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Telework, the Essential Core of Fundamental Social Rights, and Binding Precedents: The Constitutional Function of the TST's IRRs in the Digital Age

Teletrabalho, Núcleo Essencial dos Direitos Fundamentais Sociais e Precedentes Vinculantes: A Função Constitucional dos IRRs do TST na Era Digital

Teletrabajo, Núcleo Esencial de los Derechos Fundamentales Sociales y Precedentes Vinculantes: La Función Constitucional de los IRRs del TST en la Era Digital

Agatha Gabrielle Lorena Seixas

Abstract:
This article analyzes the compatibility of the exclusion of working hours control in telework—provided for in Article 62, III, of the Consolidation of Labor Laws—with the essential core of the fundamental right to the temporal limitation of work (Article 7, XIII and XVI, of the Federal Constitution). It examines the role of Repetitive Appeals Incidents (IRRs) of the Superior Labor Court as an instrument for the constitutional stabilization of labor jurisprudence, based on the analysis of established theses and legal issues still under judgment relating to the exceptions of Article 62 of the CLT. The research articulates the theory of fundamental rights (Robert Alexy), the normative force of the Constitution (Konrad Hesse), directive constitutionalism (Canotilho), the open society of interpreters (Peter Häberle), the integrity of law (Ronald Dworkin), and comparative law (ILO, Court of Justice of the European Union, and German Federal Constitutional Court). It argues that the automatic interpretation of Article 62 of the CLT is flawed. 62, III, compromises the maximum effectiveness of social rights and may constitute a material setback. It is concluded that IRRs (Repetitive Incidents of Labor Law) play a structuring role in the constitutionalization of Labor Law, provided they are grounded in theoretical depth and decisional precision, and the absence of a specific repetitive incident on telework is identified as a gap to be filled by the Superior Court.

Keywords:
Teleworking; Fundamental social rights; Essential core; IRR; Constitutionalization of Labor Law.

Resumo:
O presente artigo analisa a compatibilidade da exclusão do controle de jornada no teletrabalho — prevista no art. 62, III, da Consolidação das Leis do Trabalho — com o núcleo essencial do direito fundamental à limitação temporal do trabalho (art. 7º, XIII e XVI, da Constituição Federal). Examina-se o papel dos Incidentes de Recursos de Revista Repetitivos (IRRs) do Tribunal Superior do Trabalho como instrumento de estabilização constitucional da jurisprudência trabalhista, a partir da análise de teses já fixadas e de questões jurídicas ainda em julgamento relativas às exceções do art. 62 da CLT. A pesquisa articula teoria dos direitos fundamentais (Robert Alexy), força normativa da Constituição (Konrad Hesse), constitucionalismo dirigente (Canotilho), sociedade aberta dos intérpretes (Peter Häberle), integridade do direito (Ronald Dworkin) e direito comparado (OIT, Tribunal de Justiça da União Europeia e Tribunal Constitucional Federal Alemão). Sustenta-se que a interpretação automática do art. 62, III, compromete a máxima efetividade dos direitos sociais e pode configurar retrocesso material. Conclui-se que os IRRs desempenham função estruturante na constitucionalização do Direito do Trabalho, desde que fundamentados com densidade teórica e precisão decisória, e identifica-se a ausência de incidente repetitivo específico sobre o teletrabalho como lacuna a ser preenchida pela Corte Superior.

Palavras-chave:
Teletrabalho; Direitos fundamentais sociais; Núcleo essencial; IRR; Constitucionalização do Direito do Trabalho.

Resumen:
El presente artículo analiza la compatibilidad de la exclusión del control de la jornada laboral en el teletrabajo — prevista en el artículo 62, III, de la Consolidación de las Leyes del Trabajo de Brasil — con el núcleo esencial del derecho fundamental a la limitación temporal del trabajo (artículo 7, XIII y XVI, de la Constitución Federal). Se examina el papel de los Incidentes de Recursos de Revista Repetitivos (IRRs) del Tribunal Superior del Trabajo como instrumento de estabilización constitucional de la jurisprudencia laboral, a partir del análisis de tesis ya establecidas y de cuestiones jurídicas aún en juicio relativas a las excepciones del artículo 62 de la CLT. La investigación articula la teoría de los derechos fundamentales (Robert Alexy), la fuerza normativa de la Constitución (Konrad Hesse), el constitucionalismo dirigente (Canotilho), la sociedad abierta de los intérpretes (Peter Häberle), la integridad del derecho (Ronald Dworkin) y el derecho comparado (OIT, Tribunal de Justicia de la Unión Europea y Tribunal Constitucional Federal Alemán). Se sostiene que la interpretación automática del artículo 62, III, compromete la máxima efectividad de los derechos sociales y puede configurar un retroceso material. Se concluye que los IRRs desempeñan una función estructurante en la constitucionalización del Derecho del Trabajo, siempre que estén fundamentados con densidad teórica y precisión decisoria, y se identifica la ausencia de un incidente repetitivo específico sobre el teletrabajo como una laguna que debe ser cubierta por el Tribunal Superior.

