

Labor Newsletter Cape Verde

A photograph of a person's hands holding a stack of three books. The top book is blue, the middle one is yellow, and the bottom one is red. The person is wearing a white sleeveless top. The background is dark.

AUGUST 2024

OPINION

1970 year

In 54 years, from 1970 to the present day, the world has undergone profound changes, inevitably experiencing several transformations. It was in the 1970s that the former Portuguese colonies began their process of independence, notably the independence of the Republic of Cabo Verde in 1975. Consequently, changes in the legislative framework were also expected. This assertion is contradicted by the commonly known Labor Process Code, specifically by Ordinance No. 87/70, of May 21. Strictly speaking, the current Labor Process Code is not the same version that was approved in 1970, as Decree No. 62/87, of June 30, introduced several changes. Moreover, it is important to clarify that several matters regulated there were also addressed by other legislative instruments, among which we would like to highlight Decree-Law No. 194/1991, of December 30, 1991 (hereinafter “**Decree 194/91**”).

This Decree 194/1991 is of particular importance in labor procedural law, as it is accepted by Cape Verdean jurisprudence, and also by doctrine, that the deadline for appealing decisions rendered by first-instance courts is the one stated in its Article 3. That article stipulates that “the deadline for filing an appeal to the Supreme Court of Justice is five days,” which in our view does not guarantee or protect the rights of the appellant.

Labor relations have become more complex, and consequently, labor litigation has followed these changes. Thus, with this in mind, it does not seem reasonable to establish a mere 5-day period for drafting appeal arguments (and counter-arguments) of a legal decision. From a technical standpoint drafting an appeal is not a simple task, as it involves an in-depth analysis not only of the legal decision but also of the facts established by the first-instance court, as well as all documents and arguments made throughout the process.

From this perspective, and because it no longer reflects the complexity of labor relations, it is urgent to reform the current Labor Process Code in force in Cape Verde. As indicated above, it came into force in the distant year of 1970, and its inadequacy is evidenced even using historically outdated references, such as “Overseas Council,” “metropolis,” or even “overseas.”

JURISPRUDENCE

2nd Labor Court of the Judicial Court of the District of Praia Ruling No. 4/2023

In an ordinary declaratory action in summary form, the Claimant requests the Court to condemn the Defendant to pay him a compensation, in the amount of the retirement pension that he did not receive, as well as interest for late payment and statutory interest.

This request is based on the fact that, in 2016, the Claimant asked the Defendant to retire, but the Defendant denied his request. It did so on the grounds that the Claimant did not fulfil the age requirement to retire, due to a recent change in the Defendant's internal regulations in this regard. Subsequently, the amendment made by the Defendant to its internal regulations was declared ineffective by the courts. Accordingly, and as per the thesis put forward by the Claimant, the Defendant forced him to work for a longer period than required and, as such, he requests payment of compensation in the amount of the pension relating to the additional working time.

The Defendant, in its Statement of Defense, argued that the Claimant's claim was not in compliance with the statute of limitations established by Article 498 of the Civil Code (3 years). The Defendant also argued that the pecuniary damages being requested by the Claimant arise from non-contractual civil liability and are comprised of two separate components: consequential damages and loss of profits. Therefore, for the Defendant to be ordered to pay any compensation to the Claimant, it is mandatory to prove the damages he suffered as a result of his non-retirement, as well as the amounts which he failed to earn in virtue of being forced to continue to work by the Defendant.

Given that the Claimant failed to prove any damages as a result of the unlawful act carried out by the Defendant, the latter cannot be condemned to pay him any compensation. In fact, the exact opposite occurred, since the salary the Claimant earned during the period of additional working time increased his assets more than if he had retired. The salary earned by the Claimant was higher than the amount of the pension to which he would have been entitled.

In the above-mentioned decision, the Court of First Instance not only upheld the arguments raised by the Defendant, namely the statutes of limitation, but also acquitted the Defendant of the claim on the grounds that the facts brought forward by the Claimant had not been proven.

The court enforced Article 498 of the Civil Code to the case because, in its view, the cause of action (violation of the right to retirement) and the claim (compensation for damages) do not constitute a labor claim and therefore the statute of limitations for filing a labor claim (6 year) does not apply.

Therefore, since the right to retirement only arises after the termination of the employment contract, the statute of limitations to be enforced to a claim of non-contractual civil tort is established by the general provision of Article 498 of the Civil Code. Thus, and given that the claim was filed in 2023, the Claimant would always be in breach of the statute of limitations. According to the Court, its computation starts on the date on which the Claimant learnt that his right to retirement had been breached by the Defendant, *i.e.*, in 2016. However, even if this were not the case, and the computation of the statute of limitations only began on the date in which the Claimant retired, in 2019, the statute of limitations would also be breached.

The Court also fully adhered to the arguments put forward by the Defendant in its Statement of Defense. Although the Defendant had committed an unlawful act by refusing to allow the Claimant to retire on the basis of an internal regulation that was deemed as ineffective later on, the Claimant was unable to prove any damages or loss of profit. In fact, the court confirmed that the Claimant's assets had increased because of his work.

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