

33 - RESPONSIBILITY ETHICS OF TECHNICAL REPRESENTATIVE (RT) AND ARISING ATTRIBUTIONS CIVIL AND CRIMINAL.

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INTRODUCTION

The historical process of our evolution reveals the search for peaceful coexistence (MORAES, 2011); this fact does not is a privilege of our time, in fact, enjoy the past improvement, which comes to be portrayed in the works of the poet Greek Aeschylus, in his famous trilogy, in kind, Prometheus Bound, and to illustrate, we bring a small stretch dialogue between Vulcan and Power, during the fulfillment of the sentence handed down by Jupiter Prometheus for stealing fire to give humans:

Power: Very may the gods, but depend on a supreme power; only Jupiter is omnipotent; Vulcano: Really so it is all we have the proof; I have nothing to object. Power: In that case, why do not you fulfill your mission, so that your father did not see you negligent? Vulcan: The links to the arms, behold, you are: you can see them "(Aeschylus, 2005, p 8-9.)

The appreciation of this small but important dialogue refers in strict obedience to those who hold power, to comply with its orders issued; independent because of our will, when there is legitimacy to the activities of discipline in the way that the law admits, in the above case, the will of God, and our, as the constitutional and infra-constitutional guidelines (laws, ordinances, acts, resolutions, technical standards, etc.).

Is it wise the memory of a gap between the publication of the classic work of Aeschylus and our day ... over the years, were found flagrant violations of the use of power in a despotic manner, in contrast, in contemporary times, which is to inspire the state organization is the observance of legality and legitimacy of power, given that the real owner is the people and their governments act in favor of that.

In Brazil, after the political opening, we sought to establish a consolidated State "set of ideas" (CANOTILHO, 2002), calls Constitutionalism, aimed at building a more just, fraternal and solidary society (MORAES, 2011, p .22), respecting the ideals submission Republicans the law.

Were these assumptions we report that guided the Brazilian State to regulate on September 1, 1998, through Law 9696, the Profession of Physical Education, thus satisfying the terms in item XIII of art. 5 of the CF / 88 "is free to carry on any work, trade or profession, observing the professional qualifications established by law." (PLATEAU, 2016)

The item XIII of art. 5 of the CF / 88' is considered an effective rule contained as soon as there was the regulation of the profession of Physical Education by Law 9696/98, from there, only those who have acquired skills, will enable the professional exercise.

The effectiveness of constitutional norms, they are classified as Full Efficacy, Contained and Restricted. Contained Effectiveness are those regulated by law, restrict the production of its effects, then, with the entry into force of Law 9,696 / 98, only those who have a license can perform the operations of the Professional Physical Education

Accordingly, quotes ARAÚJO (2016) Apud Moraes:

To be immediate or full effect, although its effectiveness may be reduced, restricted in cases and in the manner provided by law; therefore have their power reduced by legislative activity. Are constitutional provisions that received the normativity constituent able to govern interests, but contain within it, the prescription of normative resources or concepts that restrict the production of its effects. Standards are subject to restriction. (MORAES, 2011, p.13)

For all narrated detaches itself any questions about the obligation of the Professional Physical Education registration, imposing professional be enabled in the System CONFEF / CREF.

SKILL X CLEARANCE

The entry into force of the Law that regulated the profession of Physical Education is a watershed between having skill and qualification, when the professional practice.

This framework will distinguish the provision of services in Physical Education as a bias optimizer quality of life, guiding face by a qualified professional, possessing skills and fit to professional practice, by his competence, defined by law in art. 3 of Law 9696/98:

Art. 3 It is for the Physical Education Professional coordinate, plan, schedule, supervise, stimulate, direct, organize, evaluate and execute jobs, programs, plans and projects, and provide audit services, consulting and advisory services, conduct specialized training, participate multidisciplinary and interdisciplinary teams and prepare technical reports, scientific and educational, all in the areas of physical activity and sport. (ARAÚJO cited PLATEAU)

It is understood that the powers referred to in art. 3 of Law 9,696 / 98 are acquired in regular higher education institutions in our country, which today proffer undergraduate courses in Bachelor and Bachelor of Physical Education, providing the skills that they are relevant, ie "the skills are skills acquired in HEI by egress, necessary for the exercise of the professional of Physical Education." (Araújo, 2016)

In the same way, those coated with the skills, including greeted by the law under discussion, should, to exercise it, enroll in your class body condition "sine qua non" in these terms by empowerment, compreende- if such authorization offered by the company, by law, who has the ability to practice the profession. "(ARAÚJO, 2016)

But so it is with the other regulated professions (Medicine, Pharmacy, Engineering, Social Services, etc.), now also be with Physical Education.