Palabras clave:
Teletrabajo; Derechos fundamentales sociales; Núcleo esencial; IRR; Constitucionalización del Derecho del Trabajo.

Introduction

The reorganization of work in the digital age has shifted the factory and the office into the home and largely dissolved the physical boundaries that historically defined work time and life time. The expansion of telework, abruptly accelerated by the COVID-19 pandemic and consolidated as a permanent model in a significant portion of employment relationships, brought with it a promise of flexibility and, simultaneously, a risk that is difficult to measure: the perpetual availability of the worker. In this scenario, the technology that enables the remote provision of services is the same technology that, if misinterpreted by the law, can convert the home into a workplace without hours or limits.

Brazilian law has responded to this transformation in an ambivalent way. On the one hand, Article 7, items XIII and XVI, of the 1988 Federal Constitution establishes the limitation of working hours and the remuneration of overtime work as fundamental social rights. On the other hand, the Labor Reform (Law No. 13,467/2017) included telework in the list of exceptions in Article 62 of the Consolidation of Labor Laws, literally exempting it from working hour control; a move reinforced, in its logic of exceptionality regarding timekeeping,

by the Economic Freedom Law (Law No. 13,874/2019). Thus, a normative tension arises between the freedom to organize economic activity and the minimum civilizational standard that the Constitution reserves for the worker's time.

It is from this tension that the research problem guiding this article emerges: is the automatic exclusion of working hours control in telework, as derived from a literal reading of article 62, item III, of the CLT (Brazilian Labor Code), compatible with the essential core of the fundamental right to the temporal limitation of work? And, in case of incompatibility, what role is reserved for the Incidents of Repetitive Appeals (IRRs) of the Superior Labor Court in the constitutional stabilization of this matter?

The hypothesis is that the automatic interpretation of the provision, which presumes the impossibility of control simply because the work is performed remotely, undermines the maximum effectiveness of the social right and may constitute a genuine material setback. This presumption disregards the fact that contemporary management technologies, by recording *logins* , data traffic, and response times, make the control of working hours factually possible, shifting the issue from the plane of technical impossibility to the plane of hermeneutical choice. It is further argued that the IRRs (Repetitive Incidents of Labor Law) play a structuring role in the standardization and constitutionalization of labor jurisprudence, and that the absence of a specific repetitive incident on telework constitutes a significant gap, to be filled by the Superior Court in due course.

The relevance of this topic is both theoretical and practical. On a practical level, the lack of clarity regarding the control of remote work arrangements creates legal uncertainty, fuels mass litigation, and strains the right to disconnect, with direct repercussions on the physical and mental health of millions of workers. On a theoretical level, the controversy offers a privileged field to test the resilience of fundamental social rights in the face of legislative innovations of a flexible nature and to examine the potential of binding precedents, following Article 927 of the 2015 Code of Civil Procedure, as instruments of coherence and integrity within the system.

To address the problem, this work articulates a pluralistic theoretical framework. It draws on Konrad Hesse's normative force of the Constitution to avoid reducing constitutional norms to mere pieces of paper; Robert Alexy's theory of principles and proportionality to understand the limitation of working hours as a mandate for optimization; JJ Gomes Canotilho's guiding constitutionalism; Peter Häberle 's open society of constitutional interpreters; and Ronald Dworkin 's integrity of law as a requirement for decisional coherence. This framework is complemented by dialogue with comparative law, especially the parameters of the International Labour Organization, the decision of the Court of Justice of the European Union

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in case C-55/18 (CCOO v. Deutsche Bank), and the jurisprudence of the German Federal Constitutional Court.

