among others. As Stoco points out (2004, p. 118), enforcing liability on the offender for their acts and the duty to indemnify "amount to the very notion of justice existing in the social group" and reveals itself "as something irreplaceable in human nature".

Reparation is directed to the harm unjustly committed against the victim by the offender, as in French law: "*Il a déjà été souligné que le droit de la responsabilité civile en France, comme d'ailleurs dans la plupart des pays étrangers, est orienté principalement vers la réparation des dommages qui constitue son objectif prioritaire*" (VINEY; JORDAIN, 2010, p. 154). For Cretella Júnior (1980, p. 5 apud STOCO, 2004, p. 129), the assumptions of liability are as follows:

a) the one who violates the rule;
b) the victim of the violation;
c) the causal link between the agent and the illegal act;
d) The loss caused – the damage – that gives cause to the reparation, that is to say, insofar as possible, bringing the harmed person back to their economic status prior to the production of the pecuniary imbalance.

Santos (2015, p. 28) sums up *strict liability* briefly, as "an obligation to answer for the legal consequences of an unlawful act and to repair the loss or damage caused".

Strict liability can be contractual or extra contractual (tort liability). Stoco (2004, p. 136) points out that the Civil Code distinguished contractual liability "that deals with the defects of the legal matter" (Arts. 166 to 184

of the Civil Code), from the tort one, "which conceptualizes the unlawful act" (Article 186 of the Civil Code).

According to Aguiar Dias (1979, p. 148-149 apud STOCO, 2004, p. 137), contractual strict liability corresponds to the "foreseeable and avoidable non-performance by one party or its successors of an obligation arising from a contract, which is harmful to the other party or their successors".

Strict liability in tort "is outside the rules of the contract":

> [...] it is certain that contractual liability is based on the autonomy of the will, while tort liability is independent of it. [...] contractual liability follows the common rules of contracts and is often based on a result duty, which leads to the presumption of fault (AGUIAR DIAS, 1979, p. 148-149 apud STOCO, 2004, p. 137).

In short, Santos (2015, p. 28) says that contractual strict liability is that arising from the contract itself and tort liability "is that represented by a violation of a legal provision, without connection with the contractual rule".

It is particularly understood by the disjointing of dichotomous logic. Stoco (2004, p. 137) draws attention to this warning:

> Caio Mario warns that those who seek to find an ontological distinction between contractual guilt and tort guilt have no grounds thereto. Both raise different points regarding the evidence and the extent of the effects. They are, however, accidental aspects. What is superfluous is the ontological unity. In both one and the other, the contravention of a norm must be present, or, as stated by Pontes de Miranda: "The guilt is the same for breach of contract and for tort".

This ontological unity is even more evident in the field of Labor Law: in addition to the effects belonging to the employment contract, there are undoubtedly *related effects*:

> The employment contract is a legal act with a complex content, capable of causing a wide variety of rights and obligations between the contracting parties. There are compulsory effects on the employer, as well as effects on the employee. The effects resulting from the employment contract can be classified into two main modalities, according to their more or less direct linkage to contractual labor content: effects specific to the contract and effects related to the employment contract.
>
> The effects inherent to the employment contract arise from their nature, their object and the natural and recurrent set of labor contractual clauses. They are unavoidable repercussions of the structure and dynamics of the employment contract or that, once agreed upon by the parties, do not deviate from the basic contents of the contract. The most important repercussions are, respectively, the obligation of the employer to pay salaries and the obligation of the employee to provide services or to make

> themselves professionally available to the employer. The effects resulting from the employment contract that do not arise from its nature, its object and the natural and recurrent set of labor contract clauses, but which, for reasons of accessory nature or connection, are coupled to the employment contract, are connected to them. They are, therefore, effects that are not of a labor kind, but which are subject to the structure and dynamics of the labor contract because they have arisen due to or in connection with it (DELGADO, 2018, p. 725).

Also, from the point of view of the labor contract effects, it is certain that there are *attached duties* to the contract, including those having substantial impact on hygiene, health, safety and labor health standards, or rather, directly demand by and arising from the contract itself, stating that the employer must maintain the hygiene of their workers, considered from the biopsychosocial aspect, according to the preamble of the WHO Constitution and Art. 3 (e) of Convention 155 of the LIO (the latter occupying a hierarchical-normative position of supralegality), for which health is not merely an absence of disease or infirmity, but a complete state of physical, mental and social well-being.

> Ascertaining the guilt of the defendant emerges from their misconduct, since they did not prove the implementation of the necessary preventive measures required by the legal order regarding labor safety and health, which duties are attached to the employment contract. Therefore, the defendant, by not having presented a defense against the burn of the evidence, was presumed guilty and consequently liable for the damage caused. The stated violations did not obtain. Appeal denied (TST; RR 150700-86.2005.5.05.0021; 6th P.; Rapp. Justice Mauricio Godinho Delgado; DEJT 29.10.2010; p. 1.150) (DALLEGRAVE NETO, 2016, p. 73).

However, for didactic purposes, the classical classification is adopted[11].

Alongside contractual and non-contractual liability, strict liability may be either in fault or in tort, especially when linked to the idea of presence or absence of guilt (or, in a more severe way, willful misconduct).

Stoco (2004) criticizes the lack of systematization of guilt in civil law, unlike criminal law, which systematized it favorably. He also points out that, in civil law, the psychological theory of culpability still prevails, whereas it has already been superseded in criminal law, which recognizes it based on the normative theory of culpability.

11 Even so, the classical classification is not above criticism. Mention may be made, for example, of ADC 16/DF, tried by STF, where the court understood that Art. 37, § 6 of the Constitution treats "only" of contractual liability, not covering situations of tort (extra-contractual) liability, thus leaving almost totally outside the scope of protection of the Law those workers outsourced by the Government/customer (which demonstrates that this dichotomy does not impact workers' fundamental social rights only in the academic world, but also in the phenomenal world).

According to Stoco (2004, p. 132), willful misconduct "is the will directed to an illicit end; it is a conscious behavior aimed at achieving a desired end".

Guilt in the strict sense, in its turn, "means a wrong behavior by a person, stripped of the intention to harm or violate the law, but from whom a different behavior might be required" (STOCO, 2004, p. 132).

Guilt is an "inexcusable error or one without plausible justification and that could have been avoided by the *homo medius*" (STOCO, 2004, p. 132). Proof of guilt in court, considering it is a behavior that can be avoided by the average person, is presumptive, inasmuch as Art. 375 of the CPC provides that the judge will apply the rules of common experience provided by observation of what ordinarily happens.

> The Civil Code of 2002 does not ignore this fact. On the contrary, despite having adopted and maintained guilt as a presupposition of strict liability, that is, requiring a conduct to have a qualitative element linked to the subjective or internal element of the individual, so that it must be projected towards a desired or assumed outcome, this principle was excepted to admit liability irrespective of (objective) guilt when the activity carried out by the perpetrator of the harm entails a risk to the rights of others (Article 927, sole paragraph) (STOCO, 2004, p. 130).

Thus, briefly, fault liability takes into account the conjugated trifecta of: (i) harmful act *plus* (ii) a causal link between that act and the misfortune borne by the victim *plus* (iii) willful misconduct or guilt; strict liability in tort does not require the latter (willful misconduct or guilt).

Considering these terms, we see that, as a rule, the Constitution treated fault liability in the form of Art. 7, XXVIII, when dealing with the indemnity that the employer is obliged to pay "when incurring in willful misconduct or guilt".

