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The role of the Prosecutor´s Labour Office in the field of Health and Safety in the 15th Region: a view on the effectiveness of its intervention in the period between 2013 and 2016

Atuação do Ministério Público do Trabalho em Saúde e Segurança na 15ª Região: uma visão de eficácia das intervenções no período de 2013 a 2016

Actuación del Ministerio Público del Trabajo en Salud y Seguridad en la 15ª Región: una visión de la eficacia de las intervenciones en el período de 2013 a 2016

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ABSTRACT

The State's performance through public institutions is essential for the realization of labor law in Brazil due to chronic and persistent non-compliance with the law, including those designed to protect the health and safety of workers. In this scenario, the objective of this article is to discuss and analyze the effectiveness of the work of the Prosecutor's Labour Office as a guardian of law enforcement and enforcement of labor rights, especially rights related to the work environment, an area that involves health, safety, and well-being of workers. To this end, the intervention of the institution in the countryside of São Paulo (15th Region of the Public Prosecutor's Labour Office), during the period 2013-2016, was examined by analyzing the extrajudicial and judicial procedures used for investigating, adjusting, or prosecuting illicit conducts by employers. The analysis showed that a good part of the terms of adjustment of conduct were effective and there was greater success in the lawsuits, which allows the identification of to identify limitations in the power of coercion of the institution in the resolution of the conflicts in which it intervenes.

KEYWORDS: Prosecutor's Labour Office. Labor Law. Work environment. Health and safety of the worker.

RESUMO

A atuação do Estado por meio das instituições públicas se mostra essencial na concretização do direito do trabalho no Brasil devido ao descumprimento crônico e persistente da lei, inclusive daquelas destinadas a proteger a saúde e a segurança dos trabalhadores. Neste cenário, este artigo tem como objetivo oferecer uma visão da eficácia da atuação do Ministério Público do Trabalho enquanto guardião do cumprimento da lei e efetivação dos direitos trabalhistas, em especial direitos relativos ao meio ambiente do trabalho, área que envolve saúde, segurança e bem-estar dos trabalhadores. Para tanto, foi examinada a intervenção da instituição no interior de São Paulo (15ª Região do Ministério Público do Trabalho), ao longo do período 2013-2016, por meio da análise dos procedimentos extrajudiciais e judiciais utilizados para investigar, ajustar ou processar os ilícitos cometidos pelas empresas. A análise demonstrou haver eficácia em boa parcela dos termos de ajustamento de conduta e maior sucesso nas demandas judiciais, permitindo identificar limites no poder de coerção da instituição na resolução dos conflitos nos quais intervém.

PALAVRAS-CHAVE: Ministério Público do Trabalho; direito do trabalho; meio ambiente do trabalho; saúde e segurança do trabalhador.

RESUMEN

La actuación del Estado por medio de las instituciones públicas se muestra esencial en la concreción del derecho del trabajo en Brasil debido al incumplimiento crónico y persistente de la ley, incluso de aquellas destinadas a proteger la salud y la seguridad de los trabajadores. En este escenario, este artículo tiene como objetivo ofrecer una visión de la eficacia de la actuación del Ministerio Público del Trabajo como guardián del cumplimiento

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de la ley y efectividad de los derechos laborales, en especial derechos relativos al medio ambiente del trabajo, área que involucra salud, seguridad y bienestar de los trabajadores. Para ello, se examinó la intervención de la institución en el interior de São Paulo (15ª Región del Ministerio Público del Trabajo), a lo largo del período 2013-2016, por medio del análisis de los procedimientos extrajudiciales y judiciales utilizados para investigar, ajustar o procesar los ilícitos cometidos por las empresas. El análisis demostró haber eficacia en buena parte de los términos de ajuste de conducta y mayor éxito en las demandas judiciales, permitiendo identificar límites en el poder de coerción de la institución en la resolución de los conflictos en los cuales interviene.

PALABRAS-CLAVE: Ministerio Público del Trabajo; Derecho del trabajo; medio ambiente del trabajo; salud y seguridad del trabajador.

INTRODUCTION

The way in which the State acts in relation to labor law and in relation to institutions equipped for its defense is dynamic, and Brazilian history reveals that this strategy is always determined by the interest of the block in power[1], therefore, subject to advances and setbacks. It is therefore necessary to return to the idea that *"recovering the right to work in its foundations and recovering the historical role of public institutions capable of saying it is one of the tasks of the possible way"*[2] for the construction of a more just and less uneven society. Thus, the performance of strong public institutions becomes one of the most important factors for the resistance and reassertion of social rights in an era of globalized neoliberalism. In Brazil, the public labor institutions promoted movements of resistance to the tendency to soften the labor market, contributing positively to the formalization of labor contracts, from 2004 with the reactivation of the economy[3].

[1] According to Poulantzas, the block in power would be comprised by several fractions of bourgeois classes (entrepreneurs, merchants, and farmers, for example), forming a contradictory unity, whose interests are organized by the State. See: POULANTZAS, Nicos. **Poder político e classes sociais**. São Paulo: Martins Fontes, 1977.

[2] BIAVASCHI, Magda Barros. **O direito do trabalho no Brasil:** 1930-1942 – construindo o sujeito de direitos trabalhistas. São Paulo: LTr, 2007, p. 33.

[3] BALTAR, Paulo Eduardo de Andrade *et al*. **O trabalho no governo Lula: uma reflexão sobre a recente experiência brasileira**. Global Labour University Working Papers, Paper no. 9, May 2010.

What is called a public institution of work is that part of the "bureaucratic apparatus"[4] operating in the "material structure of the State"[5], which basically performs three functions (simultaneously or separately): the administrative function, the supervisory function (institution as "prosecutor of the law") and the coercive function (use of force for compliance with the norm).

The relationship between the State and labor law can be understood from the work of public labor institutions responsible for monitoring the norms. The material structure and the qualification of the servants, the autonomy of the institutions, the legal authorization for the use of multiple strategies of action, the interests of its agents and the way in which the institutions can enforce the norm, form the great tangle, which, in the end, in a combined way, is effective or not, in this society, for a certain time, within what the Law assigns it as duty[6].