The distinction between skill and qualification, this being the species and that gender, will distinguish the Professional Physical Education, where the Technical Manager and its intrinsic commitment to society; observe the following illustration:



Figure 01 - The ratio of gender x species

Proceeding in the analysis of the figure is to be concluded that the Technical Director (RT), will have to be a professional of Physical Education, carrying, should have the authority of the company to exercise the profession, preceded by CONFEF / CREF system.

ETHICS OF THE LAY RESPONSIBILITY

In the field of responsibilities, the layman is the natural person owning or no skill, acting without the authorization offered by the company through its class body: the CONFEF / CREF system, which constitutes the local authority with delegated authority to exercise oversight the supply of good professionals. (QUINTINO, 2008)

This objective reality of acting without a license is also a practice carried out by graduates of HEIs that do not register in CONFEF / CREF system.

In this sense, equals the egress of the HEIs that do not register, the layman who serves the competence of the Professional Physical Education, both incur in criminal typicality provided for in art. 47 of the LCP (Law of Criminal Misdemeanor) because the clumsiness is north given by the violation that offer the scope of criminal liability as well as civil.

The liability is given, because of the constant causal link in the premises of the preceding paragraph or in isolation, because it establishes a hipossuficiente relationship, so in situations at odds with the law, allow the injured parties to seek in court the damage repair caused by a third party. if -Entenda by damage, a priori and superficial, any injury to someone and repair, due monetary compensation.

So there repair, it is necessary to relations between the agent that gave rise to another and its manifestation of will and thereby identify whether the act committed was lawful or unlawful. - It must be noted that in both there is a deliberate will to act and so stop their similarities; "Licit act is founded on the right, the second are acts that violate the law.: Are crimes" (ALMEIDA, 2007, p.58)

As for illegal acts, for hurting the law in essence, not discussing who repair duty gave rise to it; liability is born with the unlawful act, so exhausted our discourse on the subject.



Figure 02 - The chart above summarizes the liability of the Laity.

Finally, there is no ethical responsibility reached the laity, and in this group, enter the graduates of HEI, but civil and criminal liability, because their acts are illegal, generate legal acts and not Legal Business. Who does not enable, within reach of the Criminal and Civil Law and consumer relations.

ETHICS RT LIABILITY ARISING OUT AND ATTRIBUTIONS CIVIL AND CRIMINAL.

The doctrine, after much effort, so defines who comes to the RT:

Technical Manager is the taxable person of the same standard founding, as its registry and personal submission to the supervisory rules of the respective Councils are essential requirements for the exercise of the function itself. (QUINTINO, 2008, p.134-135)

One has to conclude that it is the RT, the natural person who will be responsible for "technical activity", operated by the company, legal person ". (QUINTINO, 2008, p.134)

Notice that the definition of RT, brings a narrative that there is acceptance of the established by law and specific norms established by the control system, so the supervision of Physical Education Professional holds the Administrative Police Power to guide, fine, charge rates, it is necessary for the proper professional performance for society. (Tojal, 2006)

Relationship between this recipient (Professional Physical Education) and the recipient (Society) in search of quality of service offered is visible in CONFEF the Statute of the premises, which will greatly influence the resolutions that are guiding the Ethics in intervention Professional Physical education, to the point of having Statute of the articles reproduced verbatim in resolutions dealing under this ethical act (Tojal, 2006)

We agree with VÁZQUEZ when it states that ethics should not be confused with moral; The moral, the individual acts in accordance with what they believe is right, but that's a personal relationship with himself; but on ethics, "individuals are faced with the need to pattern their behavior by rules which are deemed more appropriate or more worthy to be fulfilled." (VAZQUEZ, 2007, p.16)

The difference here is accountability (VAZQUEZ, 2007), because before certain situations, we expect certain behaviors, so in their actions, called attitudes are present values that will be observed in the conduct; soon, said regards ethics is declaratory

THE CONFEF No. 134/2007 RESOLUTION - THE ETHICAL FRAMEWORK OF TECHNICAL RESPONSIBLE

The CONFEF Resolution No. 134 of March 5, 2007, "establishes the Technical Responsibility function on service providers establishments in the field of physical and sports activities, and other measures" (CONFEF, 2016) and then in Article 13, normalizes "the RT that does not comply with the provisions of this Resolution shall be liable according to the Code of Ethics of the Professional Physical Education."

