

Mandate of the Special Rapporteur on the independence of judges and lawyers

REFERENCE:
AL BRA 6/2018

7 June 2018

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolution 35/11.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning the alleged persecution suffered by **Judge Hugo Cavalcanti Melo Filho** by the Brazilian judicial authorities.

According to the information received:

Mr. Hugo Cavalcanti Melo Filho is the president of the 12th labour circuit of the city of Recife, one of the twenty monocratic first instance courts in the city, the state capital of Pernambuco. He is also the President of the Latin American Labour Judges Association (ALJT) since 18 November 2015.

In the first quarter of 2017, the Brazilian Congress began to discuss the so-called "Labour Law Reform" and the "Pensions Reform", which aimed at introducing far-reaching changes to the social legislation. The controversial reform package allegedly reduced job security and withdrew a number of basic guarantees enshrined in articles 5, 7 and 8 of the Brazilian Constitution.

In response to the two bills, the main Brazilian workers unions called a general strike to be held, in accordance with the Article 9 of the Brazilian Constitution, on 28 April 2017.

On 27 April 2017, the day before the general strike, Judge Melo Filho sent an official communication to the public servants of the 12th Labour Court of Recife to postpone the hearings scheduled for the following day in order to allow them to join the strike. In this letter, he referred to article 765 of the Brazilian Labour Law, which advocates the broad freedom of the judge in the conduct of the proceedings, and recommended the civil servants in his circuit to disregard the order of the President of the Regional Labour Court of 6th Region, which requested that the absence of anyone who adheres to the shutdown on 28 April 2017 be recorded.

Immediately thereafter, the disciplinary body of the Labour Court of Pernambuco State opened a procedure to investigate the conduct of Judge Melo Filho on the eve of the general strike. Judge Melo Filho was accused of using inappropriate language in his official communication against the Chief Justice of the Brazilian Federal Labour Court, Mr. Ives Gandra Martins Filho.

Two months later, before the discussion of the “Labour Reform” bill in the Congress, the Brazilian unions called another general strike for 30 June 2017. On 29 June, Judge Melo Filho sent another official communication to the public servants in his circuit to postpone the hearings scheduled for the following day in order to facilitate their participation in the strike.

On 3 July 2017, the President of the Labour Court of Pernambuco State, Judge Valdir Carvalho, requested the disciplinary board of the National Council of Justice (CNJ) to open a new disciplinary procedure against Judge Melo Filho to evaluate his conduct on the eve of the two general strikes of April and June, as well as to review the compatibility of a note sent by the Latin American Labour Judges Association (ALJT) with the obligations arising from the judges’ code of conduct.

The President of the Labour Court of Pernambuco State also obtained an injunction from the Labour Court of Pernambuco, in administrative jurisdiction, to prevent Judge Melo Filho from participating, in his capacity of President of ALJT, in a public hearing organised by Senator Paulo Paim to discuss the “Pensions Reform” proposal. The Court ruled that Judge Hugo could not go and the President of the Labour Court informed the Senator of the decision.

Following his participation in the public hearing, the disciplinary body of the Labour Court of Pernambuco State opened an additional disciplinary procedure against Judge Melo Filho, alleging that his absence from the court to participate in the public hearing affected the regular operation of his district.

In early July 2017, the disciplinary body of the Labour Court of Pernambuco also opened two additional investigations against Judge Melo Filho, in order to check the alleged incompatibility of his conduct as President of ALJT with his judicial functions.

In August 2017, the disciplinary procedures against Judge Melo Filho were transferred from the disciplinary body of the Labour Court of Pernambuco State to the disciplinary board of the National Council of Justice, allegedly without any legal basis.

In March 2018, the disciplinary body of the Labour Court of Pernambuco opened a sixth disciplinary procedure against Judge Melo Filho with a view to investigating inappropriate comments allegedly made by him in a private judges’ discussion group on the Internet.

In May 2018, the disciplinary procedures against Judge Melo Filho pending before the disciplinary board of the National Council of Justice were allegedly sent back to the disciplinary body of the Labour Court of Pernambuco State.

Without prejudging the accuracy of the information received, concern is expressed at the above allegations. The opening of six disciplinary procedures against Judge Melo Filho may be regarded as an inappropriate interference with the legitimate exercise of his right to freedom of expression. These disciplinary proceedings may also have an adverse impact on the legitimate exercise of this right by other judges, who may be deterred from asserting their freedom of expression out of fear of being subject to disciplinary proceedings.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information on the legal grounds for initiating six disciplinary proceedings against Judge Melo Filho, and explain how these proceedings are compatible with international human rights norms and standards.
3. Please provide detailed information on the guarantees in place to protect and promote judicial independence, including measures to ensure that members of the judiciary can exercise, on an equal basis with other individuals, their right to freedom of expression

I would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of my highest consideration.

Diego García-Sayán
Special Rapporteur on the independence of judges and lawyers

Annex

Reference to international human rights law

The independence of the judiciary is prescribed, inter alia, in the International Covenant on Civil and Political Rights (ICCPR), acceded by your Excellency's Government on 24 January 1992, and the United Nations Basic Principles on the Independence of the Judiciary.

In particular, the Basic Principles on the Independence of the Judiciary provide that it is the duty of all governmental and other institutions to respect and observe the independence of the judiciary (principle 1); that the judiciary shall decide matters before them impartially (...) without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason (principle 2); and that there shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision (principle 4).

The Basic Principles provide that members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly; in the exercise of these rights, however, judges must always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary (principle 8).

The Basic Principles also include specific principles on the discipline, suspension and removal of judges. According to principle 17, a charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure, and the judge shall have the right to a fair hearing. All disciplinary proceedings shall be determined in accordance with established standards of judicial conduct (principle 19), and decisions in disciplinary proceedings should be subject to an independent review (principle 20).