Of the definition of local service delivery in telework as a measure of impeding setbacks fundamental social rights

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ABSTRACT
This paper presents a discussion of jurisdiction and applicable law in international relations of telecommuting from the perspective of the worker's fundamentals rights and the prohibition of retrogression due to the localization of the service of these new relationships. The research is performed from the study of telework, where it seeks to briefly conceptualize the institute. Subsequently, we study the jurisdiction and conflict of laws in place in teleworking, which consider the principle of Protection, Brazilian law, European law and the recommendations and conventions of the International Labour Organization. Finally, we study whether the workers' social rights as fundamental rights and the possibility - and ban - to reverse these guarantees before implementation of the law of the country less protective teleworker, with respect to human dignity and the problem of social dumping due to the competitiveness of products from a cheap hand-to-work.

Keywords: Telework. Information Technology and Communication. Jurisdiction. Conflict of laws in space. Fundamental Rights.

1 INTRODUCTION

Contemporary society has long suffered from the effects of so-called globalization in which borders between states and large companies are decreasing at an accelerated pace. In recent decades, however, this phenomenon is no longer the privilege of public entities and large corporations, but reaches smaller corporations and individuals from all areas of knowledge and different social classes.

Currently, in view of the flattening of the world - a term designated by Thomas L. Friedman [7] - the physical presence of people and, more specifically, workers as well as geographical localization, become increasingly less significant and, in some cases irrelevant. The unrestrained development of Information Technologies and Communication, added to the growing need for companies to reduce costs and increase productivity, allow the implementation - practically in many countries and increasing in others - the so-called telework.

Teleworking allows services of all kinds, such as readings of medical examinations, scheduling hours in restaurants and even private tutoring lessons to students of elementary and middle school, can take place anywhere in the globe, simultaneous and without loss of quality and increased productivity. Activities that where unthinkable without a present attendant, today are conducted in virtual mode, by any person of any nationality, anywhere, in constant physical mobility.

The job evolves to a virtual form, already confused with the real one in many cases and on countries like United States and European countries, they already see telework in significant levels. The worker, however, irrespective of its work, whether in person or remotely, by physical or electronic, is still the same: the human person and dignity, regardless of color, race, religion or sex, that deserves respect and is entitled to the fundamental guarantees, so hardly won after centuries of struggle throughout the history of the Labor Law. The evolution of information technology and labor represent an upgrade and must not involve, against a common sense, the recession of the fundamental social rights.

This work's development, however, may characterize in some cases, violation of social rights and reverse labor, such as extenuated schedules, lower wages, even lower than the minimum, removal of safeguards for workers and the pension system. This came mainly from to the difficulty to identify and establish the location of services and, consequently, the jurisdiction and applicable law, since there is no global rules, only international conventions that not apply to all countries. Take as an example, just for the title of best illustration, a Brazilian hired by an American company to provide services in their home through virtual channels of communication and Web sites hosted in countries from China. Where the Brazilian works? In Brazil, the USA or China? Setting up the service in the Asian country, will have the law of this State as applicable in this case, even if it means losing the social rights achieved by the occidental worker? Brazilians who, after years of slavery, have achieved the right to a minimum

wage cannot, under the auspices of and justification for speed and ease of communication and work, and smaller economic and social costs, rewind and have Chinese wages, defying their dignity.

This study, therefore, justified himself for a revolution of information and way of work: telework, which is not future, but rather the present. It has been amazing as a phenomenon of rapid development, which is its nature, but that tramples personal relations and law, not prepared for such a drastic change that has ever happened without the majority realizes. Society calls for study that barely begins to crawl, but it shows the urgent development, failing to have a violation of fundamental social rights, already present and cannot setback in a society undergoing rapid change and accelerated.