The MPT's role is to supervise compliance with labor legislation when there is a public interest, seeking to regularize and mediate relations between employees and employers. It acts, especially, promoting actions to defend collective interests, when constitutionally guaranteed social rights are disrespected, in addition to being able to intervene as mediator in collective bargaining agreements. Its main role is the defense of workers' rights and the enforcement of the law, under penalty of triggering, through action, the Labor Court, so that there is coercion, that is, coercive compliance (use of force by the State). It is therefore deduced that the effective performance of the Public Labor Ministry is one that directly promotes compliance with legislation through the

[4] Bureaucratic apparatus understood here according to the Poulantzian category, representing a mechanism or institution inserted in the legal-political instance of the State, where Poulantzas locates the right, in PPCS (Political Power and Social Classes) (POULANTZAS, Nicos. **Poder político e classes sociais**. São Paulo: Martins Fontes, 1977).

[5] Material structure of the State as a Poulantzian category that calls the organized structure, or the various bureaucratic structures or state instances. Poulantzas: "The State (centralized, bureaucratized, etc.) establishes this atomization and represents (representative State) the unity of the body (people-nation), breaking it into formally equivalent monads (national sovereignty, popular will). The materiality of this State is, in certain respects, constituted as if it were to be applied and to act on a fractioned social body, homogeneous in its division, uniform in the isolation of its elements, continuous in its atomization, from the modern army to the administration, to justice, to prison, to school, the media etc - the list would be huge." (POULANTZAS, Nicos. **O Estado, o poder, o socialismo**. São Paulo: Paz e Terra, 2000, p. 61).

[6] Effectiveness, in the terms used here, in the sense of fully achieving what the constitutional norm attributed to the MPT, that is, zeal for compliance with legislation, maintenance of the legal order, ensuring the rights inscribed in the Constitution (arts. 127 and 129, II, of the Federal Constitution of 1988).

supervision and use of extrajudicial tools and that, in the absence of these mechanisms, the effectiveness of the action is based on the proposition of coercive measure (judicial action).

In this context, the objective of this article is to discuss the effectiveness of interventions by the 15th Region's Public Labor Ministry in the defense of workers' rights to guarantee the implementation of the rules established in the Democratic State of Law, based on the Federal Constitution and infra-constitutional rules applicable to labor relations relating to health, safety, and well-being, which translates the field of "work environment".

The issue is based on three cuts: the first one, related to the field of action of the Public Labor Ministry, which was the area of work environment, with a focus on health and safety; the second, geographic cut, since only the 15th region was investigated, which includes the municipality of Campinas and other almost six hundred municipalities of the countryside, according to MPT[7] subsections; the third, a temporal cut, because the MPT's performance was investigated between 2013 and 2016. It is important to state what we define as effectiveness for purposes of this study.

The concept of effectiveness, which will be used in this analysis[8], covers two aspects: general and strict. In a general sense, efficacy means quality or ownership of what is effective and efficient, all that produces the desired effect[9].

To justify what we understand by the effectiveness of the institutions that make up the justice system, especially to define what would be the effectiveness of the Public Prosecutor's Office, it is necessary to integrate the general sense with the legal sense (strict sense).

Traditionally, legal doctrine links the idea of effectiveness to the concrete application of the legal norm, that is, all the laws in force in a given legal order. Efficacy is the relation between the concrete, factual occurrence in the world of being and that

[7] It is important to safeguard that there are important regional differences in Brazil, with no possibility of extending the conclusions built here to another MPT region of operation.
[8] Effectiveness and efficiency will be treated only marginally, not constituting the main objective of the analysis.
[9]FERREIRA, Aurélio Buarque de Holanda. **Miniaurélio:** o minidicionário da língua portuguesa dicionário. Curitiba: Ed. Positivo, 7. ed., 2008, p. 334.

which is prescribed by the legal norm, which is in the world of "ought to be", that is, when what is prescribed by laws at the theoretical level also affects the real plane.

Concrete occurrence does not mean only obedience to the commands indicated by the legal norms (prohibition, obligation, or permission), but also violation. If the performance is fulfilled, it is said that the norm is effective. However, if there is non-compliance, it will also be effective, provided that another aspect of the norm in operation is practiced: sanction, punishment. Therefore, effectiveness is related to the concrete occurrence of what is prescribed by the legal norm and applied in the concrete plane in a double aspect: that of the fulfillment of the benefit and that of the sanction if the norm is disregarded. In fact, legal ineffectiveness perpetuates not only because it is not enforced, but, especially, when there is no incidence of coercion. Impunity for most labor offenses shows that it pays, for most companies, to continue to evade rights[10].

The same sense can be applied in relation to the concept of the effectiveness of legal institutions, or at least all those institutions whose main objective is the application of laws in concrete terms. It should be emphasized that for the fair and impartial application of the law (the fundamental principle of the Rule of Law) a legitimate, independent, efficient, and effective judicial system is necessary. Note: effective because it is consistent with its normative justifications, fulfilling the demands and expectations regarding its role[11].

In the Social Sciences, this subject becomes important in Brazil as an academic research agenda from the 1990s, when the effects of the 1988 Constitution were consolidated, considering that it promoted the constitutionalization of a significant range of civil, political and social, rights, which, in turn, generated a movement to intensify the search for the Judiciary (and other institutions of the justice system, such as the Public Prosecutor's Office), making studies on institutions arouse interest, stimulating the use of statistical information (such as the National Data Bank of the Judiciary, 1989) and the

[10] BALTAR, Paulo Eduardo de Andrade *et al*. **O trabalho no governo Lula: uma reflexão sobre a recente experiência brasileira**. Global Labour University Working Papers, Paper no. 9, May 2010.
[11] CUNHA, Luciana Gross; OLIVEIRA, Fabiana Luci de. Desempenho judicial, o quanto a sociedade confia e como avalia o Poder Judiciário brasileiro: a importância das medidas de confiança nas instituições. *In:* GONÇALVES SILVA, Felipe; RODRIGUEZ, José Rodrigo (Orgs.). **Manual de Sociologia Jurídica**. São Paulo: Editora Saraiva, 1. ed., 2013, v. 1, p. 269-287.

analysis of the performance of the judicial system, especially in relation to meeting demands and their slow movements, pointing to the need for reform. In the 2000s, studies by international agencies such as the World Bank and the United Nations have classified the Brazilian judicial system as one of the most inefficient, unfair, and corrupt in the world[12].