However, the same Constitution recognizes the possibility of liability in an objective manner, without any investigation of willful misconduct or guilty, as can be seen, for example, relating to nuclear damages (Article 21, XXIII, "d"), Government tort liability (Article 37, paragraph 6) and damages of an environmental nature (Article 225, paragraph 3).

Also, let us not forget that, in addition to Art. 7, heading of the Constitution *forbidding social retrogression* – a significant characteristic of social rights[12] – it is certain that when the Constitution says "besides others",

12 This is the so-called "*cliquet* effect", meaning that, once a human right is acknowledged, it cannot be suppressed or reduced: "The prohibition of social retrogression can also be recognized in the French expression *effet cliquet*. The *cliquet* effect is an expression used in mountaineering to mean the movement of ascension that only allows the climber to climb up" (Leitão, Meirinho, 2016, p. 43, emphasis added).

it also consecrates the pressing need of life to *move forward*, *evolving, actualizing* the constitutional promise of a free, just and supportive society.

In this sense, the Constitution enshrines a "social advancement clause" that guides not only its interpreter, but the lawmaker in particular, in progressively expanding the list of minimum rights (the International Covenant on Economic, Social and Cultural Rights, by example, guarantees a progressive nature to such rights).

In this sense, strict liability in tort provides more protection to workers, especially those in employment relationships, either by the employment power to which they are submitted (directing, regulating, supervising and disciplinary power), or by the characteristic of otherness of the Law according to which the employer must bear the risks of the business (Art. 2, heading, CLT).

Thus, as well as foreseeing that one who, by voluntary act or omission, negligence or imprudence, violates the law and causes harm to another, even if exclusively pain and suffering, or, in doing so, manifestly exceeds the limits imposed by their economic or social purpose, by good faith or by good customs, commits an unlawful act (Arts. 186 and 187 of the Civil Code), being thus obliged to repair it (article 927, heading of the Civil Code), it provides the obligation to repair the damage regardless of guilt, in the form of a general clause in the code, as provided for in Art. 927, sole paragraph, of the Civil Code.

According to Molina (2013, p. 77), among the various legal texts that provide for strict liability in tort (without the need to look for willful misconduct or guilt), "it shows us that this latter modality is in fact a large genre," a so-called macro-system of strict liability in tort", within which various types of strict liability are included without guilt, according to each of the micro-systems and the general clause of Art. 927, sole paragraph, of the Civil Code".

There are currently *nine* micro-systems of strict liability in tort:

1. Nuclear accident (Art. 21, XXIII, of the Constitution and Law 6,453/1977).
2. Environmental accident (Arts. 225, § 3 of the Constitution and 14, § 1 of Law 6,938/1981).
3. Transportation accident (Arts. 734 ff. of the Civil Code).
4. Public employees and legal entities governed by private law that provide public services (Art. 37, § 6, of the Constitution).

5. Accident due to the collapse of a building or construction (Art. 937 of the Civil Code).
6. Accident due to the objects on fire (Art. 938 of the Civil Code).
7. Accident caused by animals (Art. 936 of the Civil Code).
8. Accident in mining activities (Decree-Law 227/1967).
9. Accident in risk activities – *general clause* in the code (Art. 927, sole paragraph of the Civil Code).

What this paper intends is to think up a new criterion of strict liability in tort arising from *adequate environmental protection*. The proposal is also in line with the current trend towards the "objectification" of strict liability.

As we saw, the rule provided for fault liability, with an exception to the strict liability. However, today, thanks to strict liability in tort being actualized by means of a general clause, which allows judge discretion and fairness in trials, it is possible to have fault and strict liability to coexist harmoniously.

The current tendency of "objectification" of strict liability is due to the greater concern of the justice system (ordered by values and aimed at achieving constitutional bases of dignity, solidarity and material equality) with whom it is the victim, and who was effectively injured.

Under the law theory, Gagliano and Pamplona Filho (2003, p. 28-29 apud STOCO, 2004, p. 133) point out that guilt is a "merely accidental element of strict responsibility" because it "lacks the necessary generality", in these terms:

> Guilt is not, in our view, a general assumption of strict liability, especially in the new Civil Code. [...] Guilt, therefore, is not an essential, but rather an accidental element, and we reiterate our understanding that the basic elements or general presuppositions of strict liability are only three: (positive or negative) human conduct, damage or injury, and the nexus of causality.

Going back to Stoco's criticism (2004, p. 132) of a lack of systematization of guilt in civil law, as opposed to criminal law, it should be noted that, in criminal law, the general theory of crime encompasses the typical fact, illegality, and culpability, while illegality (unlawfulness) mirrors "the opposition relationship between the typical fact and the legal order as a whole" (CUNHA, 2019, p. 297), culpability being a "reprobation judgment [...] regarding the need to apply a criminal sanction" (CUNHA, 2019, p. 329).

As for Civil Law, Catalan (2011), when predicting the "death" of guilt, emphasizes that Law, as a prescriptive – and not merely descriptive – science must include those behaviors that move away from the legal system toward the idea of illegality (unlawfulness) and guilt to the violation of a duty of conduct.

Otherwise, the "objectification" of liability is based on national jurisprudence (BRASIL, 2013):

> Whenever an unjust offense against the dignity of the human individual is demonstrated, proof is not necessary to establish pain and suffering. According to the STJ law theory and case law, where violation of a fundamental right is expected – thus defined by the CF – an inevitable violation of the dignity of the human being will also obtain. Compensation in this case is independent of the demonstration of pain and suffering, thus becoming an *in re ipsa* consequence intrinsic to one's own conduct that unjustly impairs the dignity of the human being. In fact, these sensations (pain and suffering), which are usually linked to the experience of victims of moral damages, do not translate into the harm itself, but have their direct cause in it. Special Appeal 1,292.141-SP, Rapp. Justice Nancy Andrighi, tried on 4/Dec/2012. STJ Newsletter 513.

The micro-system proposed here, which is based on *adequate environmental protection*, will be an important instrument for the realization of the scopes and values under a Democratic State of Law and the central objective of the Federative Republic of Brazil of building a free, fair and supportive society (Arts. 1, heading and 3, I of the Constitution).

3.1 Environmental and labor protection

The concept of environment, including that of the workplace, is *omnipresent* and affects labor relations in a variety of ways:

> [...] the workplace environment is one of the main sources of origin and dissemination of pollution [...]
>
> According to António Barreto Archer, it is a fundamental principle of Environmental Law that "the principle of correction at source, which advises combating pollution as close as possible to its source, either in a subjective sense by looking for the first polluting subject, or in a spatial sense by looking for the initial focus, or in a temporal sense, by trying to intervene at the beginning of the pollution phenomenon" (MARANHÃO, 2017b, p. 23).

Failure to pay wages to employees in a timely and correct manner, for example, causes great upheavals in their lives, of all types (from market restrictions to the lack of basic material survival assets, such as food); these

disturbances also obtain thanks to excessively extensive working hours and failure to pay for the work corresponding to them, the simple failure to return the CTPS (employment record book) to dismissed employees, who will inevitably not be able to find formal employment afterwards because of that, etc. Violation of contractual obligations of all kinds has several effects on employees' biopsychosociality.

Alongside these specific violations of contractual clauses, the employment relationship, taken as an "instrument at the service of the person and their dignity", must "reflect the primacy of existential interests over pecuniary interests" (NEGREIROS, 2006, p. 461). This view is adequate to protect the dignity of the human individual based on social justice imperatives, especially considering that the economic order is based on the valuation of human work and laissez-faire (also imbued of social values, according to Art (1), IV, of the Constitution) and is intended to ensure a dignified existence for all (as also stated in Art. 170, heading of the Constitution).