2 TELEWORK

Telework is a phenomenon of relevant consequences, legally, politically and socially, compared to its implications, such as the overall reduction of jobs - before replacing the human labor by machines more productive, changing the form of compensation - the fixed wages for payment by work performed, the increase in outsourcing, the rise of dissimulation relations with links to employment, increase of cases of social dumping, etc.. [10]. The effects of this new form of work, increasingly present in the current world scenario, whether beneficial or detrimental, affecting workers, employers, societies and states, for which reason it's urgent an specific legislation on telework, yet inexistent in most countries, especially those not developed or underdeveloped, as most countries in South America.

Telework is, in the words of Chaparro, the "trabajo a distancia, las telecomunicaciones y by using cuenta ajena. That is, this way of working is one that generates wealth as well as the presential, but that occurs far away from the establishment of the company, whether is the domicile of teleworker, whether in telecentres or other places where it is possible to provide services. The working distance, therefore, is that accomplished bt the use of telecommunications systems (Information Technology and Communication), whoever they are: facsimile, telephone, satellite, broadband networks, email, video conferencing, etc. Finally, telework should be for the account of others, in the sense that the service must benefit the person or company that remunerate for it, regardless of whether they pay for the work, temporarily or indefinitely, unlike the standalone teleworking, which only brings results to the person who conducts activities through information technology and communication. [5] The teleworker may or may not have an employment relationship, characterized as the unique qualities of this institute: service on a personal basis, with payment, no eventually and subordinate - or at least subordinate like - calling for the protection of the law. [6]

3 JURISDICTION OF THE CONFLICT OF LAWS AND LABOR IN SPACE

Stated those brief remarks, will go with the study of law and conflicts of labor laws in space, based on domestic laws and international treaties and conventions. Telework is present in the current world scenario, but still cannot find enough rules in developing countries, and specifically regulated only in some countries, like Portugal.

Globalization and the overthrow of borders in the economy and job market, combined with the sharp differences between developed, developing and underdeveloped countries, calls for international regulation of labor law, which is why the ILO has the core of its mission to normatize activity seeking to protect the worker and the development of underdeveloped regions [15]. The difficulty in applying the protective conventions of the International Labor Organization will lie, however, in those countries that do not sign these treaties and does not respect them, violating the human dignity of the workers that are unprotected from these fundamental guarantees. In such cases, when there is failure of international organizations, international relations work should be solved by their own rules for resolving conflicts of law in space.

The implementation of labor laws to international relations demands differential treatment in respect to the orientation of the other branches of law. Given the need of international protection to the worker inapt, it becomes imperative to study the theory of Savigny, which provides that the applicable law - national or foreign - will be determined by the characteristics of each legal relationship, not based on fixed notions of nationality versus territoriality. [11]

The current view – different from the past, where labor laws were mandatory, considering the lack of autonomy of will in the labor agreement, which was viewed as the membership - is that the employment contract must comply with the autonomy of the parties, currently recognized by the Courts, legally accepting the clauses established between employee and employer regarding the applicable law, which must be observed by the competent jurisdiction. This conception, however, should be taken with caution, because the countries involved in these international relations today are more diverse, including those who, like India and China, have no little or no protection to workers, which leads to the question: to what extent the autonomy of will prevail when it comes to protection of fundamental social rights, guaranteed by Western legal systems and the International Labour

Organization as unavailable and inalienable? The election of the applicable law may not entail, in some cases, the recession of the fundamental social rights?

3.1 Principle of Protection

The Principle of Protection is to protect the inapt part of the relationship, with the goal of, by this protection, to achieve a substantial and genuine equality between the parties. The principle of protection is expressed by three rules: a) in dubio, pro worker - criteria used by the magistrate to impose a single standard that contains more than one meaning, and use whichever is more favorable to the worker, b) more favorable rule - applies the standard most favorable to the worker, although lower-ranking in the hierarchy of traditional labor standards, c) the most favorable condition - sets a standard that Labour cannot backdate to discriminate against an employee who, under the optics of the standard previously in force, was in optimum condition. [12]

Bearing in mind that the viewpoint of this study refers to the conflict of laws in space and the application of labor standards in the international arena without it reflects the prejudice to the employee and shrinking social rights, it will restrict to the study of the last two rules of the Principle of Protection, excluding the analysis of the rule in dubio pro worker research proposed here.