Regarding methodology, the hypothetical-deductive method is adopted, with a qualitative approach. The research is eminently bibliographical and jurisprudential: alongside the doctrinal review, an analysis of precedents is carried out, with emphasis on IRR-73 and IRR-300 of the Superior Labor Court and on Theme 1,046 of the general repercussion of the Supreme Federal Court, articulating them with the examination of sources of comparative law. The aim is not only to describe the normative and jurisprudential state of the art, but also to critically evaluate its compatibility with the essential core of the right to limitation of working hours.

The overall objective is to demonstrate that the constitutional function of the TST's IRRs (Incidents of Repetitive Demands), when exercised with theoretical depth and decisional precision, operates as an instrument for the constitutionalization of Labor Law in the digital age. Specific objectives include: (i) characterizing the limitation of working hours as a fundamental social right with structuring effectiveness; (ii) delimiting its essential core and subjecting Article 62, III, of the CLT (Consolidation of Labor Laws) to the scrutiny of proportionality; (iii) examining the harmonization of the matter with the jurisprudence of the STF (Supreme Federal Court) and the TST and the nature of on-call time in telework; (iv) comparing the Brazilian solution with international parameters; and (v) evaluating the suitability of IRRs to concretize the protection of working hours control and identifying the specific gap related to remote work.

To that end, the article is organized into six sections, in addition to this introduction and conclusion. The first presents the workday as a structuring right, founded on the normative force of the Constitution and the theory of principles. The second investigates the essential core of the right, proportionality, and the duty of protection. The third examines the open society of interpreters and the constitutionalization of Labor Law, with sub-items dedicated to harmonization with the jurisprudence of the STF (Supreme Federal Court) and the TST (Superior Labor Court) and the legal nature of on-call time in telework. The fourth promotes international dialogue with the ILO (International Labour Organization), the Court of Justice of the European Union, and the German Federal Constitutional Court. The fifth addresses the integrity of the law and the function of IRRs (Repetitive Incidents of Law), detailing the concretization of the thesis by the Labor Court and the gap in Article 62, III, as the next frontier for repetitive incidents. Finally, the sixth synthesizes the conclusions and reaffirms the thesis

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that, in the digital age, technology must be converted from an instrument of erosion into a field for reaffirming the normative force of the Constitution.

The workday as a fundamental right.

The limitation of working hours constitutes a fundamental social right with structuring effectiveness. It is not merely a programmatic norm, but a binding command endowed with normative force.

Konrad Hesse states that the legal Constitution is not simply a piece of paper, but a normative order that aims to shape political and social reality (HESSE, 1991, p. 15). The so-called normative force of the Constitution requires that all sub-constitutional legislation be interpreted in a way that preserves the maximum effectiveness of fundamental rights.

Robert Alexy, in turn, argues that fundamental rights are principles that mandate that something be realized to the greatest extent possible within the legal and factual possibilities (ALEXY, 2008, p. 90). If the limitation of working hours is a principle of optimization, any interpretation that renders its instrument of implementation—the control of working hours—unfeasible reduces its material effectiveness.

Unlike a programmatic norm, which merely points the legislator in a direction, the limitation of working hours is considered structural because it organizes life in society itself. From the perspective of worker dignity, the limitation prevents the commodification of human beings, guaranteeing time for rest, leisure, and family life. In terms of immediate effectiveness, and by virtue of Article 5, § 1, of the 1988 Federal Constitution, norms defining fundamental rights and guarantees have immediate application; thus, the limit of eight hours per day and forty-four hours per week is not a suggestion, but a rigid ceiling that binds the employer and the State.

A deeper understanding of the workday as a fundamental social right requires overcoming a merely regulatory view towards a perspective of structuring and binding effectiveness. From the perspective of the normative force of the Constitution defended by Konrad Hesse, the constitutional norm cannot be reduced to a piece of paper or a set of programmatic intentions; it is a normative order that has the power—and the duty—to shape political and social reality. This means that the limitation of the workday imposes a constitutional will that must prevail over exploitative practices or sub-constitutional interpretations that attempt to make the civilizational standard of work more flexible. In this context, the application of Robert Alexy's theory of principles reveals that the limitation of the workday acts as a legitimate optimization mandate. As such, this right must be realized to the

greatest extent possible, considering the legal and factual possibilities. If the rule mandates that working hours be limited to preserve the physical and mental integrity of the worker, any interpretation of ordinary legislation that makes it impossible or difficult to control those hours—the instrument for realizing the right—ultimately undermines the very material effectiveness of the constitutional precept.