For this reason, much more than "paying a salary", the employer has the power/duty[13] to adequately protect and supervise (Arts. 932, III, and 933 of the Civil Code) the workplace environment, not threaten the existence of the employee, respect their life projects, treat them with proper manners and respect, not practice or allow any kind of harassment to be practiced, keep the environment 100% safe or minimally unsafe – a corollary of the principles of minimum regressive risk[14] and limitation of the risk to its source[15] – etc.

The object of the employment contract is to allow the employee to have a resource for survival and a *dignified life*.

The Labor Law is protective, given the employee's lack of assets when compared to the employer, which causes them to need their salary to survive; the employer is thus the holder of the employment power, having

13 "Power/duty" mean inspired in the *power,* by the employment power in favor of the employer, in employment relations (directive, regulatory, supervisory and disciplinary power), and *duty* before the whole constitutional framework of protection of the dignity of the human individual.

14 "The employer has a duty to reduce risks inherent to the work insofar as possible, at each time, so that harm suffered by the worker for risks that could have been eliminated or controlled characterize guilty conduct by the non-observance of the principle of minimal regressive risk" (OLIVEIRA, 2017, p. 95).

15 "[...] it lays down as an obligation of the employer to identify foreseeable risks in all activities of the company, establishment or service when designing or building facilities, workplaces and work processes, as well as when selecting equipment, substances and products, with a view to their disposal or, where that is not feasible, to reduce their effects. It also provides for fighting risks at their source in order to eliminate or reduce exposure and increase protection levels" OLIVEIRA, 2017, p. 96).

in their favor the assumption of legal subordination of the employee.

In this regard, we have the "essentiality paradigm": contractual law, considered as "instrument at the service of the individual and their dignity", must "reflect the primacy of existential interests over pecuniary interests" (NEGREIROS, 2006, p. 461). It is not a question of "more or less protecting the patrimonial situations, but of reserving them a qualitatively different kind of protection" (NEGREIROS, 2006, p. 462), which must adequately realize the rights of the personality and the protection of the dignity of the human individual.

> It is in these situations that it is important to distinguish those pecuniary situations – specifically contractual relations – qualified in terms of their existential utility, meaning the degree of indispensability of the acquisition or personal use of the asset in question for the conservation of a minimum standard of dignity of those who need it. The destination of the asset that is the object of the contract is a fundamental element in determining the relative bargaining power of the contract parties, and therefore must be taken into account in resolving any conflict of interest that may arise.
>
> These are the assumptions that underlie the establishment of the paradigm of essentiality. Contracts that deal on the acquisition or use of assets that, given their destination, are considered as essential, are subject to a protection regime, which is justified by the need for protecting the vulnerable party – namely, the contracting party that needs the asset in question. Contrarily, at the other end, contracts that deal with superfluous goods are governed predominantly by the principles of classical contractual law, and here the rule of minimum heteronomous intervention applies (NEGREIROS, 2006, p. 463).

In the employment contract, one of the parties (the employee, who is economically disadvantaged) has in the contract object (the provision of labor) their only possibility of a dignified living (receiving wages), which legitimizes the intervention of the state in the autonomy of the private will, given the characteristic unbalance of the contractual relationship.

In addition to work itself, other fundamental social rights expressed in Art. 6 depend mainly on the fruit of labor (wages): in spite of the duty of the government to provide positive goods, it is known that education, health, food, housing, transportation, leisure and social security are included in the legal-constitutional content of salary, which must be capable of meeting the basic vital needs of the individual and their family from the enjoyment of these fundamental social rights (Art. 7, IV, of the Constitution).

According to Art. 225, § 3 of the Constitution, conduct and activities considered to be harmful to the environment – including the workplace

one – subject the individual or corporate offenders to criminal and administrative sanctions, *regardless of the obligation to repair the damages caused.* In this regard, the Constitution "adopted a broad system of liability for environmental damages" (PADILHA, 2011, p. 252).

The principle of solidarity, as the legal and constitutional milestone of the Socio-Environmental State of Law, establishes shared liability in environmental matters, "given that third-generation or solidarity rights are characterized as both individual and collective, and their actualization depends on the cooperation and solidarity of individuals" (BRITO, ZUBERI, BRITO, 2018, p. 72).

Art. 225, § 3, of the Constitution correlates with others, of the same text: 5, V and X (extrapatrimonial damage), 5, XXII and XXIII (property rights) and 170, 184 and 186 (social function of property) (LEITE, 2013, p. 2105).

Although there is no constitutional or legal definition of "environmental damage", it can be conceptualized as "any intolerable harm caused by human action, *whether guilty or not*, directly affecting the environment as a macro-asset of collective interest and, indirectly, to third parties, because of their own and individual interests" (Leonardo, 2013, p. 2107, emphasis added).

The legal definition of the environment is found in Law 6,938/1981, according to which "the environment" is "the set of conditions, laws, influences and interactions of a physical, chemical and biological order that allows, shelters and governs life in all its forms" (Art. 3, I).

This definition has a "comprehensive and integrated meaning" and has been "embraced and amplified by the constitutional text," so that the environment "can be considered a common macro-asset of the people; it is intangible and immaterial, since it cannot be mistaken by the sum of its parts"; "it encompasses not only natural assets, but also all those artificial ones that are part of human life, as artistic, historical and cultural heritage" (Leonardo, 2013, p. 2107); this includes the workplace environment.

Also in relation to Law 6,938/1981, Art. 1 makes up the "preliminary part" of the Law (Art. 3, I, of Complementary Law 95/1998) and says that it is *based* on Arts. 23, VI and VII, and 225 of the 1988 Constitution, which is a very important detail: Art. 23 deals with the powers the Federal Government, the States, the Federal District and the Municipalities share in common, among which is to protect the environment and combat pollution in any of its forms.

If Art. 23, VI, of the Constitution deals with such a large scope, if Law 6,938/1981 is a corollary of this magnitude, and if the concept of the environment includes the workplace environment, it must be concluded that the concept of pollution has repercussions in the field of labor.

In this sense, *labor-environmental pollution* is defined in the following terms as a concept:

> [...] it is the systemic imbalance in the arrangement of working conditions, the organization of work or interpersonal relations within the scope of the labor environment which, on an anthropic basis, creates intolerable risks to the safety and physical and mental health of the human being exposed to any legal-labor context – thus providing them with a healthy quality of life (CF, art 225, heading) (MARANHÃO, 2017a, p. 234).

This conceptual, which is *adequate* to the labor-environmental protection, reaches the entirety of the risk factors felt in the workplace environment:

> In our view, the adoption of this conceptual reference implies a considerable extension of the incidence radius of the legal notion of environmental degradation, thus making the rigors of legal-environmental axiology fully channeled into the workplace environment, influencing it completely, so as to have an influence on the fullness of labor-environmental risk factors (MARANHÃO, 2017a, p. 234).

Thus, within the management of labor-environmental risks, one has the *work conditions*, which are the "physical-structural conditions in the workplace environment", the *work organization*, considered as the "technical-organizational arrangement laid down for the execution of the work", and the *interpersonal relations*, which are the as "socio-professional interactions that take place during everyday work" (MARANHÃO, 2017a, p. 234), all demanding *quality*: quality of life in its fullness, covering all aspects of human life, and quality of life during work and within the workplace.