The effectiveness of the public institutions of the judicial system became directly criticized, driving different measures of confrontation by the public power, such as Law 9.099/95, which created the Special Civil and Criminal Courts, under the principles of orality, simplicity, informality, procedural economy and speed, seeking, whenever possible, conciliation or transaction (art. 2), measures explicitly aimed at the search for efficiency and effectiveness, followed by the administrative reform promoted by EC 19/98 and the so-called reform of the Judiciary, EC 45/2004.

Just as the Constitution establishes that the Public Prosecutor's Office is a permanent institution essential to the jurisdictional function of the State, it is responsible, among other functions, for the defense of the social and legal order, that is, the defense of the Constitution and all other laws subordinate to it (within the national legal system), therefore, its effectiveness must be evaluated: the Public Prosecutor's Office will have an effective performance when promoting compliance with the legislation in each area of its action, as this is the primary function assigned to it by the Law. There is no other reason why it is popularly called the prosecutor of the law.

From these cutbacks and the concept of effectiveness outlined, the methodological tools used in this study were: a) bibliographical review; b) quantitative/qualitative empirical research[13] through the mapping and examination of MPT actions, carried out with the creation of a database of judicial and extrajudicial procedures. Each procedure performed in the year 2013 on the environment theme of

[12] SADEK, Maria Tereza. Estudos sobre o sistema de justiça. In: MICELI, Sérgio. **O que ler na ciência social brasileira?** São Paulo: Sumaré, 2002, v. IV; CUNHA, Luciana Gross; OLIVEIRA, Fabiana Luci de. Desempenho judicial, o quanto a sociedade confia e como avalia o Poder Judiciário brasileiro: a importância das medidas de confiança nas instituições. *In:* GONÇALVES SILVA, Felipe; RODRIGUEZ, José Rodrigo (Orgs.). **Manual de Sociologia Jurídica**. São Paulo: Editora Saraiva, 1. ed., 2013, v. 1, p. 269-287.

[13] In this article, only quantitative data will be addressed. The qualitative analysis is part of the research in the doctoral thesis of which this article originated, as indicated in the bibliographical references.

the work was examined and subsequently logged *in the virtual environment of Google Forms*, through a form built for this purpose. Primary sources of data: MPT Digital procedures (internet), MPT website (regional and national) and Labor Justice website (in relation to ACPs).

It is important to understand that this research completely depended upon the computerization of procedural data, using the tool *MPT Digital*[14], a platform created by MPT and used by prosecutors, lawyers, and judges, with the purpose of queries and petitions in the various ongoing procedures[15]. Such a virtual environment was created recently, which is why the research starts in 2013. If there were no MPT Digital, the research would have to be performed based on the analysis of the physical records, making it totally unfeasible, due to the number of records and the geographic cut.

It is of extreme importance to point out that the proceedings filed or registered in 2013, the research database, do not occur in 100% of cases under investigations that started only in 2013; there is a dynamic flow of work to the institution, and there is no way to perform this separation of data without affecting the veracity and quality of the analysis presented here. Therefore, we include the calculation of time that the MPT found necessary to, from the knowledge of illegality, materialize the TAC or the ACP. It is possible, for example, that an investigation initiated in 2011 may have been convoluted in TAC or ACP only in 2013, due to the time required for the investigation and gathering of the data needed to follow the action. What is analyzed, therefore, is the primary database of procedures recorded in 2013 (TACs and ACPs registered in 2013) and not investigated only in 2013.

It is important to inform that this research was funded by CNPq - National Council for Scientific and Technological Development - in partnership with the Doctoral Program in Social Sciences of the Institute of Philosophy and Human Sciences of Unicamp.

1. QUANTITATIVE VIEW OF MPT INTERVENTIONS IN THE PERIOD 2013-2016

[14] MPT Digital is set up on a website with a database of all procedures, which allows for the realization of queries and the electronic petition of the parties involved. For more information, access the link: https://peticionamento.prt15.mpt.mp.br/login.

[15] The Labor Justice website was also used, but only to complement the lack of information regarding public civil actions.

In 2013, MPT-15 received a total of 5,847 complaints, considering all areas of operation. In the area of work environment, there were 1,728 complaints (29.6% of the total). As there were 61 prosecutors in the MPT-15, with 54 acting in the first instance, the average number of complaints received per prosecutor was approximately 108 (9 per month, on average).

As can be seen in Table 1, 1,096 (63.4%) of the denunciations referring to the work environment in 2013 became a civil inquiry (investigation), while 331 other complaints (19.2%) did not have sufficient information to open an investigation. In addition, it is important to note that 158 lawsuits were filed by the MPT-15 based on complaints and investigations (corresponding to 9.1% of procedures in this area). Focusing on the analysis in the open civil investigations and in the judicial actions, 1,254 "actuations" were carried out, which implies in 20.6 actuations for each attorney, on average, only in the work environment.

Table 1 - Complaints received by the MPT-15 in the workplace environment in 2013

	N	%
Complaints that have become civil inquiries	1,096	63.4
Complaints that did not have sufficient information to open an investigation	331	19.2
Judicial actions promoted from denunciations and investigations	158	9.1
Complaints that became a civil inquiry only after 2013	104	6.0
Letters rogatory	3	0.2
Mediation procedures	16	0.9
Request follow-up procedures (trade unions, fire brigades)	20	1.2
Total	1,728	100.0

Source: Ministry of Labor. *MPT Digital*. Its own elaboration.

1.2. SIGNED CONDUCT ADJUSTMENT TERMS AND CIVIL ACTIONS FILED

Just over half (51.4%) of the MPT-15's investigations in the area of work environment resulted in a Conduct Adjustment Agreement (TAC), in 2013 (Table 2). The other half (48.6%) remained in the investigation stage, either because of the need for more time to investigate the complaint, or because the civil investigation is already

considered by many prosecutors as a sufficient procedure to correct the problem, because they start to negotiate directly with the company in order to correct the ascertained problem. It is important to clarify that it was possible to search for 464 TACs signed in 2013 (82.4% of the total), leaving out those protected by secret of Justice from the analysis. It is necessary to explain that some processes did not become TACs or ACP because they did not have all the elements to provoke investigation, or they were not collectively relevant.

Table 2 - Work environment surveys that resulted in TACs in 2013

	N	%	%
Complaints that have become civil inquiries	1,096	100.0	
Inquiries still under investigation	533	48.6	
Inquiries on which TACs were signed	563	51.4	100.0
- TACs analyzed in the research	464		82.4
- TACs not analyzed (restricted access, secrecy of Justice)	99		17.6

Source: Ministry of Labor. *MPT Digital*. Its own elaboration.