Therefore, the interpretation of laws such as the CLT (Brazilian Labor Code) or laws on economic freedom must always be filtered through the principle of maximum effectiveness. By removing or hindering the recording of working hours, for example, the interpreter is not only dealing with a bureaucratic rule, but also reducing the capacity to optimize a fundamental right. Hesse's normative force and Alexy's proportionality converge on the conclusion that the control of working hours is not an end in itself, but the indispensable guarantee so that the right to limit working hours does not become an empty promise.

The intersection between the telework regime and the innovations of the Economic Freedom Law (Law No. 13.874/2019) represents the ideal scenario to test the resilience of the normative force of the Constitution and the optimization mandates of Robert Alexy. The point of friction lies primarily in the exemption from working hour control, which the Economic Freedom Law sought to facilitate by raising the level of mandatory timekeeping and encouraging the logic of exceptional control in flexible work regimes. When this logic is transposed to telework, a direct conflict arises with the premise that the limitation of working hours is a fundamental structuring right.

Through the lens of Konrad Hesse, the will of the Constitution demands that telework not be interpreted as a lawless territory or a space of complete availability for the worker. The interpretation that the remote work regime, in itself, would make it impossible to control working hours—and therefore dispense with the payment of overtime—offends the principle of maximum constitutional effectiveness. If current technology allows for the monitoring of logins, data traffic, and response times, the factual reality mentioned by Alexy allows for the optimization of the right to disconnect.

Alexy's systematic application therefore requires the legal interpreter to seek balance: economic freedom may justify flexibility in where and how one works, but it cannot negate how much one works. If limiting working hours is a principle of optimization, then sub-constitutional legislation—such as Article 62, III, of the CLT (Consolidation of Labor Laws), amended by the 2017 reform and influenced by the logic of Law No. 13.874/2019—must be read restrictively. Any interpretation that uses economic freedom to endorse an exhausting and

invisible workday in the domestic environment reduces the material effectiveness of the social right.

In this scenario, the right to disconnect emerges not as a new right, but as the necessary external facet of limiting the workday in the digital age. Following Robert Alexy's logic, the right to disconnect functions as a protective barrier for mental health: it is the act of not doing that allows for the realization of the principle of human dignity. Without the right to disconnect from digital tools, messaging platforms, and corporate emails, the worker remains in a state of perpetual readiness, which negates the mandate to optimize rest and leisure.

Applying Konrad Hesse's normative force to the right to disconnect requires that the Judiciary and the legislature not ignore the invasion of private space by technology-mediated work. Interpreting the Economic Freedom Law in a way that allows the absence of timekeeping to become a regime of uninterrupted availability is to convert the Constitution into a merely nominal text. For the constitutional norm to conform to social reality, it is necessary to recognize that the employee's submission to digital commands outside of contractual hours—or the implicit expectation of an immediate response—constitutes excessive working hours. Thus, the right to disconnect imposes clear limits on the employer's managerial power, based on the duty to preserve health (Article 7, XXII, and Article 196 of the 1988 Constitution). In the context of telework, economic freedom must coexist with the company's socio-environmental responsibility, so that the interpretation of the norms prioritizes the maximum effectiveness of fundamental rights, establishing that non-work time is immune to interference. Denying disconnection under the pretext of autonomy or lack of control over working hours is, ultimately, a violation of the essential core of the fundamental right to limits on working hours. The convergence between limiting working hours and the right to disconnect reveals that protecting workers in the digital environment is not a prerogative of the employer, but a requirement of public order that conditions the validity of any contractual regime. When sub-constitutional legislation, under the guise of economic freedom, removes control over working hours in telework, it not only makes a procedural rule more flexible, but also strikes at the very foundation upon which the dignity of the human person at work is built. This erosion of the instrumental guarantees for monitoring working time opens the way for an analysis of the theory of the essential core and the duty of state protection (Schutzpflicht).

Essential core, proportionality and institutional protection

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The theory of the essential core prevents the substantial emptying of a fundamental right. According to Alexy, the guarantee of the essential core prevents restrictions from eliminating the substance of the fundamental right (ALEXY, 2008, p. 295). In telework, the automatic exclusion of working hours control compromises the practical possibility of verifying the temporal limitation. The Bundesverfassungsgericht (Federal Constitutional Court) developed the doctrine of the duty of protection (Schutzpflicht), according to which the State must adopt normative measures capable of protecting fundamental rights against structural threats, including those arising from private relations. In decision BVerfGE 88, 203, the Court stated that the State cannot remain inert in the face of situations that jeopardize fundamental rights. Applied to telework, this implies recognizing that the legislator cannot structure a legal regime that weakens the temporal protection of work.