Law 6,938/1981, in an almost literal-grammatical hermeneutic appeal, clearly explains this labor-environmental notion and lays down the assumption that "pollution" (Art. 3, III, "b") is the degradation of environmental quality resulting from activities that direct or indirectly, create adverse conditions *for social and economic activities*.

As we can see, the idea of the *workplace* environment is not implicit in the Law; on the contrary, it includes, in its conceptual structure, the idea of labor-environmental degradation. For the purposes of Law 6,938/1981, it would not even be necessary to inquire into the extension of "social

activity" or "economic activity", since, according to the Law itself, these adverse conditions derive not only from direct environmental degradation, but also from indirect degradation (Art. 3, III, heading), which shows that the spirit of the norm intends to extend its scope and application as far as possible.

On the other hand, art. 3, IV, of Law 6,938/1981 states that a "polluter" is an "individual or public or private law legal entity directly or indirectly responsible for an activity that causes environmental degradation".

Considering that the idea of environmental degradation encompasses the workplace environment, we are led to conclude that the employer, while in a legally higher position within labor relations and holding the employment power, is an individual or legal entity capable of causing environmental degradation and, consequently, they can be obliged to repair the damage which, by an unlawful act, they should causes the employee, *regardless of guilt*.

Here, there is no application of the rule provided in Art. 7, XXVIII of the Constitution, because there is a specificity that causes Law 6.938/1981 to apply; this Law, in this case, is a *special law*, specifically applicable to labor-environmental protection and adequate to the constitutional principle of prohibiting social retrogression and to the social advancement clause.

Thus, in a case of labor-environmental pollution, to labor-environmental protection, the employer-polluter is subject to the rule of Art. 14, paragraph 1 of Law 6.938/1981, which reads as follows:

> Without prejudice to the application of the penalties provided for in this article, the polluter is obliged to indemnify or provide reparation for damages caused to the environment and to third parties affected by their activity, regardless of being guilty. The Federal and States Prosecution Offices will have standing to file a criminal and civil liability action for damage caused to the environment.[16]

This is a corollary of the application of the polluter pays principle[17],

16 Art. 14, paragraph 1 of Law 6.938 / 1981 recognizes both individual protection either through individual or collective labor claims, or through the MPT (Brazilian Labor Public Ministry), which will have legitimacy to file liability suits for damages caused to the workplace environment; there is a constitutionally adequate provision (Article 127 of the Constitution) to file public civil suits within the scope of the Labor Courts in order to defend collective interests, when constitutionally guaranteed social rights (Article 83, III of Complementary Law 75/1993) are violated, including in cases brought against the Public Power in legal-statutory relations, as the interpretation well-established in Precedent 736 of the STF.

17 On this subject, the following are taken into account: (i) Principle 16 of the Rio Declaration on the Environment and Development (ECO-1992), according to which Brazilian authorities should encourage the internalization of environmental costs by the polluter or degrader and the use of economic instruments that should cause the polluter to, in principle, bear the costs of environmental degradation"; (ii) Art. 225, § 2 of the Constitution, whereby "anyone who exploits mineral resources is

which was defined by the STJ as the principle that imposes the "internalization of negative environmental externalities", in order to "replace, mitigate, delay or hamper the duty of the material or principal polluter of fully recovering the affected environment and compensating for the damages caused"[18].

> Well, it is a building principle of Environmental Law that the external social costs that accompany industrial production (such as the cost resulting from pollution) must be internalized; that is, taken into account by economic agents in their production costs. [...] this is the duly stated *polluter pays principle*. So, it seems clear that if there is pollution also in the workplace (including as defined by Law 6.938/81), then the costs of the damages caused by it – to the surrounding environment (= exogenous effects) or to directly or indirectly exposed third parties, such as workers (= endogenous effects) – must also be internalized, regardless of the investigation of guilt (Art. 14, § 1 of Law 6,938/81), so that the polluter himself should bear them (FELICIANO, 2013, p. 19 apud GONDIM, 2018, p. 185).

Reparation must be broad, according to the STJ[19]:

> Whatever the legal qualification of the public or private polluter, under Brazilian Law strict liability for environmental damage is objective, joint and several, and unlimited, being ruled by the polluter pays, *in integrum* reparation[20], priority of *in natura* reparation[21], and *favor debilis*[22] principles, the latter of which legitimizes a series of techniques to facilitate access to Justice, including reversing the burden of proof in favor of the environmental victim. STJ case law.

There are issues that intuitively do not match this relationship, such as the mere delay in the annotation of the CTPS when the employment

obliged to recover the degraded environment according to a technical solution required by the public body with jurisdiction, according to the law", and Art. 4, VII of Law 6,938/1981, according to which "the National Environmental Policy shall aim at: [...] imposing on the polluter and the predator the obligation to recover and/or indemnify for damages caused, and on user a contribution for the use of environmental resources for economic purposes.

18 STJ, Special Appeal 1.071.741/SP, Rapporteur: Justice Herman Benjamin, Appellate Court: Second Panel, Trial Date: 24/Mar/2009, Publication date/source: DJe 16/Dec/2010.

19 *STJ, Special Appeal 1.071.741/SP, ibid.*

20 "In Brazilian Law, the principle of *in integrum*reparation of environmental damage, which is multifaceted (ethically, temporally and ecologically speaking, but also regarding the vast number of victims, ranging from the isolated individual to the society as a whole, future generations, and the ecological processes in themselves)" (MEDEIROS NETO, 2014, p. 290).

21 "One can then glimpse the feasible option of *in natura* reparation in nature, bringing satisfaction to the victim without recourse to compensatory pecuniary means, although it can be done in a complementary manner, when the natural way is not enough to fulfill the objective of providing full reparation for the damage" (MEDEIROS NETO, 2014, p. 93).

22 "The proration technique is often used in an exceptional way, either in the Civil Code itself or in special micro-systems (the environmental one, for example), mainly due to the degree and kind of risk of certain activities or the need – backed by the principle of *favor debilis* – to ensure greater protection to individuals or property considered as particularly vulnerable. [...] *favor debilis* [...] is one of the basis for the environmental legislation and solidarity [...]" – *STJ, Special Appeal 1.071.741/SP, ibid.*

bond is still in effect. However, this same issue can be considered as labor--environmental pollution when it is proven that the employee, in the event of undue withholding of the CTPS and that, as a result, the employee was unable to get another job in the labor market (we must also point out that CLT (Brazilian Consolidation of Labor Laws) does not require exclusivity in the employment relationship, so the employee may have more than one job with a formal contract, unless otherwise stated as provided for in CLT Art. 29).

Also, there are issues that, in themselves, are labor-environmental demands. Labor accidents and occupational diseases, for example, "are considered as pollution of the workplace environment, which view is important for the protection of fundamental labor rights" (SOARES, 2017, p. 75).

A sure gage to determine what is tied to labor-environmental issues lies in the acknowledgment of the protection of the entity's rights. These rights, embodied in Art. 5, V and X of the Constitution (merely as an example), constitute "a true general clause of protection to the entity", namely, Art. 1, III of the Constitution, "which guarantees the dignity of the human individual as the foundation of every Democratic State of Law. Thus, the whole legal order must be interpreted in the light of the principle of maximum effectiveness of entity rights" (DALLEGRAVE NETO, 2017, p. 161).