Regarding the lawsuits (AJs) filed by the MPT-15 in a work environment in 2013, it should be clarified that the study analyzed 141 (89.2%) cases, of which 79 were public civil actions (ACPs) and 62 unaccomplished TACs (Table 3). It was not possible to include in the analysis 13 lawsuits protected by secrecy of Justice or confidentiality, besides other 4 that are not pertinent.

Table 3 - Lawsuits promoted by the MPT-15 in the work environment in 2013

	N	%
Total lawsuits (civil actions and executions)	158	100.0
Judicial actions analyzed in the research	141	89.2
- Public civil actions	79	50.0
- Unfulfilled TAC executions	62	39.2
Judicial actions not analyzed	17	10.8
- by restricted access (secrecy of Justice)	13	8.2
- because the MPT just followed and gave an opinion	2	1.3
- because they referred to an inquiry opened in 2012	2	1.3

Source: Ministry of Labor. *MPT Digital*. Its own elaboration.

Therefore, the research analyzed a total of 605 MPT-15 actuations filed in 2013: 464 conduct adjustment terms (TACs) and 141 lawsuits (AJs).

Table 4 - TACs and AJs analyzed, considering the branch offices of MPT-15

Headquarters and branch offices	Actuations	%	Prosecutors	%
Campinas (headquarters)	173	28.6	35	57.4
Araçatuba	67	11.1	2	3.3
Araraquara	67	11.1	3	4.9
Bauru	74	12.2	4	6.6
Presidente Prudente	31	5.1	3	4.9
Ribeirão Preto	81	13.4	4	6.6
São José do Rio Preto	63	10.4	3	4.9
São José dos Campos	22	3.6	4	6.6
Sorocaba	27	4.5	3	4.9
Total	605	100.0	61	100.0

Source: Ministry of Labor. *MPT Digital*. Its own elaboration.

Table 4 shows the distribution of these actuations in the work environment according to the branch offices of the MPT-15, as well as the distribution of the number of prosecutors. It is noticeable that the region of Campinas (where MPT-15 is located) has the largest share (28.6%) of the actuations analyzed. Then we have Ribeirão Preto (13.4%), Bauru (12.2%), Araçatuba (11.1%), Araraquara (11.1%), São José do Rio Preto (10.4%), Presidente Prudente (5.1%), Sorocaba (4.5%) and São José dos Campos (3.6%). It is also important to note that the majority (57.4%) of the prosecutors are concentrated at the headquarters and that there appears to be an insufficient number of prosecutors located in the branch offices, which may limit the performance of the Public Prosecutor's Office in most of the municipalities in the countryside of the State of São Paulo.

Table 5 - MPT-15 TACs and AJs in 2013, by industry

Industry	Actuations	%
Agribusiness	165	27.3
- Sugar and alcohol industry	26	4.3
- Cold stores	23	3.8

Construction	110	18.2
- Civil construction	84	13.9
- Heavy construction	26	4.3
Industry	150	24.8
- Metallurgical industry	34	5.6
- Textile industry	17	2.8
- Footwear industry	15	2.5
Commerce	48	7.9
- Supermarket and hypermarket	20	3.3
Services	101	16.7
- Security and surveillance	28	4.6
- Road transport	23	3.8
Public administration	26	4.3
- City halls	25	4.1
Other activities	5	0.8
Total	605	100.0

Source: Ministry of Labor. *MPT Digital*. Its own elaboration.

Other relevant information regarding this set of actuations refers to the branch of economic activity of the company investigated by MPT-15 (Table 5). In 2013, more than a quarter (27.3%) of the TACs and AJs in the labor environment analyzed were related to agribusiness, being important to note that there were 26 actuations in the sugar and alcohol sector and 23 in cold stores. The industry was the second most frequent, having motivated 24.8% of the actions in this area, with highlight to 34 in metallurgical companies, 17 in textile factories and 15 in footwear factories. The construction sector has also required a lot of attention from the prosecutors (18.2% of the actuations). It is relevant to mention that there were 26 actuations in heavy construction (generally, large public works that require a large number of workers). Next comes the service branch with 16.7% of the actuations, 28 in security and surveillance companies and 23 in road transport companies (cargo and passengers). Also noteworthy were the actuations involving companies in the commerce sector (7.9%), of which 20 were in supermarkets and hypermarkets. Finally, it should be mentioned that 4.1% of these actuations in the area of occupational health and safety were directed to municipal governments.

It is noteworthy the diversity of branches of activity that motivated a strong performance by MPT-15, it should be noted that 45.5% of the TACs and AJs in 2013 occurred in two branches of activity (agribusiness and construction) identified as the main focus of operation in the work environment area. It should also be mentioned that there was only 1 case regarding the use of asbestos and 3 in telemarketing services.

It must be recognized that Brazilian agribusiness has become essential for the national economy. According to the Ministry of Agriculture, Brazil promoted "a green revolution in the world" by transforming the Brazilian countryside and changing the position of the country from a large importer to one of the largest exporters of food worldwide. In addition, thanks to the intensive use of technology, it gained productivity and avoided further deforestation - from 1991 to 2017, grain and oilseed production increased by 312%, but the planted area grew by only 61%[16].

At the same time, agribusiness has caused problems. Brazil is the country with the most deforestation in 34 years (1982 to 2016), according to a study carried out by means of satellite photos, totaling an area of 399 thousand km2 of wooded area[17]. By 2016, the country was the seventh largest emitter of the gases that cause global warming. The agricultural sector accounted for 74% of the 2.3 billion tons of CO2 and other gases released into the air. It is also the sector that makes Brazil a world record in violence in the countryside - 65 murders in 2017, according to the Pastoral Land Commission - and feeds corruption, with more than R$ 600 million paid in bribes to politicians in 2014 only by JBS, according to the professor at the Federal University of Minas Gerais, Raoni Rajão and the executive secretary of the Climate Observatory, Carlos Rittl[18].

Just as an example of the serious problems of the use of labor in the agribusiness, in some cases analyzed, the death of workers was verified during the journey in the field

[16] BRASIL. MINISTÉRIO DA AGRICULTURA, PECUÁRIA E ABASTECIMENTO. Em Paris, ministro fala dos avanços do agro brasileiro e de respeito ao meio ambiente. **Momento Agro**, 22nd May 2018. Available at: <https://www.gov.br/agricultura/pt-br/centrais-de-conteudo/audios/momento-agro/em-paris-ministro-fala-dos-avancos-do-agro-brasileiro-e-de-respeito-ao-meio-ambiente> . Access on: May 30th 2018.