Regarding the more favorable rule, unlike what occurs in the solution of the antinomy existing law, the Labour Law, existing more than one rule on the same subject, we will apply the most favorable to the employee as the case, albeit lower in the hierarchy of labor sources. The rule not applied will not be waived by the other, just neglected in the case, because in another factual situation, that rule may be most favorable. [12]

The principle of the more favorable rule, therefore, will also solve the conflicts between domestic and international law in the context of supranational labor relations, thus ensuring the guarantees of more beneficial to the employee. In this context, in favor of worker protection, the international standard, from international treaties or conventions, the internal standard can prevail if it is more beneficial, the opposite is true. [15] It is noteworthy the opposing view of the Superior Labor Court, because of the lack of comparability of international law, should apply the law more beneficial only when there is contradiction of internal laws. Case nº TST-AIRR-107298/2003-900-01-00.3. Superior Labor Court. 6th Class. Min Rel Mauricio Godinho Delgado. Judged in: out, 14, 2009.

The rule of the most favorable condition, in turn, determines the maintenance of the concrete situation already acquired by the worker and more beneficial than that imposed by a later law - imagine a Chinese worker who came to Brazil to provide services and because of technological innovation, can return to his country to perform services for the same Brazilian company. This status quo may have been reached by previous rule, by custom and usage of local and by a grant donation by the company or a rule applicable in the situation. This is very similar to the rule most favorable standard is very difficult to distinguish them.

3.2 Jurisdiction and Conflict of Laws in Labour Law Latin Space

Regarding the Brazilian legal system, the Consolidation of Labor Laws, in his article 651, defines the Brazilian jurisdiction as competent in cases where the employee provides services in the country, although it has been contracted abroad, or if the service is due in an agency or branch abroad, provided that the employee is Brazilian and there is no international agreement providing otherwise (first paragraph). The Pronouncement nº 207 of the Superior Labor Court of Brazil, in turn, establishes the principle of *lex loci executionis*, in which the legal relationship of labor is governed by the laws of the country for service provision and not by those of local hiring. Thus, with the Brazilian jurisdiction competent to judge Brazilian labor relationship, the law shall be that of local service delivery.

The Brazilian law adopts the principle of territoriality, but compared to the principle of *pacta sunt servanda*, the guideline set in the summary does not prevent the Brazilian Labor Court to apply for employment contract rules stipulated by the parties in the country of employment provided they be more beneficial to the employee. This is because the summary is intended to ensure the Brazilian or foreign worker hired outside the minimum guarantees set out in our legal system, preventing workers who provide services in Brazil fall short of the minimum rights guaranteed by the legal system because of the contract signed in a foreign country with less guaranties of rights. [11]

The problem, however, is the difficulty in identifying the location of service provision, since their virtual location. The telecommuter at home or mobile, which provides online services, provides services in the place where he resides at the seat of company - where to send their services - or the place hosting the site on which it is connected? If the contract has no choice of forum or law, and the employee is mobile teleworkers, jurisdiction and legal system can be applied anywhere where it passes and renders services? [9]

The understanding of Joseph Cairo Junior states that, when the employee is connected *on line* with work center, your computer is an extension of this center, as if there were working, because only with the arrival of their tasks to the work center, the providing service is completed. For this reason, the *loci laboris* of the teleworker would be the place where the establishment is situated. While there is no specific regulation on a global level, either through an international agency or through groups of countries, through international treaties or conventions, applicable law would be the location of the establishment of the company. [3]

3.3 From Jurisdiction and Conflict in the Area of Labour Laws in European Legal System

Regarding the Law of the European Union, the Rome Convention of 1980 regulated the telework, teleworker guaranteeing the same rights as workers face. Art. 3 of the Convention establishes the general rule applying the law chosen by the parties, the choice must be expressed or clearly from the provisions of the contract or the circumstances of the case. The intention of the parties may by law enforcement for all or only part of the contract and can change the law applicable at any time, which does not affect the formal validity of the contract within the meaning of Article 9, neither prejudice the rights of others. The choice of application of foreign law, however, as in this article shall not deviate from the mandatory provisions of the country in which reside the elements of the situation.

