Revue de droit comparé du travail et de la sécurité sociale

4 | 2020
English Electronic Edition

The new offensive against the regulations of labor by Jair Bolsonaro's government

Sidnei Machado

Electronic version

URL: <https://journals.openedition.org/rdctss/903>

DOI: 10.4000/rdctss.903

ISSN: 2262-9815

Publisher

Centre de droit comparé du travail et de la sécurité sociale

Printed version

Date of publication: 1 December 2020

Number of pages: 168-171

ISSN: 2117-4350

Electronic reference

Sidnei Machado, "The new offensive against the regulations of labor by Jair Bolsonaro's government", *Revue de droit comparé du travail et de la sécurité sociale* [Online], 4 | 2020, Online since 01 December 2020, connection on 26 January 2022. URL: <http://journals.openedition.org/rdctss/903> ; DOI: <https://doi.org/10.4000/rdctss.903>

Revue de droit comparé du travail et de la sécurité sociale est mise à disposition selon les termes de la Licence Creative Commons Attribution - Pas d'Utilisation Commerciale - Pas de Modification 4.0 International.

SIDNEI MACHADO

FEDERAL UNIVERSITY OF PARANÁ

THE NEW OFFENSIVE AGAINST THE REGULATIONS OF LABOR BY JAIR BOLSONARO'S GOVERNMENT

Labor relations in Brazil are facing great tension. Deep economic crisis, political instability and institutional reforms in labor relations have broadened the spectrum of labor market deterioration and weakened institutional mechanisms for labor protection.

There is a double movement in action. The first one is characterized by the effects generated by the broadened deregulation of labor promoted by the Labor Reform of 2017, law n. 13.467, in force since 11 November 2017. The reform has not yielded the result desired by its proponents of restraining unemployment. On the contrary, it has brought forth a set of negative factors in the labor market and labor protection, including (i) a rising informality in the labor market; (ii) a noticeable weakening of union action and collective bargaining; (iii) a deep restriction to workers' access to justice. The second and more recent movement stems from the election of Jair Bolsonaro to the presidency of the Republic of Brazil in October 2018. Bolsonaro's arrival in power, imbued with an authoritarian liberal discourse, represents a new inflection in social policies, with proposals for broadening ultraliberal policies, fueled by a far right ideology of neo-fascist characteristics, which threatens to demolish the institutional frameworks of guaranteeing social labor rights.

This essay comments the central aspects related to the institutional arrangement of labor in the context of Jair Bolsonaro's government, highlighting the major normative reforms already implemented and also relevant projects under discussion in parliament and in the public debate. This will provide an overview of the new and alarming contours of the government's labor policy and labor law.

BOLSONARO'S REFORM PLAN

President Jair Bolsonaro was elected with a liberal program, whose speech and proposals were markedly authoritarian-liberal, and with a singular radicalization strategy of declared offensive against social labor rights. Since its inception, the government has created an environment that accentuates and reinforces the attack on the recognition and protection of social labor rights. Bolsonaro was elected with the priority of approving his project for a broad reform of the Brazilian Social Security and also to deepen the reforms of « modernization of labor relations » in order to expand the 2017 reform approved by the former president Michel Temer (2016-2018).

During the 2018 presidential campaign, Jair Bolsonaro argued that « fewer rights are better than no jobs ». His only proposal, which was generically launched, was the creation of a « green and yellow work card » (*carteira de trabalho verde e amarela*) as an alternative and

deregulated option for labor contracts. In his first interview after being elected, he reiterated that « Brazil has excess of rights. The idea is to deepen the labor reform ». Economy Minister Paulo Guedes stated that: « Relations in Brazil are obsolete and represent weapons of mass destruction of jobs».

THE EXTINCTION OF MINISTRY OF LABOR

The first major measure of impact in Bolsonaro's government was the extinction of the Ministry of Labor, Employment and Welfare (*Ministério do Trabalho, Emprego e Previdência - MTE*) on January 7 (*Medida Provisória 870/2019*). Created in 1930, the Ministry of Labor was responsible for regulating and overseeing all aspects of labor relations in Brazil. Some of its activities were incorporated into the Ministry of Economy. The extinction of a mediating institution of the capital and labor conflict characterizes a social setback and has a negative impact on a set of public employment policies and reduces the effectiveness of the supervisory functions of the Brazilian state.