[17] AGÊNCIA ANSA. Brasil é o país que mais desmatou em 34 anos, aponta estudo. **Época Negócios**, 20 Aug. 2018. Available at: <https://epocanegocios.globo.com/Vida/noticia/2018/08/brasil-e-o-pais-que-mais-desmatou-em-34-anos-aponta-estudo.html>. Access on: 30 Aug. 2018.

[18] RAJÃO, Raoni; RITTL, Carlos. "O agronegócio brasileiro é uma potência, mas se tornou uma ameaça", diz artigo. **Agência Envolverde Jornalismo**, 22 Feb. 2018. Available at: <https://envolverde.com.br/o-agronegocio-brasileiro-e-uma-potencia-mas-se-tornou-uma-ameaca-diz-artigo/>. Access on: 30 Aug. 2018.

due to the excessive heat endured without the use of PPE - personal protection equipment, during the manual harvest of cane. In one of the public civil actions analyzed, the labor attorney is explicit in affirming that the capitalist logic of profit making by the physical exploitation of the worker still prevails, even in a context of agribusiness economic strength:

> "For the Ministerial Body, the omission of the defendant is not accidental or due to a forgivable lapse, but rather intentional conduct, based on economic criteria aiming to keep the cost of sugar cane labor low - even though sacrificing the health and well-being of workers -, since industry companies know that the main way to prevent heat-related fatigue is to establish shorter work cycles or to suspend the activity during hotter periods, without loss of remuneration, which can at the same time reduce the volume of cane harvested and increase production costs." (Originally from Civil Inquiry no. 000044.2012.15.004/2 of Araçatuba/SP).

Undoubtedly, decision-making for the protection of the worker's life, however basic it may sound, is being neglected in some segments of the agribusiness, on the one hand by employers, causing death or serious, irreversible physical injury.

Table 6 - Incidence of irregularities in TACs and AJs analyzed in 2013

Type of irregularity	N	%
PPE and CPE – personal and collective protective equipment	329	20.5
Working conditions and general protective measures Sanitary	323	20.1
conditions, hygiene, and comfort in the workplace Safety of	239	14.9
machinery and equipment	187	11.7
Dangerous and unhealthy activities	177	11.0
PCMSO – medical control and occupational health program	144	9.0
Typical or similar work accident	70	4.4
CIPA – internal commission of accident prevention	59	3.7
Ergonomics	57	3.6
CAT – work accident notice	16	1.0
Work under conditions analogous to slavery	4	0.2

Subtotal 1	1,605	100.0
Employment contract conditions	341	21.2
Illegal outsourcing	14	0.9
Moral harassment, abuse, sexual harassment	13	0.8
Other	50	3.1
Subtotal 2	418	26.0
Total	2,023	126.0

Source: Ministry of Labor. *MPT Digital*. Its own elaboration.

As can be seen in Table 6, it lists the incidences of the infractions that motivated the investigation of the inquiries analyzed. The two most recurring types of workplace environment irregularity in 2013 were (i) lack of individual (PPE) and collective protection equipment (CPE); and (ii) precarious working conditions due to the absence of general protection measures. These types of irregularities are directly related to the protection of life, health, and dignity of working conditions.

Regarding the item of higher incidence in the cases established, the lack of PPE and CPE for the safety of workers, include, besides the absence of equipment delivered individually due to lack of investment by the company, the lack of maintenance of dangerous machines, such as regular inspection and insertion of machinery devices responsible for the containment of pressure, transmission of electric current, heat etc. In one of the analyzed cases, where the death of a worker (boiler explosion that lacked maintenance and pressure control valve) and the threat to the safety of many others placed there was verified, one observes the lack of investment of the great employer, caught in this tragedy, in full disobedience to the regulatory norms of the Ministry of Labor.

According to the Public Ministry of Labor of the Bauru branch, in this public civil action against Raizen Energia SA (Usina da Barra)[19], "the situation of the work environment described in the inspection report reveals degrading conditions, which seems deeply regrettable, mainly compared to the gigantic size of the

[19] Great company of the Cosan-Shell economic group.

company required and its economic-financial profile in the face of the scenario of energy production on the planet." The company was required in 15 infraction notices when the boiler explosion occurred. The MPT requested in court a compensation of 10 million reais in collective moral damages. The case was dismissed by JT. The MPT did not appeal.

In another case against a company of the same branch, the MPT filed a public civil action requiring compensation of 7 million reais for collective moral damages due to non-compliance with individual and collective protection standards. In an audience, an agreement was reached between the parties in the amount of R$ 200,000 (69.2013.15.001/¨6- MPT x Comanche Biocombustíveis).

A second group of irregularities that are also frequent deserve attention: (iii) improper conditions of sanitation, hygiene, and comfort in the workplace; (iv) precariousness in the safety of machinery and equipment; (v) existence of dangerous and unhealthy activities; and (vi) absence of medical control and occupational health program (PCMSO).

According to reports from the labor prosecutor and the tax auditor during an inspection in an investigation that led to a public civil action in Araraquara (against a railway company), workers did not have access to the most necessary asset to maintain good physical operation: drinking water. They report that "the company only provided the purchase of water bottles after **being summoned by MPT**, and without proving the effective delivery of water to the employees. By January 2013 (approximately one year after the start of the inspections), the product was certainly not supplied to employees, so that to drink water during the journey they had to buy it with their own money" (p. 3 of the ACP of MPT against América Latina Logística Malha Paulista SA).

Similar situations were found in many procedures analyzed, in view of the incidence of the first three types of irregularities. According to Table 10, more than half of the reported incidences were related to individual and collective safety and hygiene and well-being conditions of workers, where they lack suitable bathrooms, drinking water, places for meals and thermal protection.

A third group of infringements, relatively less frequent in 2013, was comprised by: (vii) occurrence of a typical or comparable work accident; (viii) absence of an internal accident prevention committee (CIPA); (ix) ergonomics problems (non-compliance with NR-17 of the Ministry of Labor, especially about repetitive efforts, movement of loads, body positioning, work rhythm, lighting, and ambient temperature); and (x) lack of work accident notice (CAT). It should also be noted that 4 cases were found with (xi) work in slave-like conditions.

