

10/14/2008

SECOND PANEL

EXTRAORDINARY APPEAL 541,627-5 PARA

RAPPORTEUR : JUDGE ELLEN GRACIE
APPEALANT(S) : FEDERAL PUBLIC PROSECUTOR
DEFENDANT(S) : EUCLEBE ROBERTO VESSONI
DEFENDANT(S) : JOSE VALDIR RODE
DEFENDANT(S) : LUIZ CARLOS DA SILVA PARREIRA
ATTORNEY(S) : GILBERTO ALVES

CRIMINAL PROCEDURAL LAW. EXTRAORDINARY APPEAL. JURISDICTION OF THE FEDERAL COURT. CRIMES OF REDUCTING WORKERS TO CONDITIONS ANALOGOUS TO SLAVERY, EXPOSURE OF LIFE AND HEALTH OF THESE WORKERS TO DANGER, CONCEALMENT OF LABOR RIGHTS AND OMISSION OF DATA ON EMPLOYMENT RECORD AND SOCIAL SECURITY CARDS. SUPPOSEDLY RELATED CRIMES. APPEAL PARTIALLY ACKNOWLEDGED AND, IN THIS PART, GRANTED.

1. The extraordinary appeal interposed by the Department of Public Prosecution covers the issue of jurisdiction of the Federal Court for crimes of reducing workers to conditions analogous to slavery, exposure of the workers' life and health to danger, concealment of their labor rights, and omission of data in their work and social security cards, and other supposedly related crimes.

2. In regards to the admissibility assumptions of the extraordinary appeal, in respect to the alleged jurisdiction of the Federal Court to hear and judge crimes supposedly related to infractions of interest of the Union, as well as crime against Social Security (Criminal Code, art. 337-A), the issues raised by the appellant would require the infra-constitutional normative (Code of Criminal Procedure, arts. 76, 78 and 79; CC, art. 337-A).

3. Thus, there is no possibility of hearing part of the extraordinary appeal interposed, due to the infra-constitutional nature of the issues.

4. The judgment under appeal maintained the decision of the federal judge who declared the lack of jurisdiction of the Federal Court to prosecute and judge the crime of reducing to conditions analogous to slavery, the crime of concealment of rights secured by labor laws, the crime of omission of data from Employment Record and

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Social Security cards, and the crime of exposure of the workers' life and health to danger. In this case, it was noted that it is not a question of crimes against the labor organization, but against certain workers, which does not draw the jurisdiction of the Federal Court.

5. The Plenary of the Supreme Federal Court, in judgment of the EA 398,041 (Reporting Judge Joaquim Barbosa, session of 11.30.2006), determined the jurisdiction of the Federal Court to judge the crimes of reducing to conditions analogous to slavery, for considering "*that any conduct that would violate not only the system of agencies and institutions that preserve, collectively, the rights and duties of workers, but also the working man, affecting negatively him/her in the spheres in which the Constitution should provide maximum protection, falls under the category of crime against the labor organization, if practiced in the context of labor relations*" (Bulletin no. 450).

6. The behaviors attributed to the appellees, in principle, violate juridical property that goes beyond the limits of individual freedom and health of workers reduced to conditions analogous to slavery, violating the principle of human dignity and freedom of work. Among the precedents in this regard, I refer to EA 480,138/RR, Reporting Judge Gilmar Mendes, Court Gazette 4.24.2008; EA 508,717/PA, Reporting Judge Carmen Lucia, CG 4.11.2007.

7. Extraordinary appeal partially acknowledged and, in this part, granted,

J U D G M E N T

After reviewing, reporting on and discussing the case records, the Judges of the Supreme Federal Court agree, in Second Panel, according to the minutes of judgments and shorthand notes, by unanimous vote, to acknowledge, in part, the extraordinary appeal and, in regards to the portion acknowledged, grant the same, in accordance with the Rapporteur's vote.

Brasília, October 14, 2008.

[Signature]
Ellen Gracie - President and Rapporteur

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R E P O R T

Judge Ellen Gracie: 1. This report relates to an extraordinary appeal interposed against the judgment of the Federal Regional Court of the 1st Region, amended as follows (p. 57):

CRIMINAL PROCEDURAL LAW. EXPOSURE OF THE LIFE AND HEALTH OF WORKERS TO DANGER (ART. 132 OF THE CC). REDUCING WORKERS TO CONDITIONS ANALOGOUS TO SLAVERY (ART. 149, CC). CONCEALMENT OF RIGHT SECURED BY LABOR LAW (ART. 203, CPC). OMISSION OF DATA FROM EMPLOYMENT RECORD AND SOCIAL SECURITY CARDS (ART. 297, PARAGRAPH 4, OF THE CC). EVASION OF SOCIAL SECURITY CONTRIBUTION (ART. 337-A OF CC), THIS IS A CONSUMMATED CRIME. USE OF CHAINSAW WITHOUT LICENSE OR REGISTRATION OF THE COMPETENT AUTHORITY (ART. 51 OF LAW 9,605/98). JURISDICTION. POSSESSION OF A FIREARM WITHOUT AUTHORISATION (ART. 10 OF LAW 9,437/97). CASE DIVISION FOR PROSECUTION AND TRIAL, SEPARATELY, BY THE STATE COURT AND THE FEDERAL COURT.