THE SOCIAL SECURITY REFORM PROJECT

An expected proposal for the reform of the Brazilian Social Security, under pressure from the markets, was presented to the Chamber of Deputies on February 20, 2019, through a proposal of Amendment to the Constitution (*Proposta de Emenda à Constituição - PEC*) n. 6/2019. The proposal, later approved by the Chamber of Deputies, has the potential to bring about a paradigmatic change in our social protection model, with great impact on the Brazilian society. More broadly, the pension reform proposal is intended to complete the three-folded market-driven reforms initiated after the 2016 coup d'état by Michel Temer. The other two reforms were the Proposed Constitutional Amendment that freezes public spending for inconceivable 20 years (Constitutional Amendment n. 95/2016) and the already mentioned labor reform (law n. 13.467/2017). The three structural reforms are thus articulated in the redesign and redefinition of public policies.

Presented by the Bolsonaro government on February 20, as the « new pension », the proposal modifies the social security system by reconfiguring the social security of private sector workers, both rural and urban, also the public servants' pension. It also encompasses the welfare benefits of the poor elderly and disabled people. The main measure of the reform is the introduction of a *minimum age requirement of 65 for men and 62 for women, previously nonexistent in the Brazilian system*.

Brazil's pension reform is a very broad proposal, of great complexity for public policies, with a high impact on social protection and on the rights under acquisition of current insureds, as well as of future insureds. It encompasses social security and welfare benefits, modifying the financing model of social security in the public and private sectors. From the legal point of view, there are numerous problems that can be addressed from the reform proposal, but the central issue is the deconstitutionalization of the catalog of social security rights provided for in the 1988 Constitution, reducing the role of the State in policy design within our development project.

WORK ON SUNDAYS

In June 2019 the Bolsonaro government issued a norm (*Portaria n. 604, 06/18/2019*) expanding work on Sundays to six sectors of the economy, including vegetable oil and

biodiesel extraction industries; wine and grape derivatives industries; aerospace industries; trade in general; tourism establishments and aerospace maintenance services. The purpose of the measure was to provide greater freedom for companies to produce and employ, including on Sundays and on holidays. Thus, work is now authorized for the large portion of economic activities in which Sunday work was the exception. The measure modifies and weakens the right to weekly rest « preferably on Sundays », provided for in Brazilian law since 1949 (law n. 605) and in the very text of the Brazilian Constitution of 1988, which has a similar disposition (Article 7, XV).

DEROGATIONS FROM SAFETY AND HEALTH NORMS AT WORK

Under the regulation of health and safety at work, the government of President Jair Bolsonaro issued, in July 2019, a norm with the objective of « removing bureaucratic obstacles for entrepreneurship ». By a decree the government initiated the revocation and modification of thirty-six current regulatory rules. This is a loosening of health and safety at work rules. Deregulation raises concern among social actors linked to the promotion of health and safety at work, with the risk of increased occupational accidents in the country, which already occupies the fourth position in occupational accidents in the world.

FLEXIBILIZATION OF WORKING HOURS CONTROL

Law n. 13.874 was issued on 20 September 2019 with the objective of promoting economic freedom and encouraging entrepreneurship. It included measures to make working hours more flexible in companies. Under the new law, all companies with less than twenty employees are exempt from keeping track of their working hours. The other measure was the creation, through individual or collective agreement, of a mechanism for the registration of the exceptional working hours by the employee, which means that there will be registration only if during the workday the employee goes beyond the workday stipulated by law or contract.

Thus, the restriction of working hours control to companies with more than 20 employees and the control only by exception is also a flexibilization measure, but which has as its greatest impact the possibility of fraud in cases of non-registration of the actual working hours by the employee, with the objective of creating an obstacle to overtime pay. Without proof of the registered working hours, a harmed employee has restricted access to justice to repair the damage.

FINAL CONSIDERATIONS

It is in this context that, while still experiencing some impacts of the profound labor reform approved in 2017, Jair Bolsonaro's government promotes important normative changes to deepen labor market deregulation and flexibilization in Brazil. Regarding its political discourse, the government reevaluates the meaning of increased economic freedom and pushes workers' rights into a subordinate position in relation to the markets. The common sense of Bolsonaro's reforms is to increase corporate freedom and corporate power. The government's latest initiative was to establish, in August 2019, the Working Group on Advanced Labor Studies (*Grupo de Altos Estudos do Trabalho - GAET*) for the « modernization of labor relations and the future of labor in the country ». The working group was designed with the aim of deepening the deregulation of labor even further. The

set of legislative measures and initiatives here analyzed reveal that Jair Bolsonaro's reform program, backed by large business sectors, aims at workers' rights as obstacles to free enterprise.