

# Labor Newsletter

## ANGOLA

OPINION

### DISCIPLINARY PROCEDURE AND STATUTE OF LIMITATIONS

Under the labor legal framework, the employer has disciplinary power over the employees at its service, and may exercise it in relation to the disciplinary offenses committed by the employees. On the other hand, the General Labor Law (“GLL”), enacted by Law No. 7/15, of June 15, in force since 15 September 2015, defines disciplinary offense as the *“faulty behavior of the employee which violates the duties arising from the employment relationship”*. It follows that the employer may use its disciplinary power to sanction the behavior of its employees that violates the legal or contractual duties directly arising from the labor relationship.

However, if the conclusion on the possibility of the employer punishing the offenses committed by the employees at its service does not raise any doubt, the issue is whether the employer may exercise its disciplinary power at all times. The answer to this question is negative, as one of the main principles of any democratic constitutional State – such as Angola – is to prevent that the possibility of punishment, whether disciplinary or criminal punishment, be maintained as a permanent and unlimited threat over the offender. Also, the excessive gap between the commission of the offense and the application of the penalty is not suited to the nature and purposes of the penalty which shall be essentially preventive and not punitive.

In this sense, the GLL expressly provides that the statute of limitations for the disciplinary offense is one (1) year as from the date on which it was committed. Hence, the statute of limitations of the disciplinary offense shall begin to run on the date the offense was committed, regardless of its nature and of its acknowledgement by the employer. After this one-year period the employer shall no longer be entitled to exercise its disciplinary power, regardless of the seriousness of the offense or of its consequences even if the employer became aware of the commission of the offense after the one-year statute of limitations.

What about those situations where the disciplinary offense is at the same time a crime? Would it be acceptable to make use

of the statute of limitations laid down in the Criminal Code – five or fifteen years, as the case may be – or, on the contrary the one year statute of limitations laid down in the labor law must apply?

In favor of the application of the criminal statute of limitations to the disciplinary offense, one may resort to Article 498.3 of the Civil Code which foresees that if the offense constitutes a crime for which the law lays down a longer limitation period the latter statute of limitations shall be applicable. One may also argue that in case the disciplinary offense is at the same time a crime, the applicable statute of limitations will be the criminal one, or else it would be absurd to have an expired disciplinary offense and an effective criminal conviction.

Taking a different view, i.e., in favor of the application of the one year statute of limitations to the disciplinary offenses, one may argue that the letter of the law is clear enough, in addition to the fact that it follows from the GLL that the disciplinary liability does not undermine the civil or criminal liability. This option seems to demonstrate the lawmaker’s intention to separate the disciplinary, civil and criminal regimes, as each one of these forms of liability has its own legal framework. Also, when writing Article 61.1.(b) of the GLL, the lawmaker had necessarily in mind the existence of other type of liabilities and showed no interest, in parallel with the legislator of the Civil Code, to provide for a rule that would determine the prevalence of the statute of limitations for the criminal offense.

The answer to this issue is not obvious and will most certainly be responded by the national courts, which may wish to resort to the Comparative Law on its interpretation, as other legal systems with the same legal tradition have already discussed several times the issue of the application of the criminal statute of limitations to disciplinary offenses.

### FUTURE LABOR OBLIGATIONS TO BE TAKEN INTO ACCOUNT:

- Preparation and submittal of the list of remunerations to the “INSS” (companies with more than 20 employees are required to submit electronically) and payment of contributions until June 10, July 10 and August 10.

- Submittal of copy of the list of remunerations paid monthly to the employees, certified by the Labor General Inspectorate, to the insurance company until June 30 (the insurance policy may have specific provisions on this duty).

- Preparation and submittal of the report on accidents at work occurred during the previous half year to the Labor Chamber of the Provincial Court until June 30.

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