1. *This e. Court already signed understanding, as a consequence of precedents of the Superior Court of Justice and the Supreme Federal Court, that work performed in conditions analogous to slavery, without compliance with labor and social security laws, only characterizes crime against the labor organization, which falls within the jurisdiction of the Federal Court, in case it affects collectively labor institutions.*

2. *The prosecution and trial of crimes against the environment - related to flora and fauna, goods of common use of the people (FC - art. 225), shall be the jurisdiction of the State Court, only incurring the competence of the Federal Court when*

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the offense occurs in waters or lands of the Federal Government, or when the good affected is of its ownership by specific legal act. Precedent of SFC (EA no. 300,244-9/SC).

3. *Social security contribution evasion (art. 337-A of the CC) represents consummated crime. The complaint failed to prove the fiscal releases by the INSS (National Social Security Institute), there being no cause for appointing a crime. Habeas corpus granted, ex officio, to dismiss the criminal procedure regarding the crime of social security contribution evasion.*

4. *Appeal in stricto sensu dismissed.*

5. *Habeas corpus granted, ex officio, to allege lack of authority of the Federal Court to prosecute and judge the crime specified in art. 51 of Law no. 9,605/98, and to determine the dismissal of the criminal action regarding crime specified in art. 337-A of the Criminal Code (art. 43, 1, of the Code of Criminal Procedure)."*

2. The appellant argues that the judgment of the Federal Regional Court of the 1st Region denied the jurisdiction of the Federal Court for the prosecution and trial of crimes listed in arts. 203, 297, paragraph 4 and 132, all under the Criminal Code, 51, of Law no. 9,605/98, art. 10 of Law no. 9,437/97, and also determined the dismissal of the criminal action regarding crime referred to in art. 337-A, of the Criminal Code.

Notes that the appealed judgment violated art. 109, VI, of the Federal Constitution, yet, the complaint narrates two crimes against the labor organization, which are jurisdiction of the Federal Court. With regard to the crime of social security contribution evasion, the inspection of the Ministry of Labor and Employment has conducted surveillance in the Ponta da Pedra Farm, having established its occurrence, which led to the drafting of fifteen infringement notices.

In addition, there is a link with the other crimes outlined in the complaint. As for the crime of reducing workers to conditions analogous to slavery, there is direct legal interest of the Federal Department, since there is full subjection of the workers to the power of the farm owners or their representatives, with total suppression of their freedom and dignity.

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Requires the granting of the appeal in order to review the appealed judgment with the maintenance of the jurisdiction of the Federal Court.

3. Decision of acceptance of the extraordinary appeal (p. 93).
4. Declaration of the Attorney-General of the Republic in the direction of partial acknowledgement of the extraordinary appeal and, in this part, of its granting.

This is the report.
[Signature]

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V O T E

Judge Ellen Gracie - (Rapporteur): 1. The extraordinary appeal interposed by the Department of Public Prosecution covers the issue of jurisdiction of the Federal Court for crimes of reducing workers to conditions analogous to slavery, exposure of the workers' life and health to danger, concealment of their labor rights, and omission of data in their employment record and social security cards, and other supposedly related crimes.

In regards to the admissibility assumptions of the extraordinary appeal, I notice that, in respect to the alleged jurisdiction of the Federal Court to hear and judge the crimes supposedly related to infractions of interest of the Union, as well as the crime against Social Security (CC, art. 337-A), the issues raised by the appellant would require examination of the infra-constitutional normative (CCP, arts. 76, 78 and 79; CC, art. 337-A).

Thus, there is no possibility of acknowledgement of part of the extraordinary appeal interposed due to the infra-constitutional nature of the issues aforementioned. Furthermore, the possible solution of such issues would require the factual and probational revaluation of evidence, finding obstacles on guidance contained in Opinion no. 279, of this Court: "*For simple review of evidence, there is no admission of extraordinary appeal*"

2. The assessment of the existence of a connection between certain behaviors ascribed to the accused party would require, obligatorily, the depth examination of the evidence concerning the facts narrated in the complaint, which is why it is inappropriate to mediate the cognizance of the extraordinary appeal, in the part referring to the crimes of arts. 337-A, of the Criminal Code, 10, of Law no. 9,437/97, and 51 of Law no. 9,605/98.

3. In regards to other imputations made to the appellee, I take this opportunity to transcribe a passage of the manifestation of the Attorney-General of the Republic (pp. 153/156):

"(...) the matter concerning the jurisdiction of the Federal Court for crimes that affect the labor organization deserves to be confronted,

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considering that the intrinsic and extrinsic requirements of the admissibility were met, including the previous questioning of the respective constitutional subject-matter.

Thus, it is worth noting that although the appealed judgment has not expressly mentioned the constitutional provision infringed (item VI of art. 109 of the Political Charter), the corresponding matter (Jurisdiction of the Federal Court), was widely discussed by the Lower Court, throughout the final sentence.