Using hermeneutics, we must not forget that the Statute of CONFEF, established in December 13, 2010, established the link of all physical education professionals with ethics, when in Article 11, established the obligation of registration, so as to be able:

Art. 11 - The exercise of the profession of Physical Education, throughout the national territory, both in the private sector,

the public and the professional designation of Physical Education are private of respondents in CONFEF and recorded in CREF, Certificate holders of professional identity issued by the competent CREF, which will enable them to professional practice. (CONFEF, 2016)

At RT, compliance was enhanced because the specificity of its function, will not be exempt from ethical accountability, even when not physically perform the duties because he is the faithful custodian of the good performance of the services that are under their professional scope; the will of the entrepreneur must match their professional interventions and so that it will establish a lawful act.

To have a reference from an ethical range to RT, the Ethics Disciplinary Procedures which were judged in 2016 by CEP / CREF 12-PE / AL, about 80% (eighty) percent of cases are related to failure to comply with Resolution CONFEF 134 / 2007 in Article 2 also makes proviso that the conduct must be based on ethics.

The intelligence of Articles 5 to 8 reinforce that in addition to being prepared to professional practice, should know about the risks to beneficiaries, the diversity of services offered and the capacity of facilities and equipment, as well as the appropriate technical staff be provided with what to offer, not being admitted professionals without proper qualification and skill.

Is not an exaggeration to say that the RT committed to values, expressed in correcting attitudes, promoting quality in their interventions, it is nothing more than the yearning expected by the company receiving the care their services.

MINIMIZATION OF CRIMINAL AND CIVIL ATTRIBUTIONS, BY OBERVÂNCIA ETHICS.

Acting in accordance with the Ethics, the Physical Education Professional minimizes the risks that may incur in criminal and civil charges because their attitudes are extreme in that society elected as good and fair. (VAZQUEZ, 2007), which began with their skill and consolidated in the qualification.

We come across so with the "human action obedient to the law, which is practiced aiming at the production of the ones effects by the agent, takes the legal business name" (ALMEIDA, 2007, p.57), in what is expected by society, ie RT that has qualification and ability to that predisposes provide service.

Deviate thus the objective imputation, the Laity, which for not having license, all his actions are illegal, so the immediate reach of the Criminal and Civil Law.

Possessing this exordial understanding, we seek to change the understanding of the Professional Physical Education on the importance of its relationship with the CONFEF / CREF system, thus preventing it will establish the process of knowledge, and at the end, a severance sentence handed down to his disadvantage .

Is it wise remembering that we are discussing two important pillars:

- 1) Guarida with the Judiciary and;
- 2) Professional Physical Education, it was not always so;

It will depart from the assessment of this article, which do not constitute such pillars, given not the object to which obligate us discuss, given the strengthening of legal relationships discussed here, fit with Law 9,696, which was sanctioned on 1 September 1998, logical framework in this study.

A PROFESSIONAL LIABILITY OF PHYSICAL EDUCATION

In the introduction, brought preliminary concepts of lawful act and tort (ALMEIDA, 2007) and to better understand the proposed order, the lesson below will be crucial, therefore, we will cover two (02) cases:

a) Individual degree in Physical Education in Higher Education Institution (HEI), which carries professional activity of Physical Education without registration in CONFEF / CREF system;

b) a person formed in Physical Education in Higher Education Institution (HEI), the provisionados² to include it, exercising professional activity of Physical Education with registration in CONFEF / CREF system.

In the first case, through this its positive expression of will, commits an unlawful act, given that incurs the egress in the same criminal offense layman, ie, violates art. 47 of the Criminal Misdemeanor Law:

Art. 47. Exercise profession or economic activity or announce that exercise, without fulfilling the conditions to which by law is subordinate their exercise: Penalty - simple imprisonment, fifteen days to three months or a fine of five hundred thousand reais to five contos. (PLATEAU, 2016)

The wording of Decree-Law No. 3,688, of October 3, 1941 is crystal clear; not offer any condition who does not meet the requirements of Clause XIII of art. 5 of the CF / 88, especially when there is regulation, as is the case, the existence of Law 9,696 / 98 and its scope; beyond the offense to which will respond, with Pecunia received, will be the extent of damage repair, including for moral damages in the form permitted by the Civil Code: "Art. 389. not fulfilled the obligation, answers the debtor for damages, plus interest and monetary restatement according to official figures regularly established, and attorney fees." (JUSBRASIL, 2016)

The egress not register, expresses his will contrary to the law and for that reason is, is born in the legal framework, the tort (ALMEIDA, 2007):

"The tort is also an act of will, that in the sense that there must be awareness and freedom for your practice. But the act is contrary to the law, and the effects that occur happen regardless of intent, the agent's will." (ALMEIDA, 2007, p. 58)

Notice that the egress to not register in CONFEF / CREF system, expresses its willingness to not enable to professional practice, a must sine qua non for such purpose; act contrary to the law that its denial to constitutional rule (item XIII of art. 5 of the CF / 88) and the legal, Law No. 9,696, of September 1, 1998 therefore constitutes injury to beneficiaries who take their service and all recipients (Physical Education Professionals), so surveillance CONFEF / CREF system has power of Administrative Police to request the police force to conduct those who meet the conditions described herein to the Judicial Police, thus, tilling the competent Robust Term Occurrence (TCO) and also inform the parquet, to the extent applicable, to practice their acts.