The same convention, however, states, in his art. 6, that this choice can not deprive the employee of the protection of the mandatory provisions of law that would apply in the absence of choice. The law applicable in the absence of choice by the parties pursuant to item 2 of art. 6, is the country where the worker in performance of the contract, habitually carries out his work, even if he is temporarily employed in another country, or if the employee does not habitually carry out his work in any country, the law of the country in which is based the firm which contracted the employee, unless it appears from all the circumstances of the employment contract has a closer connection with a another country, in which case the law of that country. [11]

The art. 4 of the Rome Convention regulate law enforcement in the absence of choice, establishing how the law applicable to the country with which it is most closely connected, pointing out that if one part of the contract is severable from the remainder of the contract and make a connection more close with another country, that party may apply in exceptional cases, the law of that country. The closest connection is presumed in the country where the service provider has his habitual residence or his office, if corporation, association or person conference. If the object of the contract is a real right over property, the closest connection is with the country where it is situated. Regarding the contract of carriage of goods, closer connections with the country is assumed that, on conclusion of the contract, the carrier has his principal place of business if that coincides with that country where it is the place of loading or unloading or principal of the shipper. These assumptions, however, can be evaded by all the circumstances show that the closest connection with a country other than that specified in the device.

The greatest protection to workers before the law chosen or the law of the country with the closest connection depends on the case to be tried by the magistrate. Thus, it protects the employee against the employer. The closest connection, the location of service provision, it becomes difficult to identify compared to non-physical and virtual nature of teleworking. The presumption of residence of a person would be bad if the employee resides in a country under guard, where there is the danger of social dumping. The closest connection, according to Gloves and Parra, therefore, is the country with the establishment of the employer, it is obvious where the production of services and unifies the working conditions for all teleworkers in the same company, and prevent social dumping. Avoiding social dumping, Italy, for example, which presented a bill in Parliament to allow its output resulting from teleworking foreign countries only guarantors of fundamental rights [14].

The art. 20 of the Rome Convention, however, shows the top hierarchy of rules of Community law (or harmonized national legislation) on the convention itself. There is no conflict of laws within the European Union, the solutions of the Convention should only be applied if there is another in law or in national laws harmonized. [11]

The Labor Code of Portugal has a section on telework. The employment contract is governed by the law chosen by the parties. In the absence of choice of applicable law, the employment contract is governed by the law of the State with which it is most closely connected, where it meets the law of the State in which the employee in performance of the contract, habitually carries out his work, even if he is serving temporarily in another country or the law of the State in which the place of establishment where the employee was hired, that does not habitually carries out his work in the same state. These criteria, however, can be overturned when the set of circumstances showing a condition closer to another country. Even when the law of a country by virtue of the above criteria may be applied preferably mandatory rules of another state with which the contract has close connection, if the legal system from determining the application of its laws to the contract, but for both should take into account the nature and object of the mandatory rules as well as the resulting consequences for the application and the non-application of such precepts. [11]

Important to note that the parties' choice of law applicable to the employment contract can not deprive the employee of the protection to him by the mandatory provisions of the Labor Code of Portugal where Portuguese law was applicable in the case of lack of choice of the parties. Here too the principle of protection if this show and applicable international telework.

The item 8 of art. 19 of the Constitution of the International Labour Organization guarantees the principle of protection, not leaving it here to distinguish whether this refers to the rule of generally more favorable (when talking about law, custom or collective bargaining agreement) or to the rule of the most favorable condition (when referring to award or agreement / contract of employment). Of course, this principle can not be applied absolutely, should be taken with caution and under the rule of reason, on pain of losses in the economic sphere, which would lead to layoffs, increased Frauds and informalities and serious damage to employees [12].