According to understanding crystallized by this Exalted Praetorian, the extensive discussion, in ordinary seat, of the constitutional outlines reached by controversy, is enough to configure the existence of previous questioning.

(...)

Having said that, on the merits, the extraordinary appeal is worthy of merit.

From the analysis of the contested decision, it is determined that the Federal Regional Court of the 1st Region followed up the jurisprudence, a majority at the time of the facts, to recognize the jurisdiction of the State Court to prosecute and judge the perpetrators of offenses described in articles 149 and 203 of the Criminal Code, considering that they were not essentially crimes against the labor organization.

However, one has to observe the tendency of extraordinary courts in the sense of embracing positioning in line with the one supported by the Public Prosecution Service, which is extracted from precedents of the Superior Court of Justice (HC 43381/PA, Reporting Judge Felix Fischer, CG 8.29.2005; HC 26832/TO, Reporting Judge Jose Arnaldo da Fonseca, CG 2.21.2005), and of the votes already pronounced in the trial of the EA 398041/PA, reported by the eminent Judge Joaquim Barbosa, in progress in the Supreme Court.

In fact, one cannot forget that reducing workers to conditions analogous to slavery is a crime that, under a systemic interpretation of the Brazilian legal system, affects

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directly not only the labor organization, regarded as the integrated labor system and social security laws in force, and of the institutions which have as their scope to inspect its ideal fulfillment, as explained by fundamentals of the Democratic Rule-of-Law State, expressly appointed by the Federal Constitution in its art. 1, items III and IV, namely, human dignity and the social value of work - these principles are secured by various provisions of our Basic Law, as well as by the infra-constitutional legislation.

In this sense, despite the offense described in art. 149 of the Criminal Code, be inserted in the chapter relating to Crimes against Individual Freedom, it should be noted that the effects of such typical conduct are only limited to the individual sphere. The subjection of people to forced labor violates severely important values for the community, either because subjugates, as a rule, large groups of workers, removing them the status of freedom, either because it interferes extensively on aspects of socio-economic order, given the trivialization of the workforce and the unlawful reduction in production costs.

There is no denying that the infringements imputed to the appellees reach legal values that go beyond individual freedom, of workers reduced to a condition analogous to that of slaves, since such infringements are also a threat against the primacy of the assurance of human dignity and freedom of work, making indisputable the competence of the Federal Court to prosecute and judge the case on trial, according to item VI of art. 109 of the Federal Constitution”.

4. The appealed judgment kept the decision of the Federal Judge who declared the incompetence of the Federal Court to prosecute and judge the crime of reducing workers to conditions analogous to slavery, the crime of concealment of rights secured by labor law, crime of omission of data from employment record and

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Social Security card, and the crime of exposure of the life and health of workers to danger. In this case, it was noted that it is not a question of crimes against the labor organization, but against certain workers, which does not draw the jurisdiction of the Federal Court.

The Plenary of the Supreme Federal Court, in judgment of the EA 398,041 (Reporting Judge Joaquim Barbosa, session of 11.30.2006), determined the competence of the Federal Court to judge the crimes of reducing workers to conditions analogous to slavery, for considering "*that any conduct that would violate not only the system of agencies and institutions that preserve, collectively, the rights and duties of workers, but also the working man, affecting negatively him/her in the spheres in which the Constitution should provide maximum protection, fall under the category of crime against the labor organization, if practiced in the context of labor relations*" (Bulletin no. 450).

5. Thus, I register that the behaviors attributed to the appellees, in principle, violate juridical property that goes beyond the limits of individual freedom and health of workers reduced to a condition analogous to slavery, violating the principle of human dignity and freedom of work. Among the precedents in this regard, I refer to EA 480,138/RR, Reporting Judge Gilmar Mendes, CG 4.24.2008; EA 508,717/PA, Reporting Judge Carmen Lucia, CG 4.11.2007.

6. Bearing in mind the above, **I acknowledge the extraordinary appeal in part**, and, in regards to the portion acknowledged, **I grant it** to declare competent the Federal Justice to hear and judge the case relating to imputations regarding arts. 132, 149, 203 and 297, paragraph 4, all under the Criminal Code, amending the appealed judgment in this part.

This is my vote.
[Signature]

SECOND PANEL

SUMMARY OF MINUTES

EXTRAORDINARY APPEAL 541,627-5

ORIGIN: PARA

RAPPORTEUR: JUDGE ELLEN GRACIE

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ATTORNEY(S) : GILBERTO ALVES

Decision: The Panel, unanimously, heard, in part, the extraordinary appeal and, in the portion acknowledged, granted it, pursuant to the Rapporteur's vote. Judges Celso de Mello and Eros Grau justified their absence in this trial. Judge Ellen Gracie chaired this trial. **2nd Panel, 10.14.2008.**

Presidency of Judge Ellen Gracie. Judges Cezar Peluso and Joaquim Barbosa attended the session. Judges Celso de Mello and Eros Grau justified their absence.

Deputy-Attorney General of the Republic, Dr. Francisco Adalberto Nobrega.

Carlos Alberto Cantanhede
Coordinator