In the second appreciated aspect, we are facing the individual who fits the legal dictates, the Professional Physical Education, those entitled to pursue the regulated profession.

In this first moment, the qualification is the agent will manifestation that will provide licit acts, this occurs as a result of its acceptance as a regulated profession, to do so, submitting to special rules needed the protection of society and of itself, while RT.

At the core, the Professional Physical Education, rejects the imputation of original art. 47 of the LCC and has in its favor the observance of the Code of Ethics, so that his will be a desired end, when his professional performance, so there will be no civil imputation against the practice of lawful act.

FINAL CONSIDERATIONS

There are concluding that the Technical Director in the exercise of their duties, should observe closely the recommendations pertinent to them, listed in CONFEF Resolution No. 134/2007, which harmonizes with the recommendations and the Code of Professional Ethics in force by virtue of Ordinance No. 307/2015 CONFEF.

Accordingly, the RT must possess the necessary knowledge to professional practice and seeking harmonization of good and fair because acting this way, not only with their convictions, but with what the society elected as reasonable (Ethics), there will be

scope of Hierarchical-disciplinary power under Resolution No. 307/2015 CONFEF, soon there will be a minimization of civil and criminal charges, given the legal compliance (enabled) and legitimate (supply and quality control of services), but acting in the dissonance retro contained in resolution, there may be civil and criminal waste, different from that which has no qualification, because they practice unlawful acts and the duty to repair the damage is imminent.

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SUMMARY

This article aims to offer Physical Education Professionals and especially those who act as Technical Director, the knowledge necessary to exercise this activity that requires high professional training and strict adherence to ethics; to this end, we seek to carry out a study axiological, teleological and systematic of the law that regulated profession and thus minimize civil and criminal charges of RTs.

Keywords: Ethics, Responsibility, Minimization.

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ABSTRACT

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RESPONSABILITÉ ÉTHIQUE DE REPRÉSENTANT TECHNIQUE (RT) ET DÉCOULANT ATTRIBUTIONS civiles et pénales.

RÉSUMÉ

Cet article vise à offrir aux professionnels de l'éducation physique et en particulier ceux qui agissent en tant que directeur technique, les connaissances nécessaires pour exercer cette activité qui nécessite une grande formation professionnelle et le strict respect de l'éthique; à cette fin, nous cherchons à réaliser une axiologique d'étude, téléologique et systématique de la loi qui réglementait la profession et ainsi minimiser les charges civiles et pénales de inhalothérapeutes.

Mots-clés: Éthique, Responsabilité, Minimisation.

ÉTICA DE LA RESPONSABILIDAD DEL REPRESENTANTE DE SERVICIO (RT) Y DERIVADOS ATRIBUCIONES CIVIL Y PENAL.

RESUMEN

En este artículo se pretende ofrecer a los profesionales de la educación física y en especial aquellos que actúan como director técnico, los conocimientos necesarios para ejercer esta actividad que requiere una alta capacitación profesional y la adherencia terminante a los éticas; Con este fin, tratamos de llevar a cabo un estudio axiológica, teleológica y sistemática de la ley que regula la profesión y así minimizar los cargos civiles y penales de RTs.

Palabras clave: Ética, Responsabilidad, Minimización.

RESPONSABILIDADE ÉTICA DO RESPONSÁVEL TÉCNICO (RT) E AS DECORRENTES IMPUTAÇÕES CIVIS E CRIMINAIS.

RESUMO

O presente artigo tem por objetivo ofertar aos Profissionais de Educação Física e em especial aos que atuam como Responsável Técnico, o conhecimento necessário ao exercício dessa atividade que requer elevado preparo profissional e estrita observância a ética; para tal, buscamos realizar um estudo axiológico, teleológico e sistemático do ordenamento jurídico dessa profissão regulamentada e assim minimizar imputações civis e criminais dos RTs.

Palavras-chave: Ética, Responsabilidade, Minimização.