3.4 International Labour Organization

The International Labour Organisation in 1996, also edited the Convention nº. 177 and Recommendation nº. 184 that for many authors, such as Vittorio Di Martino, can be applied analogously to telework. The Convention nº. 177 does not give a detailed regulation of telework, but stipulates that each State that has ratified the instrument should adopt, implement and periodically review a national policy on home work aimed at improving the situation of teleworkers. The purpose of this policy should be to promote as far as possible, equal treatment between homeworkers and other wage earners. Recommendation nº. 184, in turn, despite not impose obligations suggests are taken some steps in relation to telework, as the record of teleworkers and any intermediary used by employers, the application to teleworkers laws and regulations regarding the minimum age for admission, the right of homeworkers to organize and bargain collectively, the fixing of minimum wage for teleworkers; protecting the health and safety work; working hours, rest and leave; social security and maternity protection, and protection in the event of dismissal. [8]

The ILO established the fundamental principles and rights at work in the Declaration of the International Labour Organization, adopted at the International Labour Conference on 86 meeting in Geneva on 18/07/1998. This statement, worried about the effects of globalization on labor relations, established as fundamental rights: "a) freedom of association and effective recognition of the right to collective bargaining; b) elimination of all forms of forced or compulsory labor; c) effective abolition of child labor: d) the elimination of discrimination in employment and occupation. "core labor rights were also granted under the Program of Action adopted by the World Summit on Social Development in 1995 and the Policies and Resolutions of the European Union. [10]

The absence of regulation of global or regional telework and the difficulty in determining the applicable law allows the incidence of the phenomenon known as social dumping, in which employers look for cheap labor in underdeveloped countries or developing countries, where wages are minors and the legal protection of labour is lacking or weak. With this in hopes of having the law applied little or no protective of the country where the teleworker is and where it is located physically exerting the provision of services through the Information Technology and Communication, companies stop hiring employees in the country their headquarters or branch office. Thus, the country where the company is located is affected in several ways: its workers are unemployed and companies that hire employees lose national market because products originating from hand labor much cheaper become much more competitive.

If applicable law is the location of the establishment of the company or at least the mandatory provisions of these States are safeguarded, telework can be maintained for the benefits themselves of this institute, but not by the offense to human dignity. All workers, despite the country of origin and nationality, deserve protection. The countries, in turn, may not suffer social dumping.

These fundamental rights, therefore, can not be removed for any reason, much less because of globalization, because the teleworker must be guaranteed at least these safeguards already established by the ILO, is the country that are working under the penalty kick their basic social guarantees have long guaranteed.

4 PROHIBITION OF DRAWBACK ON FUNDAMENTAL RIGHTS IN A SOCIAL PERSPECTIVE OF DETERMINATION OF LOCAL SERVICE TELEWORKING AND FIXING THE APPLICABLE LEGAL PLANNING IN INTERNATIONAL RELATIONS TELEWORK

In a first moment, it’s important the definition of social rights as fundamental rights, in particular the double fundamentality, formal and material, such assurances in order to be able to analyze the prohibition of retrogression of rights in the relations of telework.

According to Brazilian constitutional law, fundamental rights, so considered, they have different legal regime, characterized by privileges within the constitutional standard, such as its inclusion in the list of immutable clauses provided for in art. 60, § 4 of this legal instrument, the protection against "arbitrary deletions and dissection by the state organs" and its immediate applicability, under the first paragraph of art. 5 of the Federal Constitution. Those who do not see the social rights as fundamental, advocate this idea based on literal interpretation, arguing that social rights are not explicitly included in the direct applicability of Art. 5, § 1 of the Constitution nor the exhaustive list of Art. 60, § 4 of this legislation. [13]