In relation to work in slave-like conditions, the MPT launched an important initiative, the Digital Observatory of Slave Labor in Brazil. According to this platform, only in the state of São Paulo, 1,544 workers were rescued in the period from 2003 to 2017, and the most fined branches of economic activity were: 1) confections; 2) cattle breeding; 3) clothing trade; 4) rice cultivation; and 5) civil construction (of buildings).

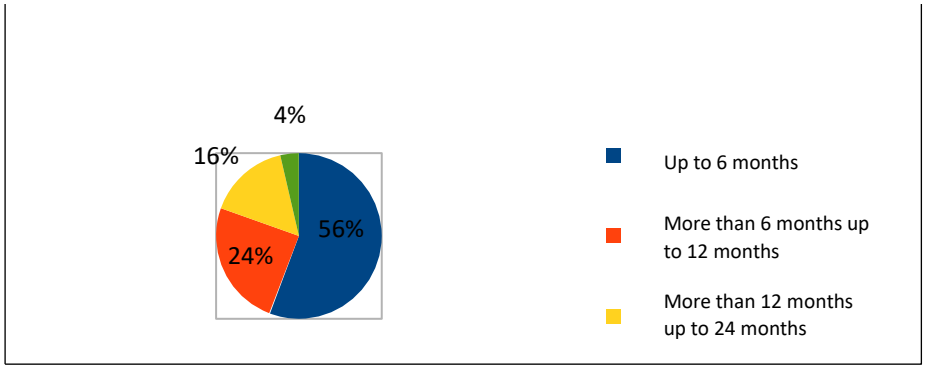
Table 6 also shows that many investigations in the work environment have found other associated irregularities, mainly in relation to employment contract conditions (CTPS registration, remuneration, journey, termination of contract, minor). Mention should also be made to the existence of few cases in which, in addition to problems related to the health and safety of workers, there had also been illegal outsourcing or moral harassment, or sexual harassment had been reported.

It is important to clarify that only 8.6% of the investigations were related to outsourced companies. That is, in more than 90% of the actions, the company denounced for disrespect to the legal norms in health and safety at work was the main employer. It should also be considered that the performances analyzed involved companies of different sizes (small, medium, and large).

The time during which the civil work environment inquiry is investigated until it is filed or results in a TAC or an AJ (ACP or unrealized TAC implementation) can vary greatly, either because of the complexity of the reported irregularities, either due to the greater or lesser overhead of the prosecutors' work In Chart 1, the distribution of the Conduct Adjustment Terms signed in 2013 can be observed according to the number of months elapsed after the finding of the irregularity(ies). In most cases (55.8%), the TAC was established within 6 months; 8 out of 10 cases analyzed were signed within a maximum period of 1 year. On the other hand, one fifth of TACs took

more than one year, with a very low percentage (3.6%) of those that took more than two years to sign.

Chart 1: Time between the finding of the irregularity and the TAC signed



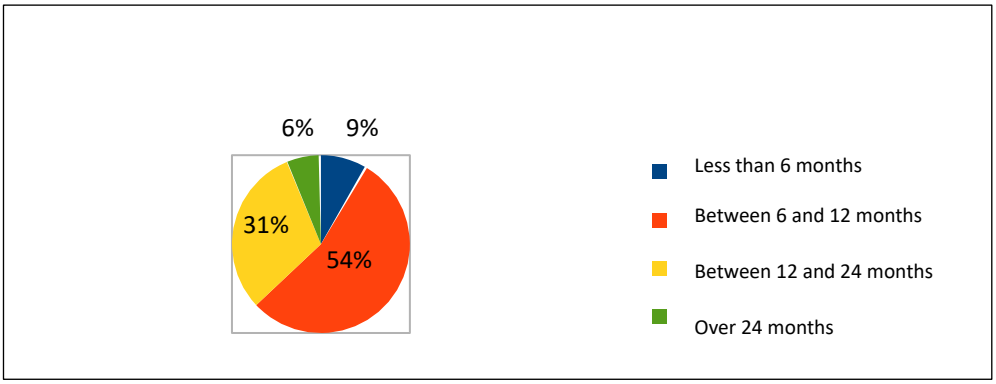
The speed of investigations and attempts to establish TAC is important because the sooner the problem is resolved, the faster it will eliminate or minimize the harm, danger or threat to the health, safety, and well-being of the worker. Some situations deserve immediate action, such as, for example, the stoppage of civil construction works when high-risk situations such as drops, or electric discharges are detected during inspection.

It is important to clarify that 9 out of 10 TACs signed established the payment of a fine. That is to say, in some cases it was understood that it was not appropriate to impose a fine, but it was necessary to correct a recurring practice. The amount of fines foreseen varied considerably (from R$ 1 thousand to R$ 15 million), considering the seriousness of the irregularity and the size of the company, often being tied to the number of employees affected, the number of items not complied with and/or the number of days of noncompliance (daily fine).

The admission of Public Civil Action usually takes a longer time. Chart 2 shows the distribution of the ACPs promoted by MPT-15 in 2013 according to the number of months elapsed after the finding of the irregularity(ies). Only 8.6% of the ACPs were proposed with less than 6 months. In most cases (54.3%), promotion of ACP occurred between 6 and 12 months. In 30.9% of the cases analyzed, admission occurred in the

period between 1 and 2 years. And 6.2% of the ACPs have taken more than 2 years since the finding of illegality.

Chart 2: Time between finding irregularity and ACP admission



All promoted ACPs established the payment of a fine. But the amount of the established fines varied a lot: from R$ 5 thousand to R$ 30 million. Usually, these values are re-evaluated in the sentence and minimized in the signed agreements. The agreement signed with the highest value analyzed was 400,000 reais and a lower value agreement was 3,000 reais. The most valuable agreement ever signed by the MPT-15 was to close the largest case of work similar to slavery ever caught by the institution, 30 million reais, in an action originating in Araraquara[20]. However, this case was not encompassed by this research because it is from the base of 2014.