In the employment contract, the employee is in a clear state of vulnerability, both at the existential and the possession levels. The enforceability and security of their existential assets and interests, which are submitted to the management of the employer, must be widely protected, so that the work is dignified. The Brazilian Civil Code (Arts. 11-21) dictates, in this regard, "by means of clauses open to hermeneutic interpretation, the inalienable, unwaivable, and unavailable nature of all the rights inherent to the entity" (CARVALHO, 2018, p. 327).

However, considering that there is already a micro-system of strict liability in tort that specifically deals with damages of an environmental nature, precisely because of Arts. 225, § 3, of the Constitution and 14, § 1 of Law 6,938/1981, and considering that the environment includes the workplace environment (Art. 200, VIII of the Constitution), why is a new, autonomous and independent micro-system being proposed?

The proposal seeks to pave the way for the scientific autonomy of Environmental Labor Law. The intention is to establish a discussion within

the legal space and also on the ethical level, with a humanistic outlook appropriate to the liberating spirit of the Constitution. The intent is not, however, to discuss a purely abstract ethic, disregarding any legal power, including because labor-environmental protection is an already a positive power/duty.

The very study of the workplace environment, along with the environment in its broad sense, is part of Environmental Labor Law, a "branch of Law that is characterized by a reorientation of environmental protection by proposing discussion and reflection on the legal protection of the worker in their work environment from a human dignity outlook" (NEVES; NEVES; SILVA, 2015, p. 13).

This acknowledged autonomy must be preserved and, certainly, expanded as "instrument at the service of the individual and their dignity", which must "reflect the primacy of existential interests over pecuniary interests" (NEGREIROS, 2006, p. 461).

3.1.1 Civil-environmental strict liability and damage to the workplace environment

As Tupinambá (2018, p. 34) notes, "in an attempt to determine what are risky activities, the development of the risk theory has implied in a subclassification of complex nuances that result in theories such as those of profit risk, created risk, business risk, and full risk liability".

The risk theory is "based on the idea that whoever profits from or takes advantage of an activity and causes damage to others has a duty to repair it", whereas the full risk liability theory is "more extreme and does not allow for any exclusion from the causality nexus" (TUPINAMBÁ, 2018, p. 34-35).

For Molina (2013, p. 78), "when the micro-system includes the full risk liability theory, the offender will not be able to prove any of the four nexus exclusions when there is a duty to compensate for the mere existence of harm."

Very well.

According to STJ[23],

> [...] liability for damage to the workplace environment is strict, according to the full risk liability theory, the causal nexus being the binding factor that allows the risk to

23 STJ, Special Appeal 1.374.284/SP, Rapporteur: Justice Luis Felipe Salomão, Second Meeting, tried on 27/Aug/2014, DJe from 5/Sep/2014; STJ, Special Appeal 1.354.536/SP, Rapporteur: Justice Luis Felipe Salomão, Second Meeting, tried on 26/Mar/2014, DJe from 5/May/2014.

> be integrated into the unity of the act, waiving of civil liability to remove from the company responsible for the environmental damage their obligation to indemnify not being admitted.

Also according to STJ, "strict liability for environmental damages, whether for harm to the environment proper (public environmental damage), whether by violation of individual rights (private environmental damage) is objective and based on the full risk liability theory"[24].

As stated by Machado (2017, p. 356), STJ case law clearly shows that the application of the full risk liability theory to environmental strict liability requires proof of the causal link between perpetration and environmental damage.

As can be seen, based on the full risk liability theory, liability is strict; all that is required is the existence of environmental damage and a causal link between the perpetrator and victim of the harmful event; and, in the STJ's own words, claiming any exclusion of strict liability in tort (fact of the victim, fact of a third party, internal or external act of god, and force majeure) is unacceptable.

However, although the STJ is responsible for standardizing the interpretation of infra-constitutional legislation at the national level, as provided for in Art. 105, III of the Constitution, the Superior Court has no powers to prosecute and try actions arising from labor relations ruled by CLT, whose mandate, by constitutional delegation, falls to the Labor Courts, as provided for in Art. 114, I of the Constitution.

How interesting. STJ has powers to standardize the interpretation of *infra-constitutional legislation* without being able to resort to an analysis of direct and literal violation of the Constitution, which is reserved to STJ; STJ, however, has an interpretation of environmental damage more in line with the constitutional mandate of building a more just, fraternal and solidarity society.

TST (Superior Labor Court) is the supreme body of Labor Justice (Art. 111, I of the Constitution) and has powers to standardize the *constitutional* and infraconstitutional interpretation of labor law. This is because, according to Art. 111-A, § 1 of the Constitution, together with arts. 894 and 896 of CLT, it is reserved to TST the power to analyze decisions of the Labor Courts "issued in literal violation of a federal law provision or a direct and literal affront to the Federal Constitution".

24 STJ, Special Appeal 1.373.788/SP, Rapporteur: Justice Paulo de Tarso Sanseverino, Third Panel, tried on 6/May/2014, DJe from 20/May/2014.

And the highest Court of the Labor Justice, although trying only so-called *specialized* matters because it must be more sensitive to the inequalities that arise from labor relations, interprets national labor case law regarding damages to the workplace environment in a restricted way and, in general, limits themselves to the application of Art. 7, XXVIII of the Constitution, which imputes to the employer the obligation to indemnify "when incurring in willful misconduct or guilt".

Even in cases of strict liability in tort, in labor relations as based on Art. 927, sole paragraph of the Civil Code, by virtue of Art. 769 of CLT, the TST case law is restrictive, since, in allowing exclusions of liability, it removes the employer's strict liability in cases of urban violence, for example, though it is known, as we have seen, that it is the obligation of the employer to maintain a 100% safe or minimally unsafe work environment – a corollary of the principles of minimal regressive risk and limitation of the risk to its source.

See, for example:

> Interlocutory appeal. Accident. Strict liability in tort. Sole guilt with the victim. Breach of the causality nexus. In order to characterize of the duty to indemnify, even in the case of strict liability in tort, the damage and causal link between the functions performed and the accident must obtain. The existence of sole guilt with the victim breaks the causal link itself, since an accident that the perpetrator caused due to their own imprudence cannot be due to the functions performed by them.
>
> In such cases, there is no duty to make reparation, since the full risk liability theory does not apply to labor disputes, except in those cases provided for in the Constitution (Art. 21, XXIII, "d" and 225, § 3, of the Federal Constitution – nuclear and environmental damages). The appeal is dismissed (TST-Ag-AIRR-55900-87.2006.5.03.0053, Justice Rapporteur: Guilherme Augusto Caputo Bastos, Trial date: 11/Dec/2013, 5th Panel, Publication date: DEJT 19/Dec/2013).

During a trial in the São Paulo TRT (Regional Labor Court), case 1000701-08.2015.5.02.0431, the strict liability of the employer was claimed by an employee who, in the exercise of their function of motorcycle courier, was robbed five times in the exercise of his work activities.

According to TRT, the employer could not be held liable because even if

> [...] they were to provide an armed escort for all couriers – which seems impracticable – there would be no guarantee that the robberies would not take place, as it is well known that urban violence in Brazil has reached intolerable limits and, unfortunately, all citizens are exposed to this growing violence.

Thus, the São Paulo TRT concluded that the matter was a *third party fact* that "excludes the employer's responsibility, which is, let us repeat,

subjective, and so there is no duty to repair the harm".

Law theory states that, "conceptually, there is in current law two cases of full risk liability; none of them, however, apply to labor relations"; also, "there is no micro-system that provides for full risk liability" (MOLINA, 2013, p. 79; 112).