In the same way, social rights can not be excluded from the list of immutable clauses, because social rights, which are not explicitly differentiated of the rights of defense by constitutional law, and in many cases treated as such in view of its function and legal structure, cannot be weakened as fundamental rights by mere absence of express provision in the role of art. 60, § 4 of the Federal Constitution because, in this case also would be excluded from political rights and nationality, which cannot sustain. That constitutional provision must be interpreted consistently, through the reading of art. 1, paragraphs I and III and 3, paragraphs I, III, V, keeping in view that social rights include the principles of the welfare state and the identity of the Federal Constitution, so, despite not expressly provided for the list of "immutable clauses," so are being shielded by the abolition constitutional reform. Social rights can not remain differentiated individual and collective rights, particularly with respect to protection of the immutable clauses, because the function of these is to preserve certain rights and guarantees of aggression or destruction under penalty of violation of the principle of human dignity. Os direitos sociais também merecem a mesma proteção, uma vez que sua transgressão – caso não protegidos contra a reforma constitucional, revelaria a mesma conseqüência, ou seja, infração ao princípio estabelecido no art. 1º, inciso III da Constituição Federal. [13]

Social rights, among which include workers' rights are also fundamental rights, since they are included in Title II of the Constitution, which deals with the rights and guarantees, which does assume, in addition to the formal character of its also essential material. Social rights, like all those positivized the Federal Constitution and international treaties ratified by Brazil (art. 5, § 2 CRFB), are fundamental rights and are under the regime of dual fundamentality: formal and material. [14]

Social rights, which date back to the Mexican Constitution of 1917 and the Weimar, 1919, show a concern with the protection of the individual by the state, leaving aside the liberal attitude taken by then. There are, therefore, the guarantee of condition Life on minimum quality standards (minimum existential) and duty of the state - which makes the omission also unconstitutional - and as a subjective right of the individual. Thus arises for the person, upon violation of the law, the possibility of postulating court for the law [2] - and in the judicial sphere is allowed, so the discussion about the legitimacy of the rights alleged setback care delivery where the individual feels violated the core essentials of the basic social guarantees.

Setting up social rights as fundamental rights, there is the guarantee of fundamental social labor, which ensure a minimum ethical to the worker [10], also for teleworkers. Work is a social value, like the dignity of the worker who, by the characteristics of this less fortunate, has constant risk of rape by reason of an employment contract. Attacking the dignity of the worker, profiles will be social injustice and both the worker and the Republic and its grounds will remain violated. [6]

The fundamental social rights, especially those that ensure workers are protected, therefore, a possible setback due to the internationalization of teleworking to countries whose legal system protects a lesser extent or not protect workers. The Brazilian constitutional order protects a general right security and, in particular, legal certainty, as an express provision of Art. 5, caput of CRFB, which is a fundamental principle of both the law of the State as internationally. Security is a citizen's right in that it allows trust the efficiency and effectiveness of the rights guaranteed to him by this law, even in a time of instability in which he lives; and the rule of law is a state legal certainty, and this is subprinciple the fundamental principle of rule of law, otherwise, is violating this security, has become a despotic state, tyrannical and unjust. [13]

Trust in state institutions, including legal and judicial, the citizens will bring with it security and peace in their living conditions in all areas. The instability caused by legal uncertainty - as would occur with the possibility of reverse social matters fundamental rights already achieved and protected by the legal system - would result in the violation of human dignity, since it would not be able to count on the protection of a protective system of fundamental guarantees, so that means that, with only a minimum of legal security, fundamental rights, in particular its essential core, remain protected. [13]

The prohibition of reverse social rights is now embraced by current Brazilian law, in some way and not explicitly under that name when it guarantees the constitutional protection of acquired rights, and perfect the legal acts of res judicata, and limits the retroactive acts and the legislative restrictions of fundamental rights. At least in these situations, therefore, fundamental rights are safeguarded, but there are constantly other situations that do not fit

perfectly for these situations expressed constitutional, eventually kicking the fundamental rights, without falling backward to an extent, as can be seen setbacks in acts with prospective effect. [13]

The setbacks on fundamental social rights accruing under a prospective approach are possible and do not represent a paradox. Occur because the acts causing the setback does not affect the consolidated legal acts or other situations before. Itself exemplifies this situation with a hypothetical legal rule that eases the rights and guarantees of workers with effect only future labor contracts, to protect existing upon the publication of the law. Not clear in this example, the standard retroactively or violation of acquired rights or legal actions perfect, because they remain protected in the law that will have only prospective effect. This act of the legislature requires, therefore, severe recession of the hard-won fundamental rights in violation social and legal order and human dignity. [13]