Table 7 provides an overview of the results of the Terms of Conduct Adjustment signed by the MPT-15 in the area of work environment in 2013. That is, it shows if the outcome occurred according to what was agreed or if there was any kind of unfolding. This is one of the crucial points of the research for indicating the effectiveness of MPT's performance in promoting compliance with the norms. Regarding the outcome: two-thirds (66.8%) of the analyzed TACs were completed and filed; 15.3% were partially fulfilled; 7.5% were not fulfilled; and 10% had another outcome (but the main thing is the loss of the object of the action by the closing of the

[20] FOLHA DE SÃO PAULO. **Odebrecht paga R$ 30 milhões para encerrar ação por trabalho degradante**. Folha Mercado, 17 Mar. 2017. Available at: <https://www1.folha.uol.com.br/mercado/2017/03/1867441-odebrecht-paga-r-30-milhoes-para-encerrar-acao-por-trabalho-degradante.shtml>. Access on: 30 Aug. 2018.

company).When the TAC is not complied with or is only partially complied with, the prosecutor may reassess the situation, or direct it directly to judicial enforcement, or establish a new TAC, or otherwise enter into an agreement with the company. The realization of a new TAC or agreement with the company are measures that we consider ineffective, because if the company did not comply with the first TAC, it should have an immediate sanction and not a new chance to transact rights without payment of fines or retroactive repair. When the company is not punished in an exemplary manner for non-compliance with the legislation, we understand that this mechanism feeds the culture of impunity, causing others to act in the same way. Worse yet, the situation of the workers is dragged and not solved and can generate further damages to their health and safety.

In 2013, 57.1% of unrealized TACs resulted in judicial execution by initiative of MPT-15 prosecutors (14.1% in the case of TACs partially complied with). On the other hand, 1 out of every 4 TACs partially fulfilled resulted in an attempt to find a negotiated solution (agreement or new TAC). And the percentage (37%) of unrealized TACs that have remained awaiting referral by the responsible prosecutor is noticeable. We understand that this high percentage of unrealized TACs that were not executed in the Labor Court represent a great loss to the workers and, once again, feeds the culture of impunity. If there is no penalty for non-compliance with the TAC, the company does not envisage obstacles to continue to fail to comply with the legislation. In fact, all TACs not complied with should be, after the expiration of the deadline established by the MPT, executed in the Labor Court. Those partially complied with merit an evaluation by the prosecutor to establish a new deadline for full compliance. After this period, enforcement action also becomes mandatory.

Table 7 - Results of TACs signed in the work environment in 2013

Type of outcome	Result	N	%	%
Fulfilled	Filed	310	66.8	

Partially fulfilled	Under	44	9.5	62.0
	investigation	10	2.2	14.1
	Judicial execution	11	2.4	15.5
	Agreement	6	1.3	8.5
	Sum	71	15.3	100.0
Unfulfilled	Judicial execution	20	4.3	57.1
	New TAC	2	0.4	5.7
	Awaiting referral	13	2.8	37.1
	Sum	35	7.5	100.0
Other		48	10.3	
Total		464	100.0	

Source: Ministry of Labor. *MPT Digital*. Its own elaboration.

In relation to the public civil actions promoted by the MPT-15 in the area of work environment in 2013, the analysis of the results should be made based on the result of the sentences pronounced (Table 8). In only 7.6% of the sentences the ACP was considered appropriate; the same percentage corresponds to the ACPs considered to be unfounded. In one third (32.9%) of the cases, the sentences indicated partial validity (15.2% without recourse and 17.7% with recourse). It is noteworthy that a large proportion (38%) of ACPs have been settled through agreements, indicating a propensity for prosecutors to seek agreements.

Table 8 - ACP judgments on work environment filed in 2013

Result of the sentence	N	%
Justified	6	7.6
Partially justified	26	32.9
- without appeal	12	15.2
- with appeal	14	17.7
Unfounded	6	7.6
- without appeal	2	2.5
- with appeal	4	5.1
Agreement	30	38.0
Terminative without analysis of merit	3	3.8
	5	6.3
Pending judgment	3	3.8

Total	79	100.0

Source: Ministry of Labor. *MPT Digital*. Its own elaboration.

At this point, the research reveals an aspect that goes against the common-sense understanding of prosecutors that public civil action is ineffective because: 1) the Labor Court does not accept the requests made by the MPT; 2) the action's admission does not solve the problem of the workers because it is extremely slow[21]. In 78.5% of the analyzed cases, the public civil action can be considered effective, since in 38% of the cases there was an agreement (for immediate fulfillment) and in 40.5% of the cases there was sentence with total or partial provenance, with immediate compliance order. When there is appeal, compliance with the judgment will, as a rule, occur from the judgment of the appeal. But the judge will charge the conviction retroactively, which, in a way, softens the waiting time.

In any case, after the civil action filed and the favorable judgment, the company can no longer evade its obligations. The only resources that can be delayed can lead to the company's conviction in bad faith litigation, with the payment of more fines. For these reasons, we understand that prosecutors could use the public civil action more intensively in cases where the infractions are serious or in cases where the company has great economic power and tends not to comply with the invitation of the MPT to hold a hearing and conclusion of the TAC, since it depends on the voluntary agreement of the investigated company.

We emphasize that each prosecutor is independent in the exercise of the position, there is no rule that determines when to enter an ACP or when to avoid this procedure.

FINAL CONSIDERATIONS

[21] In the doctoral thesis that originated this article are the interviews with the attorneys that explain this understanding (PRONI, Thaíssa Tamarindo da Rocha Weishaupt. Atuação do Ministério Público do Trabalho: uma análise da eficácia e dos limites das intervenções em saúde e segurança na 15ª Região (2013-2016). **PhD Thesis in Social Sciences**. Instituto de Filosofia e Ciências Humanas - IFCH: Unicamp, 2018).

What this study sought to examine was the performance of the MPT-15, through negotiated content in terms of behavior adjustment (subjects/problems, fines, deadlines, various obligations) and required in public civil actions to understand if they are adequate as instrument of realization of labor rights against the persistent behavior of a large part of employers in breaching labor laws. In all cases analyzed, the contents refer to the legislation in force regarding the subject or irregularity found. Employers' obligations, which were set out in the TACs and the ACPs, were in all cases a law enforcement order. In these issues, the MPT unquestionably fulfilled its role and, for the most part, was effective (at least formally) in taking appropriate action, as evidenced by the procedures investigated.

A warning regarding deadlines: some actions were complacent with employers' slowness in adjusting conduct, as observed in unrealized TACs that, instead of being executed in the Labor Court, were once again negotiated extrajudicially, in the form of agreements or new TACs, but we can say that there were few (5.7% of cases analyzed). We still need to consider that 37.1% of the unmet TACs were awaiting referral. However, by analyzing the overall figure, we can point out that, in terms of deadlines for meeting the obligations, by the end of 2016, 12.3% of the TACs analyzed were tolerant of the institution to wait for the adjustment of the conduct of the companies.