As we have seen before, there are a number of possible damages to the workplace environment, and there are significant labor-environmental issues, such as occupational accidents and occupational diseases, "considered as pollution to the workplace environment, which interpretation is important for the protection of fundamental labor rights" (SOARES, 2017, p. 75).

Along those lines, a critical outlook of law theory and case law – and therefore of current hermeneutics – further emphasizes the importance of an objective, independent and autonomous strict liability micro-system dealing specifically with environmental damage in the form of Arts. 225, § 3 of the Constitution and 14, § 1 of Law 6,938/1981.

In practical terms, in the above-mentioned case of the courier, for example, the inadequacy of the theory of culpability leads us to the application of the full risk liability theory, because the employer must bear the risks of the business and the risks and dangers involved in said business, even though employing all diligence to avoid damage[25], as suggested by CLT itself (Art. 2, heading): "An employer is considered to be an individual or collective enterprise which, *taking on the risks of the economic activity*, hires, pays wages to and directs individual service provision".

As Ney Maranhão teaches, in a phenomenological approach to the elements making up the workplace environment, the *ambient* is what surrounds the human being in the physical space; but the *environment* entails a complex, interactive idea that the human being is included in it. In the actual case mentioned, considering the courier's work takes place outdoors, it is certain that the vicissitudes of the streets are part of the workplace environment.

To agree to the strict irresponsibility of the employer, in this case, is to say that the employee must take on the risks of the business.

25 In the trial of RR-1000701-08.2015.5.02.0431, 5th Panel, Rapporteur: Justice Douglas Alencar Rodrigues, DEJT 25/Oct/2018, TST acknowledged the applicability of strict liability in tort, but did not adopt full risk liability theory, but rather that of created risk, and did not recognize the situation as harm to the workplace environment.

CONCLUSION

Given the non-obviation of jurisdiction and the exclusive power of the Judiciary Branch to pronounce the law and have the last word in every nuance of human life and the phenomenal world, legal interpretation can (must) be considered the *basis of citizenship*.

In this sense, the judge, when applying the legal system, must attend to social purposes and the demands of the common good, safeguarding and promoting the dignity of the human individual, according to Art. 8 of CPC, which demands "the requirement of a more active behavior by the magistrate" (DIDIER JÚNIOR, 2016, p. 76-77).

In reorienting environmental protection "in the face of a human dignity perspective" (NEVES; NEVES; SILVA, 2015, p. 13), Environmental Labor Law, as a separate branch of Law, is endowed with full scientific autonomy, as can be seen in the phenomenal world itself, and also from the deontic study of legal normativity, which must be given preference.

Considered health as a biopsychosocial element, as provided for in the World Health Organization Constitution and in Convention 155 of the ILO, the workplace environment must be considered from a multidimensional perspective, capable of understanding all its causalities. And being a social right implicit in Art. 6 of the Constitution of the Brazilian Republic, it must be subject to a humanistic, holistic, democratic and participatory approach.

The conception of the environment, taken as a whole, considers the interdependence between the natural, socioeconomic and cultural milieus, and links ethics, education, labor and social practices.

Along with the interaction between natural, artificial and cultural elements, the environment includes the workplace one, which is representative of labor relations; Law 6,938/1981 clarifies this environmental concept and lays down the assumption that "pollution" (Art. 3, III, "b") is the degradation of environmental quality resulting from activities that directly or indirectly create adverse conditions to social and environmental activities, and economic development.

In spite of these assumptions, Labor Justice has developed an interpretative system that falls short in providing the adequate level of protection that is required by the workplace environment and labor-environmental protection, as it includes labor environmental damages within the labor rule included in Art. 7, XXVIII of the Constitution, which enshrines fault liability and requires – besides the actual damage and the

causal link binding the perpetrator and victim to the harmful event – the occurrence of willful misconduct or guilt.

Having established the *capitis diminutio* framework, and based on the moral authority of the Constitution of the Republic and the Brazilian constitutional system that brings together numerous international human rights treaties, such as the International Covenant on Economic, Social and Cultural Rights, we have proposed a new micro-system of strict liability in tort, besides the already-acknowledged micro-systems, which is autonomous and independent, for determining the employer-polluter liability in cases of environmental pollution, based on Arts. 200, VIII and 225, § 3 of the Constitution and of Art. 14, § 1 of Law 6,938/1981.

Under the proposed system, if the damage is included in the dynamics of the workplace environment, liability is strict, informed by the full risk liability theory, the causal link being the binding factor that allows the risk to be integrated into the unity of the act, fault liability not being admitted to exclude the obligation to indemnify.

With that, we hope to pave the way for the scientific autonomy of Environmental Labor Law, always with a high regard for the dignity of the human individual and the social values of work and laissez-faire.

BIBLIOGRAPHY

BALERA, W. *A seguridade social na Constituição de 1988*. São Paulo: Revista dos Tribunais, 1989.

BRASIL. *Decreto-Lei n. 4.657, de 4 de setembro de 1942*. Lei de Introdução às normas do Direito Brasileiro. Brasília, DF: Presidência da República, 1942. Available at: <http://www.planalto.gov.br/ccivil_03/decreto-lei/Del4657.htm>. Access on: 30 jun. 2019.

BRASIL. *Decreto-Lei n. 5.452, de 1º de maio de 1943*. Aprova a Consolidação das Leis do Trabalho. Brasília, DF: Presidência da República, 1943. Available at: <https://www.planalto.gov.br/ccivil_03/decreto-lei/Del5452.htm>. Access on: 30 jun. 2019.

BRASIL. *Decreto-Lei n. 227, de 28 de fevereiro de 1967*. Dá nova redação ao Decreto-lei nº 1.985, de 29 de janeiro de 1940. (Código de Minas). Brasília, DF: Presidência da República, 1967. Available at: <http://www.planalto.gov.br/ccivil_03/decreto-lei/del0227.htm>. Access on: 30 jun. 2019.

BRASIL. *Lei n. 6.453, de 17 de outubro de 1977*. Dispõe sobre a responsabilidade civil por danos nucleares e a responsabilidade criminal por atos relacionados com atividades nucleares e dá outras providências. Brasília, DF: Presidência da República, 1977. Available at: <http://www.planalto.gov.br/ccivil_03/leis/L6453.htm>. Access on: 30 jun. 2019.

BRASIL. *Lei n. 6.938, de 31 de agosto de 1981*. Dispõe sobre a Política Nacional do Meio Ambiente, seus fins e mecanismos de formulação e aplicação, e dá outras providências. Brasília, DF: Presidência da República, 1981. Available at: <http://www.planalto.gov.br/ccivil_03/leis/l6938.htm>. Access on: 30 jun. 2019.

BRASIL. *Constituição da República Federativa do Brasil*. Brasília, DF: Presidência da República, 1988. Available at: <https://www.planalto.gov.br/ccivil_03/constituicao/Constituicao.htm>. Access on: 30 jun. 2019.

BRASIL. *Decreto n. 592, de 6 de julho de 1992.* Atos Internacionais. Pacto Internacional sobre Direitos Civis e Políticos. Promulgação. Brasília, DF: Presidência da República, 1992. Available at: <http://www.planalto.gov.br/ccivil_03/decreto/1990-1994/d0592.htm>. Access on: 30 jun. 2019.

BRASIL. *Lei Complementar n. 75, de 20 de maio de 1993*. Dispõe sobre a organização, as atribuições e o estatuto do Ministério Público da União. Brasília, DF: Presidência da República, 1993. Available at: <http://www.planalto.gov.br/ccivil_03/leis/lcp/lcp75.htm>. Access on: 30 jun. 2019.