The prohibition of retrogression is widely advocated. Abramovich and Courtis, spoke about the obligation of progressivity - which will not be subject to further clarification on this, draw the obligation to ban regressivity. The state has the obligation not regressive in the sense that it is forbidden to adopt policies and laws that penalize worsen the situation already enjoyed by the population in relation to economic, social and cultural rights guaranteed by international treaties ratified by his country. The state, because the commitment to progress, improve the rights situation reached its citizens, took the ban to reduce or abolish existing rights. [1]

The regressive, as the doctrine of the authors mentioned above, also resembles the principle of reasonableness of the regulation of personal rights, as both have as their object the guarantee of substantive due process - which will not be subject to further clarification on this, as the regulation of rights by the legislature. The principle of reasonableness will exclude the irrational rules and allow the executive power of choice within reasonable options, the most convenient, within their political viewpoint. The regressivity not add up to this principle, bringing temporal or historical criteria. Therefore, the proposed regulations also will not worsen the guarantees of the existing law in terms of its scope and purposes. Thus the new standard, to be regulated, can be neither irrational nor regress in their scope and purpose. [1]

Social rights, as Gomes Canotilho imposes an obligation on the legislature to respect and realize these rights. Thus, once implemented, the public are prohibited from removing the core has held these rights to benefits, without establishing some form of compensation or alternative, otherwise known as breach of clauses prohibiting or reactionary evolution of social regression [4]. Thus, if the ordinary law which consolidates fundamental social law is repealed, it will be eliminating social law already implemented, just not right infra, so that no act may make return to this gap, as already achieved the right social and prohibiting the reverse of this. [2]

This sort, there is configured to reverse the ban on fundamental social rights in relation to its essential core, because it is essential that this core is protected against tampering and suppression, pure and simple, is not the rule prohibiting the absolute reverse of social rights and inscrutable as certain guarantees which do not tie the essential core of those fundamental rights. The prohibition of retrogression, therefore, must meet the essential core of the fundamental right of the screen and the case where there is a threat to his backsliding.

The essential core of fundamental social rights are intimately linked to the principle of human dignity in the sense that the restrictive measures of social rights in no event may affect the core of the right prestacional, which would violate the notion of existential minimum, and a logical consequence to human dignity. The observation of fundamental rights is imperative for achieving the principle of human dignity, because those are explanations of this, ie, "In every fundamental right is present in content, or at least some projection human dignity. " Once the human person is denied the fundamental rights guaranteed by it, their dignity is also being withheld, so that the setback in social rights, with the reduction or waiver of these fundamental rights entails violation of the principle of human dignity. [13]

The principle of the prohibition of a constitutional setback in Brazil, therefore, stems from a systematic interpretation of constitutional law, especially of certain principles and arguments, which are: the principle of democratic and social state of law, the principle of human dignity The principle of maximum efficiency and effectiveness of the rules that define fundamental rights, the protection measures of a retroactive (granted, res judicata, perfect legal act), the principle of protecting reliance, self commitment of state agencies to prior acts, under penalty of violation of the Constitution at will. [13]

5 CONCLUSION

The advancement of technologies available to humanity, from the last century, along with the phenomenon of globalization, has brought profound changes in social relations, especially in the work, enabling the advent of telecommuting and called its scale offshore, ie , across national borders. Information technology and communication allow the provision of services by the employee does not give more at the headquarters of the

employer, but anywhere else in the world, is the residence of the employee, whether in telecentres and telecottage, either in geographic mobility.

The development of telework, despite the many benefits it provides to workers, businesses and society, brings losses and difficulties, particularly the regulation of this new modality, present in the U.S. and Europe, but also developing countries like Brazil. Telework international, ie, listing more than one state on the same working relationship is growing movement, especially with the development of outsourcing, which brings up the issue of conflict of law provisions.