On the other hand, in general terms, 66.8% of the TACs were fully complied with by the companies, which is why we can say that the MPT's conduct was effective in this proportion. However, in 15.3% of the cases, TACs were partially fulfilled, leading to coercive measures such as execution or re-negotiation. Among these partially fulfilled, a large part of the TACs, instead of being executed in Court, were still under investigation/inquiry, since there is still a chance of adequacy of the deficient part: 62% (of 15.3% of the overall figure), indicating a tolerance that needs to be considered.

Regarding the TACs not met, the survey found that 57.1% were sent to be executed (charged) in the Labor Court. Among those partially complied with, 14.1% were executed in Court. Once again, we highlight a substantial number of unmet TACs

awaiting arrangements/referral for collection or re-negotiation: 37.1% among those that were not fulfilled. This number is relativized when we consider that they represent 2.8% overall.

In general, we conclude that the TAC is an important measure of adjustment of the employer's conduct but should be promptly enforced/executed in Court when its noncompliance is verified, under penalty of losing its power of adjustment, indicating to the employer that the non-compliance with those agreed commitments will not have any major consequences.

Regarding the effectiveness of MPT-15's actions in public civil actions, we envisage the opportunity to offer an empirical analysis that is contrary to the common sense of prosecutors, since there is a misunderstanding that the public civil action is not upheld in the Labor Court and that bringing the conflict to court does not solve the problem of noncompliance, in addition to being subject to the slowness of the Labor Court. However, the survey found that 7.6% were judged to be fully valid, 32.9% were judged to be partially valid and 38% of the actions were immediately settled by agreement in a hearing, totaling a 78.5% success rate (full or partial) in the proposed actions. This number is very important and reveals that the Labor Court, contrary to what the prosecutors reveal, is quite receptive to the MPT's performance (obviously without stealing from the detailed analysis of the merits of each case), at least regarding safety and health of workers.

REFERENCES

AGÊNCIA ANSA. Brasil é o país que mais desmatou em 34 anos, aponta estudo. **Época Negócios**, 20 Aug. 2018. Available at: <https://epocanegocios.globo.com/Vida/noticia/2018/08/brasil-e-o-pais-que-mais-desmatou-em-34-anos-aponta-estudo.html>. Access on: 30 Aug. 2018.

BALTAR, Paulo Eduardo de Andrade *et al*. **O trabalho no governo Lula: uma reflexão sobre a recente experiência brasileira**. Global Labour University Working Papers, Paper no. 9, May 2010.

BIAVASCHI, Magda Barros. **A terceirização e a Justiça do Trabalho:** diversidades regionais. FAPESP n.2010/50251-1, Programa CESIT/IE-FAPESP, 1st jun. 2010 to 30 jun. 2012.

BIAVASCHI, Magda Barros. O capitalismo contemporâneo e as novas formas de contratação da força de trabalho: a terceirização. In: KREIN, José Dari *et al.* (Orgs.) **Regulação do Trabalho e Instituições Públicas**. São Paulo: Editora Fundação Perseu Abramo, 2013.

BIAVASCHI, Magda Barros. **O direito do trabalho no Brasil:** 1930-1942 – construindo o sujeito de direitos trabalhistas. São Paulo: LTr, 2007.

BIAVASCHI, Magda Barros. Relações e condições de trabalho no Brasil contemporâneo: garantir direitos e promover a igualdade. In: KREIN, José Dari; SANTANA, Marco Aurélio; BIAVASCHI, Magda Barros. (Orgs.). **Vinte anos da Constituição cidadã no Brasil**. São Paulo: LTr, 2010, pp. 144-60.

BRASIL. MINISTÉRIO DA AGRICULTURA, PECUÁRIA E ABASTECIMENTO. Em Paris, ministro fala dos avanços do agro brasileiro e de respeito ao meio ambiente. **Momento Agro**, 22nd May 2018. Available at: <https://www.gov.br/agricultura/pt-br/centrais-de-conteudo/audios/momento-agro/em-paris-ministro-fala-dos-avancos-do-agro-brasileiro-e-de-respeito-ao-meio-ambiente> . Access on: May 30th 2018.

CUNHA, Luciana Gross; OLIVEIRA, Fabiana Luci de. Desempenho judicial, o quanto a sociedade confia e como avalia o Poder Judiciário brasileiro. In: *Manual de Sociologia Jurídica*.

FERREIRA, Aurélio Buarque de Holanda. **Miniaurélio:** o minidicionário da língua portuguesa dicionário. Curitiba: Ed. Positivo, 7. ed., 2008, p. 334.

FOLHA DE SÃO PAULO. **Odebrecht paga R$ 30 milhões para encerrar ação por trabalho degradante**. Folha Mercado, 17 Mar. 2017. Available at: <https://www1.folha.uol.com.br/mercado/2017/03/1867441-odebrecht-paga-r-30-milhoes-para-encerrar-acao-por-trabalho-degradante.shtml>. Access on: 30 Aug. 2018.

POULANTZAS, Nicos. **O Estado, o poder, o socialismo**. São Paulo: Paz e Terra, 2000.

POULANTZAS, Nicos. **Poder político e classes sociais**. São Paulo: Martins Fontes, 1977.

PRONI, Thaíssa Tamarindo da Rocha Weishaupt. Atuação do Ministério Público do Trabalho: uma análise da eficácia e dos limites das intervenções em saúde e segurança na 15ª Região (2013-2016). **PhD Thesis in Social Sciences**. Instituto de Filosofia e Ciências Humanas - IFCH: Unicamp, 2018.

RAJÃO, Raoni; RITTL, Carlos. "O agronegócio brasileiro é uma potência, mas se tornou uma ameaça", diz artigo. **Agência Envolverde Jornalismo**, 22 Feb. 2018. Available at: <https://envolverde.com.br/o-agronegocio-brasileiro-e-uma-potencia-mas-se-tornou-uma-ameaca-diz-artigo/>. Access on: 30 Aug. 2018.

SADEK, Maria Tereza. Estudos sobre o sistema de justiça. In: MICELI, Sérgio. **O que ler na ciência social brasileira?** São Paulo: Sumaré, 2002, v. IV.