Labor Newsletter

ANGOLA

January 2020

OPINION

WHAT IS THE TIME-FRAME TO PRESENT A DEFENSE IN DISCIPLINARY PROCEEDINGS?

One of the guiding principles of the General Labor Law ("GLL" – Law No. 7/15, of 15 June 2015) is the adversarial principle, the corollary of which is the employee's right to a defense. In disciplinary proceedings, the right to a defense is exercised by means of an interview to which the employee is called by the employer.

However, one of the features that causes most controversy relates to the time-frame that must be applied for the employee to fully exercise his/her right to a defense. Both the 2000 GLL (approved by Law No. 2/00, of 11 February 2000) and the current one dating from 2015 establish a period of 10 (ten) days – currently business days – for the employee to be heard after being notified by the employer.

The problem that one of the current provisions raises (corresponding to sub-paragraph (b) of Article 48.2 of the 2000 GLL) is that the legislator merely sets out the maximum period within which the employee must be heard by the employer after receiving the relevant notification, without the employee being granted a minimum period of time to properly prepare his/her defense. The wording of the law would thus allow for a disciplinary interview to take place within just 24 or 48 hours after the employee has received the note of offence. This is despite the employee having the right to request the postponement of the relevant interview on the basis of lack of time to prepare his/her defense within the 10 days that the interview must necessarily take place. In other words, should the employee fail to exercise this right, the wording of the law would allow for the interpretation that the employee in this case feels perfectly capable of contesting the accusations made against him/her.

The fact is that in recent years, it has been understood by some courts that there is an actual omission in the GLL regarding the time-frame for the employee to prepare his defense in the context of a disciplinary proceeding. The relevant case law assumes that, even in the context of a disciplinary proceeding and notwithstanding this omission in the law, the employee's right to his/her defense – which actually has constitutional value – cannot be removed or invalidated.

Now, the most recent jurisprudence on this subject establishes that in view of the legal omission referred to above, and given that the GLL is a special statute, we must, on a subsidiary basis, apply the general regime on procedural time-frames set out in Article 153 of the Civil Procedure Code, in this case 5 (five) calendar days. This referral is permitted under Article 59.1 of the Labor Justice Law (enacted by Joint Executive Decree No. 3/82, of 11 January 1982) and Article 291.5 of the current GLL. On this subject, we already had the Supreme Court Decisions of 5 April 2017 (Process No. 298/18) and 31 August 2017 (Process No. 387/15), among others.

In this respect, and in accordance with the courts' decisions, the minimum period that must be allowed between the date of notification and the date of the disciplinary interview must be at least 5 (five) calendar days, bearing in mind criteria relating to reasonableness and the safeguarding of the adversarial principle.

It is important to stress that in the event of litigation regarding the disciplinary measure applied, recent jurisprudence considers that the employer's failure to comply with the abovementioned minimum period for the employee to exercise his/her right to a defense renders the applied disciplinary measure null and void. Added to this are the consequent reinstatement of the employee in his/her former position and the payment of salaries and benefits accruing from the moment of dismissal to the employee's reinstatement – up to a limit of 6 salaries – in accordance with Articles 208 and 209.3, both of the GLL.

On a final note, the case law examined above has now received recognition and confirmation by our Constitutional Court, in accordance with the Court's Ruling referred to below, to which, due to its structural nature, we give separate mention.

JURISPRUDENCE

Adversarial Principle and Time-frame to Present a Defense in Disciplinary Proceedings (Constitutional Court Ruling of 17 December 2019)

The case under consideration consisted of an appeal based on the unconstitutionality of the decision of a lower court, which ruled as null and void a disciplinary measure applied to the employee on the grounds of a breach of the adversarial principle, due to the fact that the employer had interviewed the employee within less than 48 hours after the date of notification of offence. The Supreme Court had previously confirmed the lower court's initial decision on the basis of the employer's breach of the principle of effective judicial protection and of the adversarial principle. The Court's Ruling confirmed the previous decisions on the same grounds.

According to the Constitutional Court, bearing in mind that the GLL does not provide for any time-frame for the employee to present his/her defense in the context of a disciplinary proceeding, such legal omission should be remedied by considering a minimum period of 5 (five) calendar days for the employee to exercise the right to a defense by resorting to Article 153 of the Civil Procedure Code, in order to respect the adversarial principle, consequently ensuring this fundamental right.

NEW LEGISLATION

- **Joint Executive Decree No. 404/19, of 16 December 2019** – Approves the regime for the transfer of personnel from Sonangol, E.P. to the National Agency for Petroleum, Gas and Biofuels;

- **Presidential Order No. 223/19, of 16 December 2019** – Approves the final report of the Restricted Procurement Procedure for the acquisition of services for the implementation and operationalization of the action plan to promote employability. The order also delegates competences, in respect of said Procurement Procedure, to the Ministry of Public Administration, Labor and Social Security for the approval of the relevant Draft Contract.

- **National Bank of Angola Notice No. 2/20, of 9 January 2020** – Establishes the rules and procedures that must be observed in the execution of current invisible exchange operations by legal entities. The new Notice repeals Notice No. 13/13, of 6 August 2013, and all contradictory regulatory provisions.

UPCOMING LABOR OBLIGATIONS TO BEAR IN MIND

- Prepare by 31 January 2020 the personnel vacation chart and post it in the workplace in full view and with easy access for employees.

- Prepare and submit payroll payment forms to the National Institute for Social Security (companies with more than 20 employees are required to submit the forms electronically) and pay contributions by the 10th of the following month.

- Prepare and submit to the Employment Center for the relevant area by 30 April a Nominal Register of Employees, according to the official (RENT) form, with information up to March of the corresponding year.

- Companies in the petroleum sector that have entered into a Program Contract with the Ministry of Mineral Resources and Petroleum must, by 31 March, prepare and submit to said Ministry's National Directorate for the Promotion of *Angolanization* and Value Chain a detailed report on the status of the implementation of the Human Resources Development Plan in respect of the preceding year. Companies must use the digital platform provided by the National Directorate for this purpose.

For more information, please contact:

JAYR FERNANDES
Jayr.Fernandes@mirandaalliance.com

ELIESER CORTE REAL
Elieser.Real@mirandaalliance.com

NUNO GOUVEIA
Nuno.Gouveia@mirandaalliance.com