The theory of the essential core, as advocated by Robert Alexy, establishes a limit to limits: although fundamental rights may be restricted by other principles, there is a minimum and intangible content—the substance of the right—that cannot be sacrificed under penalty of annihilating the norm itself. In telework, the automatic and generic exclusion of working hour control compromises the practical possibility of verifying the time limitation, affecting the core of the right to rest and health. By removing the instrument that makes the right enforceable, the legislator promotes substantial emptying, transforming the constitutional guarantee into a rhetorical promise.

Complementing this protection, the doctrine of the duty to protect (Schutzpflicht), consolidated by the German Federal Constitutional Court, imposes an active role on the State in safeguarding fundamental rights against threats arising not only from the Public Power, but also from unbalanced private relationships. In the landmark decision BVerfGE 88, 203, the Court affirmed that the State cannot remain inert in the face of situations that jeopardize fundamental rights, which, applied to telework, implies recognizing that the legislator does not have discretion to structure legal regimes that weaken temporal protection. The duty to protect requires the State to adopt normative measures capable of neutralizing the invisibility of the workday in the domestic environment, ensuring that technological innovation does not serve as a pretext for social regression.

Open society of interpreters and constitutionalization of labor law

Peter Häberle proposes the idea of an open society of constitutional interpreters, according to which constitutional interpretation is not a judicial monopoly, but a plural and

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dynamic process. For the author, the Constitution thrives on its plural interpretation, open to society (HÄBERLE, 1997, p. 37). In the field of telework, constitutional hermeneutics must engage with technological transformations, comparative experiences, and international organizations. The articulation between the theory of the essential core and the state's duty of protection demonstrates that telework cannot be an exception to constitutional sovereignty, but a field of reinforced application of guarantees. If the State has a duty to prevent technology from becoming a vector of erosion of dignity, this duty does not end with legislative production, but extends to how the norm is read and applied in everyday life. This transition from structural protection to practical application leads to the need for a democratic and expanded hermeneutics. Peter Häberle , in proposing the idea of an open society, breaks with the interpretative monopoly of courts and state bodies, arguing that the Constitution thrives on its plural and dynamic interpretation, involving all citizens and social groups who experience its norms. In the field of telework, this premise demands that constitutional hermeneutics not be limited to the cold letter of Article 62 of the CLT (Consolidation of Labor Laws), but actively engage with technological transformations, new work pathologies, and experiences from comparative law. The interpretation of working hours and the right to disconnect ceases to be a purely logical operation and becomes a democratic process, in which unions, professional associations, academia, and international organizations contribute to giving meaning to the constitutional text in the face of the fluidity of digital relations.

In this scenario, the constitutionalization of Labor Law gains a new layer of depth. The plural interpretation proposed by Häberle allows the guidelines of organizations such as the International Labour Organization (ILO) and the jurisprudence of international courts—which already recognize disconnection as a fundamental human right—to be incorporated into Brazilian law. When civil society and plural interpreters denounce the invisibility of working hours in telework, they are exercising the will of the Hesse Constitution to prevent technological innovation from dismantling the essential core of protection. The synthesis of these three pillars—normative force, essential core, and open interpretation—allows us to conclude that the constitutionalization of Labor Law in the digital environment is not merely an academic exercise, but a condition for the survival of human dignity in the face of new forms of exploitation. The integration between structural protection and hermeneutical openness consolidates a model for the defense of labor that does not allow itself to be blinded by technology, treating disconnection and control of working hours as non-negotiable guarantees of a State that fulfills its duty of protection.

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Harmonization with the jurisprudence of the STF and TST

The reception of Hesse and Alexy's theories is clear in the Supreme Court's jurisprudence.

The Federal Court, especially regarding the maximum effectiveness of social rights, has reiterated, when judging issues involving the minimum civilizational standard, that free enterprise (Article 170 of the Federal Constitution) is not an absolute principle and must be weighed against the social value of work. Within the Superior Labor Court (TST), the application of the normative force of the Constitution is reflected in the consolidation of the understanding that telework does not, in itself, preclude the right to overtime if there are means, even indirect ones, of control (TST Bulletin No. 241). Jurisprudence is moving towards recognizing that the protection of health (Article 7, XXII) forms the essential core of the employment relationship, so that the invisibility of working hours in the remote work regime cannot serve as a safe conduct for excess.