BRASIL. *Decreto n. 1.254, de 29 de setembro de 1994.* Promulga a Convenção número 155, da Organização Internacional do Trabalho, sobre Segurança e Saúde dos Trabalhadores e o Meio Ambiente de Trabalho, concluída em Genebra, em 22 de junho de 1981. Brasília, DF: Presidência da República, 1994. Available at: <http://www.planalto.gov.br/ccivil_03/decreto/1990-1994/D1254.htm>. Access on: 30 jun. 2019.

BRASIL. *Lei Complementar n. 95, de 26 de fevereiro de 1998*. Dispõe sobre a elaboração, a redação, a alteração e a consolidação das leis, conforme determina o parágrafo único do art. 59 da Constituição Federal, e estabelece normas para a consolidação dos atos normativos que menciona. Brasília, DF: Presidência da República, 1998. Available at: <http://www.planalto.gov.br/ccivil_03/leis/lcp/lcp95.htm>. Access on: 30 jun. 2019.

BRASIL. *Lei n. 9.795, de 27 de abril de 1999*. Dispõe sobre a educação ambiental, institui a Política Nacional de Educação Ambiental e dá outras providências. Brasília, DF: Presidência da República, 1999. Available at:

<http://www.planalto.gov.br/ccivil_03/leis/l9795.htm>. Access on: 30 jun. 2019.

BRASIL. *Lei n. 10.406, de 10 de janeiro de 2002*. Institui o Código Civil. Brasília, DF: Presidência da República, 2002. Available at: <https://www.planalto.gov.br/ccivil_03/leis/2002/L10406.htm>. Access on: 30 jun. 2019.

BRASIL. *Súmula n. 736*. Compete à justiça do trabalho julgar as ações que tenham como causa de pedir o descumprimento de normas trabalhistas relativas à segurança, higiene e saúde dos trabalhadores. Brasília, DF: Supremo Tribunal Federal, 2003. Available at: <http://www.stf.jus.br/portal/jurisprudencia/menuSumarioSumulas.asp?sumula=2243>. Access on: 30 jun. 2019.

BRASIL. *Proposta de emenda à Constituição n. 16, de 2012*. Altera a redação do artigo 6º da Constituição Federal para acrescenta 'o meio ambiente saudável' entre os direitos sociais. Brasília, DF: Senado Federal, 2012. Available at: <https://legis.senado.leg.br/sdleg-getter/documento?dm=4044014&ts=1553254814924&disposition=inline>. Access on: 30 jun. 2019.

BRASIL. Superior Tribunal de Justiça. *Informativo de Jurisprudência*, Brasília, DF, n. 513, 6 mar. 2013. Available at: <https://scon.stj.jus.br/SCON/SearchBRS?b=INFJ&tipo=informativo&livre=@COD=%270513%27>. Access on: 30 jun. 2019.

BRASIL. *Lei n. 13.105, de 16 de março de 2015*. Código de Processo Civil. Brasília, DF: Presidência da República, 2015. Available at: <https://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2015/Lei/L13105.htm>. Access on: 30 jun. 2019.

BRASIL. *Lei n. 13.467, de 13 de julho de 2017*. Lei n. 13.467, de 13 de julho de 2017. Altera a Consolidação das Leis do Trabalho (CLT), aprovada pelo Decreto-Lei nº 5.452, de 1º de maio de 1943, e as Leis nº 6.019, de 3 de janeiro de 1974, 8.036, de 11 de maio de 1990, e 8.212, de 24 de julho de 1991, a fim de adequar a legislação às novas relações de trabalho. Brasília, DF: Presidência da República, 2017. Available at: <http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2017/lei/L13467.htm>. Access on: 30 jun. 2019.

BIRNFELD, C. A. S. Do ambientalismo à emergência das normas de proteção ambiental no Brasil. In: VARELLA, M. D.; BORGES, R. C. B. (Orgs.). *O novo em direito ambiental*. Belo Horizonte: Del Rey, 1998. p. 71-97.

BONNA, A. P. A vedação do retrocesso social como limite à flexibilização das normas trabalhistas brasileiras. *Revista do Tribunal Regional do Trabalho da 3ª Região*. Belo Horizonte, v. 47, n. 77, p. 51-66, jan./jun. 2008.

BRITO, F. J. S.; ZUBERI, T.; BRITO, V. S. S. A constitucionalização do meio ambiente no Brasil, Espanha e África do Sul: avanços e desafios. *Veredas do Direito*, Belo Horizonte, v. 15, n. 32, p. 67-85, maio/ago. 2018.

CANARIS, C.-W. *Pensamento sistemático e conceito de sistema na ciência do direito*. 3. ed. Lisboa: Fundação Calouste Gulbenkian, 2002.

CARVALHO, A. C. L. *Direito do trabalho*: curso e discurso. 2. ed. São Paulo: LTr, 2018.

CATALAN, M. *A morte da culpa na responsabilidade contratual*. Tese (Doutoramento) – Faculdade de Direito, Universidade de São Paulo, São Paulo, 2011.

CONFERÊNCIA DAS NAÇÕES UNIDAS SOBRE MEIO AMBIENTE E DESENVOLVIMENTO. *Declaração do Rio sobre Meio Ambiente e Desenvolvimento*. Available at: <http://www.meioambiente.pr.gov.br/arquivos/File/agenda21/Declaracao_Rio_Meio_Ambiente_Desenvolvimento.pdf>. Access on: 30 jun. 2019.

CONFERÊNCIA INTERNACIONAL SOBRE PROMOÇÃO DA SAÚDE. *Carta de Ottawa*. Available at: <http://bvsms.saude.gov.br/bvs/publicacoes/carta_ottawa.pdf>. Access on: 30 jun. 2019.

CUNHA, R. S. *Manual de Direito Penal*: parte geral (arts. 1º a 120). 7. ed. rev., atual. e ampl. Salvador: JusPODIVM, 2019.

CUNHA, T. H. L. Aspecto repressivo da tutela labor-ambiental: um estudo sobre o dano moral coletivo. In: FELICIANO, G. G. et al. (Coords.). *Direito ambiental do trabalho*: apontamentos para uma teoria geral. v. 2. São Paulo: LTr, 2015. p. 225-259.

DALLEGRAVE NETO, J. A. Dano ao ambiente de trabalho individual e coletivo: evolução e notas sobre prescrição e competência. In: GUNTHER,

L. E.; ALVARENGA, R. Z. (Coords.). *Direitos humanos e meio ambiente do trabalho*. São Paulo: LTr, 2016. p. 69-80.

DALLEGRAVE NETO, J. A. *Responsabilidade civil no direito do trabalho*. 6. ed. São Paulo: LTr, 2017.

DELGADO, M. G. *Curso de direito do trabalho*. 17. ed. rev., atual. e ampl. São Paulo: LTr, 2018.

DIDIER JÚNIOR, F. *Curso de direito processual civil*: introdução ao direito processual civil, parte geral e processo de conhecimento. 18. ed. rev., ampl. e atual. Salvador: JusPODIVM, 2016.

FIORILLO, C. A. P. In: CANOTILHO, J. J. G. et al. *Comentários à Constituição do Brasil*. Saraiva/Almedina: São Paulo/Portugal, 2013.