Given the ease of hiring employees from anywhere in the world, whose labor is cheaper, or send employees to places where the means of production are lower cost, the employee will inevitably begins to provide services in countries whose protecting workers is smaller - and it is precisely this characteristic that reduces the prices of labor and production. In this field as cost reduction, the main goal of any employer, can not be obstacle to the maintenance of social labor (fundamental social rights), involving kicking, especially after decades of achievements. The application of the law of the country less protective of workers involved in the relationship of telework cause regression of social rights.

To determine the law applicable to relations teleworking, and mister that is limited to local service delivery. This goal, however, presents some difficulties, because of the malleability of the geographic and physical setting of the minor employee. In this vein, the site of service delivery could be either the place where the employee resides (telework at home), the corporate headquarters, where they are sent to work; as the provision of the service, mobile telework, the that can be given anywhere in the world [9].

The location of performance is relevant because of the Brazilian rule on the law applicable in the context of international labor relations. As the Brazilian jurisdiction competent to try and judge this relationship work internationally, as provided in Art. 651, § 2 of the Consolidation of Labor Laws, the applicable law is, as understanding docket of the Superior Labor Court (Summary paragraph. 207), the site of service delivery, not the site of recruitment, transforming the principle the lex loci executionis.

Understanding summary aims to ensure the Brazilian or foreign worker hired outside the minimum guarantees set out in our legal system, preventing workers who provide services in Brazil fall short of the minimum rights guaranteed by the native legal system by reason of a contract signed in foreign country unless the guarantor of rights. [10] This guideline, in so being, can not be absolute, since, before we check this assumption goal, it is necessary to identify what the applicable law most beneficial to the employee, depending on the disposal of the International Labour Organization, and especially in a context of prohibition of retrogression of fundamental social rights. If the location of service provision involve law enforcement less beneficial and protective, another law related to the ratio of international telework should be used in this case.

Enforcement of the physical location of service provision, however, could find protection in favor of economic development and, consequently, the workers themselves. Many companies today only grow, remain or are created because of the ease and lower costs offered by teleworking and hiring workers at low prices or sending employees to places with less protection. Applying these employees would mean more protective system under the economic point of view, unforeseen expenses, bankruptcy and economic system in crisis, with falling production and employment, which would undermine not only the companies, such as teleworkers.

Of course this should always be taken into account under the principle of human dignity, thus protecting themselves reverse the ban on social rights, as well as maintenance jobs, aims to be the sole purpose of the dignity of the worker. Once the worker is denied the fundamental rights guaranteed to him, his dignity is also being withheld, so that the setback in social rights, with the reduction or waiver of these fundamental rights in the name of the physical location of services, implies violation of the principle of human dignity. [13]

The applicable law, therefore, must respect and uphold the dignity of him who seeks protection, whatever the legal system. If the law applicable to the case - by virtue of the determination of local service delivery - meaning recession of social rights as to its essential core, it will be in case of relativization of Precedent 207 TST and other solutions to conflict law in the space in the name of protection of fundamental social rights and the principle of human dignity, in spite of jurisprudential understanding that the standard may be more beneficial choice within the same legal system, not in comparison to international law.

Thus, determining the applicable law and guarantee fundamental social rights, should also be aimed evade the phenomenon of social dumping. The use of labor, cheaper labor, either by low wages, or by minimal or no protection of the worker in his home country, because unemployment in countries where worker protection is higher, directly, because these employees are no longer for workers employed in those countries, and indirectly,

since the increased competitiveness of goods derived from labor, cheaper labor causes low domestic production, which also leads to unemployment.

Moreover, since already acquired social rights - and this one is studying workers' rights - these fundamental rights can not be minimized or derogate, under penalty kick and violation of human dignity [13]. If, because of the employee's physical location or site of service provision - which makes no sense to prioritize in teleworking, since this occurs in the virtual world - apply the law less protective of a particular country, the rights already achieved by the social worker, either by their country of origin, is the nation of domicile of the company - which has hired employees from other countries not to submit to its extensive system of worker protection - either the rights guaranteed by the International Work for all workers in the world, can not be reduced or abolished, otherwise it would violate the prohibition of retrogression of rights social matters.

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