Legal nature of on-call time in telework and the duty of protection.

In telework, standby time takes on a hybrid legal nature that requires reinterpretation in light of the state's duty of protection (Schutzpflicht). Traditionally associated with the time an employee spends awaiting orders on company premises or on standby, in telework it manifests itself through constant connectivity. When the State, through the Economic Freedom Law or legislative reforms, removes the mandatory control of working hours for certain regimes, it fails in its duty to protect against the structural threat of mental fatigue. The legal nature of this time is not merely rest, but time at the employer's disposal (Article 4 of the CLT), since the expectation of an immediate response to digital stimuli keeps the worker's nervous system in a state of alert, preventing real disconnection.

From the perspective of the Federal Constitutional Court (Bundesverfassungsgericht), the State cannot remain inert in the face of this new configuration of technological servitude. If digital on-call time limits the freedom of self-management of time and encroaches on the private sphere, it must be accounted for or, at the very least, compensated, under penalty of violating the essential core of the fundamental right to the limitation of working hours. The duty of protection requires that the magistrate, when analyzing the specific case, recognize that

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digital on-call time causes harm to the worker's vital time. Therefore, the legal nature of this interval should be understood as effective working time whenever there is a restriction on the full freedom to disconnect.

International dialogue

The ILO Working report From Home: From Invisibility to Decent The ILO warns that blurring the boundaries between work time and personal time can increase the risk of excessive working hours and psychosocial stress (ILO, 2021, p. 45). The ILO recommends clear mechanisms for defining working time in remote work arrangements.

In case C-55/18 (CCOO v. Deutsche Bank), the Court of Justice of the European Union stated that States must require objective and reliable systems for recording working hours. The decision is based on the premise that, without records, the right to rest becomes illusory. Further international dialogue reveals that the protection of working hours in telework is not an isolated concern of the Brazilian legal system, but a global trend seeking to give substance to labor human rights in the digital age. By connecting the ILO guidelines with the CJEU decisions, one perceives the consolidation of a minimum civilizational standard that prohibits the invisibility of labor effort.

Within the ILO framework, the Working report From Home: From Invisibility to Decent Work serves as a warning about the perverse nature of the blurring of boundaries in the domestic environment. From the perspective of the duty to protect, the recommendation for clear mechanisms to delimit time is not a mere bureaucratic suggestion, but a measure of public health and workplace safety. The ILO recognizes that psychosocial stress derived from constant connectivity is a new occupational pathology that wounds the essential core of the worker's dignity.

Complementing this view, the Court of Justice of the European Union, in the landmark case C55/18 (CCOO v. Deutsche Bank), established a premise that directly engages with the normative force of Konrad Hesse. The European Court ruled that, to guarantee the effectiveness of the rights provided for in the working time guidelines, Member States must oblige employers to implement objective, reliable, and accessible systems for recording daily working hours. The

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logic of the CJEU perfectly applies Robert Alexy's theory: without a measuring instrument, the right to rest becomes illusory, and the limit on working hours ceases to be a mandate for optimization and becomes a legal fiction.

This international convergence reinforces the argument that monitoring working hours in telework is an imperative for institutional protection. When the CJEU (Court of Justice of the European Union) states that the absence of registration prevents verification of the substance of the right, it protects the essential core against interpretations that prioritize business convenience over human health. Thus, international dialogue serves as a vector for strengthening the open society of interpreters in Brazil, offering support for the Brazilian Judiciary to interpret the norms of economic freedom and telework in a way that prevents technological innovation from resulting in social regression.

Integrity of law and function of IRRS

Ronald Dworkin states that law as integrity requires judges to decide difficult cases by interpreting the legal system in its best light (DWORKIN, 1986, p. 225). Article 62, III, must be interpreted in the best possible light of the Constitution, preserving systemic coherence.

Fredie Didier Jr. observes that binding precedent is a legal norm extracted from the determining reason of the qualified decision (DIDIER JR., 2016, p. 57). The IRR (Incident of Repetitive Demands), therefore, is not merely a procedural technique; it is an instrument for the constitutional stabilization of labor jurisprudence. When Dworkin posits law as integrity, he imposes on the judge the duty to see the legal system not as a collection of isolated rules, but as a coherent narrative to be interpreted in its best light. In the case of telework, interpreting Article 62, III, of the CLT (Consolidation of Labor Laws) in its best light means rejecting anachronistic readings that see the remote work regime as an exit ticket from constitutional protection. Integrity demands that the interpreter harmonize the infra-constitutional rule with the history of struggles for social rights and with the normative force of the Constitution.