FRANÇA. *Declaração de direitos do homem e do cidadão*. Available at: <http://www.direitoshumanos.usp.br/index.php/Documentos-anteriores-%C3%A0-cria%C3%A7%C3%A3o-da-Sociedade-das-Na%C3%A7%C3%B5es-at%C3%A9-1919/declaracao-de-direitos-do-homem-e-do-cidadao-1789.html>. Access on: 30 jun. 2019.

GONDIM, A. R. C. A responsabilidade por danos labor-ambientais no setor automobilístico. In: FELICIANO, G. G.; EBERT, P. R. L. (Coords.). *Direito ambiental do trabalho*: apontamentos para uma teoria geral. v. 4. São Paulo: LTr, 2018. p. 177-188.

JELLINEK, G. *A declaração dos direitos do homem e do cidadão*: contribuição para a história do direito constitucional moderno. São Paulo: Atlas, 2015.

KRELL, A. J. Do meio ambiente. In: CANOTILHO, J. J. G. et al. *Comentários à Constituição do Brasil*. São Paulo/Coimbra: Saraiva/Almedina, 2013. p. 2077-2086.

LARENZ, K. *Metodologia da ciência do Direito*. 3. ed. Lisboa: Fundação Calouste Gulbenkian, 1997.

LEAL, C. R. F.; ROCHA, S. H. Riscos ambientais laborais na sociedade global e sua proteção jurídica. *Veredas do Direito*, Belo Horizonte, v. 15, n. 33, p. 263-290, set./dez. 2018.

LEITÃO, A. S.; MEIRINHO, A. G. S. A cidadania como pressuposto de concessão do benefício assistencial de prestação continuada da LOAS. In: FURTADO, E. T.; DIAS NETO, P. M. V. (Orgs.). *Teoria da cidadania e direitos fundamentais*. São Paulo: LTr, 2016. p. 41-52.

LEITE, J. R. M. Responsabilidade civil por dano ambiental. In: CANOTILHO, J. J. G. et al. *Comentários à Constituição do Brasil*. São Paulo/Coimbra: Saraiva/Almedina, 2013. p. 2104-2110.

MACHADO, P. A. L. STJ e nexo causal na responsabilidade civil. *Veredas do Direito*, Belo Horizonte, v. 14, n. 30, p. 351-371, set./dez. 2017.

MARANHÃO, N. *Poluição labor-ambiental*: abordagem conceitual da degradação das condições de trabalho, da organização do trabalho e das relações interpessoais travadas no contexto laborativo. Rio de Janeiro: Lumen Juris, 2017a.

MARANHÃO, N. Questões social e ambiental: paralelismos e desencontros na perspectiva do meio ambiente do trabalho. *Revista Magister de Direito Ambiental e Urbanístico*, Porto Alegre, n. 72, p. 5-29, jun./jul. 2017b.

MARANHÃO, N. Meio ambiente do trabalho: relevância sociojurídica de seu reconhecimento constitucional e internacional. In: ROCHA, C. J. et al. (Coords.). *Direito internacional do trabalho*: aplicabilidade e eficácia dos instrumentos internacionais de proteção ao trabalhador. São Paulo: LTr, 2018. p. 289-295.

MEDEIROS NETO, X. T. *Dano moral coletivo*. 4. ed. ampl., atual. e rev. São Paulo: LTr, 2014.

MOLINA, A. A. Sistemas de responsabilidade civil objetiva e os acidentes de trabalho. *Revista do TST*, Brasília, v. 79, n. 2, p. 70-117, abr./jun. 2013.

MORAIS, J. L. B.; SARAIVA, B. C. O Estado de Direito Socioambiental como condição de possibilidade destinada à tutela do futuro. *Veredas do Direito*, Belo Horizonte, v. 15, n. 32, p. 11-37, maio/ago. 2018.

NEGREIROS, T. *Teoria do contrato*: novos paradigmas. 2. ed. Rio de Janeiro: Renovar, 2006.

NEVES, I. C. S.; NEVES, I. C. S.; SILVA, R. M. S. Direito ambiental do trabalho: o meio ambiente do trabalho, uma aproximação interdisciplinar. In: FELICIANO, G. G. et al. (Coords.). *Direito ambiental do trabalho*: apontamentos para uma teoria geral. v. 2. São Paulo: LTr, 2015. p. 13-20.

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

OLIVEIRA, S. G. Fundamentos da tutela labor-ambiental. In: FELICIANO, G. G.; URIAS, J.; MARANHÃO, N. *Direito ambiental do trabalho*:

apontamentos para uma teoria geral. v. 3. São Paulo: LTr, 2017. p. 91-102.

ORGANIZAÇÃO DAS NAÇÕES UNIDAS. *Constituição da Organização Mundial de Saúde*. Available at: <http://www.direitoshumanos.usp.br/index.php/OMS-Organiza%C3%A7%C3%A3o-Mundial-da-Sa%C3%BAde/constituicao-da-organizacao-mundial-da-saude-omswho.html>. Access on: 30 jun. 2019.

ORGANIZAÇÃO DAS NAÇÕES UNIDAS. *Declaração Universal dos Direitos Humanos*. Available at: <https://nacoesunidas.org/wp-content/uploads/2018/10/DUDH.pdf>. Access on: 30 jun. 2019.

PADILHA, N. S. O equilíbrio do meio ambiente do trabalho: direito fundamental do trabalhador e de espaço interdisciplinar entre o direito do trabalho e o direito ambiental. *Revista do TST*, Brasília, v. 77, n. 4, p. 231-258, out./dez. 2011.

SANTOS, E. R. *Responsabilidade objetiva e subjetiva do empregador em face do novo Código Civil*. 3. ed. rev. e ampl. São Paulo: LTr, 2015.

SARLET, I. W. As normas definidoras dos direitos e garantias fundamentais têm aplicação imediata. In: CANOTILHO, J. J. G. *Comentários à Constituição do Brasil*. São Paulo/Coimbra: Saraiva/Almedina, 2013a. p. 513-515.

SARLET, I. W. Dos direitos sociais. In: CANOTILHO, J. J. G. et al. *Comentários à Constituição do Brasil*. São Paulo/Coimbra: Saraiva/Almedina, 2013b. p. 533-548.

SILVA, J. A. *Direito ambiental constitucional*. 2. ed. São Paulo: Malheiros, 1998.

SOARES, S. C. A. *Direitos fundamentais do trabalho*. São Paulo: LTr, 2017.

STOCO, R. *Tratado de responsabilidade civil*. 6. ed. rev., atual. e ampl. São Paulo: Revista dos Tribunais, 2004.

STRECK, L. L.; MORAIS, J. L. B. Estado democrático de direito. In: CANOTILHO, J. J. G. et al. *Comentários à Constituição do Brasil*. São Paulo/Coimbra: Saraiva/Almedina, 2013. p. 113-116.

TUPINAMBÁ, C. *Danos extrapatrimoniais decorrentes das relações de trabalho*. São Paulo: LTr, 2018.

VINEY, G.; JORDAIN, P. *Traité de droit civil*: les effets de la responsabilité. 3. ed. Paris: LGDJ, 2010.

Article received on: 28-Feb-19.

Article accepted on: 01-Jul-19.

How to quote this article (ABNT):

LEAL, P. S. T.; ZWICKER, I. O. AThe employer's strict liability in light of the constitutional protection granted to the workplace environment. *Veredas do Direito*, Belo Horizonte, v. 16, n. 35, p. 139-178, may/aug. 2019. Available at: <http://www.domhelder.edu.br/revista/index.php/veredas/article/view/1499>. Access on: day month. year.