Dworkin's theory prevents solipsistic or purely utilitarian interpretations of the Economic Freedom Law. If the Brazilian legal system has chosen human dignity and the social value of work as its foundations, the best light for telework is one that recognizes digital connectivity as a new means of subordination and control, and not as an absolute presumption of autonomy. The integrity of the law forbids the interpreter from creating islands of vulnerability, because the system must be integral: if the workday is limited for the on-site

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worker, coherence demands that equivalent protection mechanisms be extended to the remote worker.

Fredie Didier Jr., the function of Repetitive Appeals Incidents transcends mere procedural speed to act as an instrument of constitutional stabilization. When the Superior Labor Court establishes a legal thesis via IRR (Repetitive Appeals Incident) regarding working hours, it extracts the determining rationale (ratio) . (decidendi) which will serve as a binding legal norm for the entire country. The qualified precedent is not merely a case management technique, but a guarantee of legal certainty and equality, functioning as a barrier against lottery-style jurisprudence.

The implementation of the thesis by the TST's IRRs : the protection of working hours control.

The theoretical analysis developed finds empirical confirmation in the recent actions of the Superior Labor Court, which, through Incidents of Repetitive Appeals, has been establishing binding theses directly related to the control of working hours and the exceptions of article 62 of the CLT (Consolidation of Labor Laws). An examination of these precedents demonstrates that the Superior Court, far from endorsing the automatic suppression of time-based protection, has reaffirmed the exceptional and evidentiary -conditioned nature of the hypotheses for waiving the requirement to record working hours. In the judgment of Theme 73 (IRR-73), the TST established the following thesis:

"The burden of proof lies with the employer to demonstrate the impossibility of controlling the external work schedule, as this constitutes a fact that prevents the worker's rights."

The precedent reveals that controlling working hours is the rule, and its impossibility is the exception, the burden of proof for which falls on the employer. Applying this logic to telework, the presumption of uncontrollability of remote working hours—frequently invoked based on Article 62, III—cannot operate automatically. The employer must demonstrate, in concrete terms, the technical infeasibility of monitoring, especially given the digital monitoring tools already available.

In the same vein, Topic 253 (IRR-253), reaffirming TST Precedent No. 287, established that the working hours of a bank employee who is a branch manager are governed by Article 224, § 2, of the CLT, while, with regard to the general manager of a bank branch, the exercise of a management role is presumed, and Article 62 of the CLT applies . Even though it relates

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to the general manager (Article 62, II), the precedent is methodologically relevant: the classification under the exception of Article 62 operates by presumption subject to proof to the contrary, and not by mere formal label — reasoning applicable, mutatis mutandis, to the remote work modality, in which the legal label of telework cannot, in isolation, presume the impossibility of control.

Even more significantly for the essential core theory, Topic 308 (IRR-308) established the thesis that an employee holding a position of trust, under the terms of Article 62, II, of the CLT (Brazilian Labor Code), is entitled to double payment for days intended for rest, when worked and not compensated. This precedent is decisive: even when the exception of Article 62 applies—which eliminates the control of working hours and the payment of overtime—an intangible core of temporal protection remains. Thus, Alexy's thesis is empirically proven: the restriction of a fundamental right does not authorize the elimination of its substance. If the exception in item II itself does not entirely empty the protection of time, then with equal or greater reason the exception in item III (telework) cannot become an absolute suppression of the right to a limit on working hours. Specifically regarding technology-mediated work, Topic 176 (IRR-176) recognized that an employee who performs exclusively or predominantly tele-service or telemarketing activities is entitled to a reduced six-hour workday, as provided for in Article 227 of the CLT (Brazilian Labor Code). Although focused on tele-service, the precedent signals the permeability of Labor Law to new forms of digital work, rejecting the argument that technology, by itself, negates the guarantees of working hours.

The topicality of the subject is confirmed by the existence of incidents still pending judgment, with a national stay of proceedings. Topic 300 (IRR-300), affected under the aegis of Topic 1,046 of the STF (Supreme Federal Court), discusses precisely whether a collective bargaining agreement that excludes the employer's obligation to control the working hours of workers who work externally is valid, for the purposes of Article 62, I, of the CLT (Consolidation of Labor Laws), and—a crucial point for this study—whether the possibility of indirect control of working hours precludes the application of the collective bargaining agreement and Article 62, I itself. This question directly relates to the hypothesis of telework, insofar as indirect control, through logins, data traffic, and response times, is exactly the instrument that technological evolution makes available. The thesis to be established in Topic 300 will have direct effects on the constitutional interpretation of Article 62, III.

Also pending, Topic 210 (IRR-210) examines the criteria for inclusion in Article 62, II, of the CLT, especially whether the differentiated remuneration standard can be assessed by the

employee's overall remuneration, demonstrating that the delimitation of exceptions to working hours control remains a live and evolving legal issue within the Superior Court.

The gap in Article 62, III: teleworking as the next frontier for IRRs (Individual Reintegration Reports).

The landscape of precedents reveals a significant fact: the Superior Labor Court has already addressed, through Incidents of Repetitive Appeals, the first two exceptions in Article 62 of the CLT (Consolidation of Labor Laws) — external work (item I, Themes 73 and 300) and positions of trust (item II, Themes 53, 253, 308 and 210) —, but has not yet established a specific repetitive thesis on telework (item III). This gap is not neutral. While the traditional exceptions were subjected to the scrutiny of uniformity and had their scope evidentiary delimited, the most recent and technologically sensitive exception remains at the mercy of fragmentary and potentially empty interpretations.

It is precisely in this space that the constitutional function of IRRs (Incidents of Repetitive Demands) is projected , as argued throughout this work. A future incident on the control of working hours in telework— establishing, in light of Supreme Court Ruling 1,046 and the doctrine of essential core principles, that the impossibility of control is a fact to be proven, not presumed—would concretize Dworkinian integrity , extending to remote workers the protective coherence already ensured to external workers and those holding positions of trust. The absence of this precedent, on the contrary, keeps the teleworker in a legal penumbra, making the unifying action of the Superior Court urgent.

Thus, the IRR (Incident of Repetitive Appeals) becomes the vehicle for realizing Dworkinian integrity in Brazilian Labor Law, preventing the open society of Häberle 's interpreters from degenerating into interpretative anarchy and conferring unity to the system. Establishing precedents in repetitive appeals that recognize the duty to monitor working hours in telework, whenever technically possible, is the correct response to the difficult case imposed by the digital revolution. By deciding under the aegis of the integrity and effectiveness of precedents, the Judiciary fulfills its role as guardian of the substance of fundamental rights, transforming the legal text into a living norm that protects the worker against the erosion of their vital time.

Conclusion

Telework does not constitute a constitutional exception, but a new and complex territory of application of the fundamental norm. The limitation of working hours, far from being a bureaucratic detail, remains a fundamental right structuring human dignity, whose effectiveness cannot be suppressed by the simple alteration of the work geography. In light of the normative force of the Constitution (Hesse) and the theory of principles (Alexy), the protection of the worker's vital time requires a mandate of optimization that does not admit empty interpretations. Added to this, Canotilho's guiding constitutionalism shows that Labor Law has a task of social transformation that prevents regression in the face of technological innovation.

The automatic and literal interpretation of Article 62, III, of the CLT (Brazilian Labor Code), which seeks to exclude working hour control only for remote work, is therefore incompatible with the essential core of the fundamental right to time limitation. As Häberle's open society of interpreters teaches , the reading of the norm must be plural and sensitive to the complaints of psychosocial stress and perpetual connectivity pointed out by the ILO and the CJEU. From the perspective of Dworkin 's integrity of law , the best light for the Brazilian legal system is that which maintains coherence between in-person and remote work, treating working hour control as an instrument of legal security and not as a dispensable burden.

In this scenario, the Repetitive Appeals Incidents of the TST (Superior Labor Court) assume an essential constitutional function of hermeneutical stabilization. They are not merely tools for managing case volume, but the means by which the ratio decidendi is extracted. A decision capable of shielding the system against arbitrariness and legal uncertainty. Analysis of precedents demonstrates that the Court has already protectively delimited exceptions for external work and positions of trust, but a gap persists regarding telework—an area that demands future standardization. Ultimately, the constitutionalization of Labor Law in the digital age requires that technology be transformed from an instrument of erosion into a field for reaffirming the normative force of the Constitution, ensuring that technical progress goes hand in hand with the preservation of human essence.

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