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À PROPOS DE NOUS

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ABOUT US

The **International Journal of Open Governments / Revue Internationale des Gouvernements ouverts (RIGO)** is an academic journal created and edited by Irène Bouhadana and William Gilles at IMODEV, the Institut du monde et du développement pour la bonne gouvernance publique.

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INFORMATION ON LEGAL PRECEDENT AS AN INSTRUMENT TO ENSURE LEGAL CERTAINTY FOR CITIZENS

by **Eduardo ARRUDA ALVIM**, Ph.D. and Master of Law and Professor of Civil Law at the Pontificate Catholic University of São Paulo – PUC/SP.

The purpose of this brief study is to examine legal precedents as enshrined in the 2015 Brazilian Code of Civil Procedure, in addition to the importance of the principle for ensuring legal certainty for citizens.

In fact, transparency in the administration of justice is only possible if the citizen is able to ascertain or have some idea as to the future of a case, in the event he or she opts to resort to the Courts.

To investigate this judicial mechanism, let us begin by providing a brief outline of legal precedents and their regulation under the 2015 Brazilian Code of Civil Procedure. We will then turn to an examination of some of the specific modalities of precedent identified.

§ 1 – SOME CONSIDERATIONS ON WHY THE SYSTEMATIC OF LEGAL PRECEDENT WAS INTRODUCED IN THE NEW BRAZILIAN CODE OF CIVIL PROCEDURE

A) Background to Brazilian Law

One of the main causes for the slowness of the Brazilian justice system consists in the countless number proceeding currently pending before the Courts.

More than that, a large portion of current proceeding address matters and issues already ruled on previously, giving rise to innumerable additional actions.

In the 1960s, the Federal Supreme Court was deemed to be in crisis, as the number of petitions entered was far higher than those effectively settled. This led to an increase in the number of proceedings for which a judicial decision was pending, resulting in a backlog in the Federal Supreme Court.

At the suggestion of Minister Victor Nunes Leal, followed by Pedro Chaves, Evandro Lins e Silva, and Gonçalves de Oliveira, in 1963 Binding Judgments of principal decisions began to be published, with a view to consolidating the key

rulings of the Federal Supreme Court.

Subsequently, the Petition for Relevance was instituted through Amendment to article 308 of the Internal Rules of Procedure No. 3 of 1975, which modified the Internal Rules of Procedure of the Federal Supreme Court, aimed at ensuring only Extraordinary Appeals would be heard by the Court if the issue at hand was deemed relevant.

The 1988 Federal Constitution, for its part, created the Superior Court of Justice, for purposes of alleviating some of the load placed on the Federal Supreme Court. In fact, creation of the Superior Court of Justice resulted in a division of jurisdictional authority previously concentrated exclusively in the Federal Supreme Court. With this change, the Superior Court of Justice was assigned the task of standardizing and issuing final decisions on matters relating to federal law throughout Brazil.

However, even with the creation of the Superior Court of Justice, the problem of the high number of cases entered daily before the Court persisted. By way of example, in the period January to August 2016, a full 313,716 cases were distributed in the Superior Court of Justice.

Following creation of the Superior Court of Justice in 1988, other instruments were development in an effort to stop the filing of cases with Brazil's High Courts.

Constitution Amendment No. 45 of 2004 established the standard of broad repercussion, which must be demonstrated by the appellant at the time the extraordinary appeal is filed before the Federal Supreme Court, pursuant to article 102, § 3, of the Federal Constitution. In addition, Constitutional Amendment No. 45 created the Binding Judgment, in accordance with article 103-A of the Federal Constitution, a binding provision *erga omnes*, as the name suggests.

Subsequently, Law No. 11,418 of 2016 introduced articles 543-A, 543-B, and 543-C in the 1973 Brazilian code of civil Procedure, authorizing the High Courts to rule on appeals involving matters already heard.

In addition to these instruments, the Brazilian legal system provided – and still provides – for class-action suits. However, the class-action suit system has proved inadequate for purposes of reducing the caseload.

Some factors, including limits on class-action suit filings (article 1, sole paragraph, of Law No. 7,347/1985); the absence of a specific number of associations to protect given groups; the possibility of re-litigating matter heard by the Courts in individual cases in which the decision on the class-action suit was not beneficial to all parties or substituted

groups (*secundumeventum eventum litis*); territorial limits of decisions (article 16 of Law No. 7,347/1985), in addition to lack of adequate representation.

B) Advent of The 2015 Brazilian Code of Civil Procedure and the Creation of Binding Precedents Through Ordinary Law

With enactment of the New Brazilian Code of Civil Procedure, procedures were instituted requiring that bodies of the judicial branch apply decisions handed down by higher court judges.

The explanatory statement of the Brazilian Code of Civil Procedure on this matter refers expressly to the need to confer efficiency and speediness to judicial proceedings. As such, "it is worth underscoring that more efficient proceedings can be secured through measures aimed at consolidated decision on proceedings involving the same matter, in two ways: a) through joint decisions on matters in proceedings which are considered separately, but subject to a unified ruling; b) to reduce the caseload before the Courts – as the time required to decide on the respective matters could be used more efficiently in other proceedings, the processing of which will involve less 'deaden time' (= periods in which the proceeding is at a standstill)."

In addition, the explanatory statement goes on to note the instability caused by the coexistence of conflicting decisions in similar legal matters, as set out in the following passage: "At the same time, an indefinite number of differing and inconsistent positions on the same legal norm subjects parties in identical circumstances to different rules of conduct dictated by judicial decisions handed down by distinct Courts.

This phenomenon fragments the system, generates unease, and, at times, causes true bewilderment among the public."

The explanatory statement also adds that "legal certainty is compromised with sudden and full reversals from established interpretations of the Courts on matters of Law," underscoring that 'People are not, or should not be — to use Bentham's well known image – like dogs who only discover that something is forbidden when the stick hits their noses.'"[1]

It is in this context that the Issue of Resolution of Repetitive Matters emerges as an instrument to prevent the proliferation of differing decisions in cases involving similar

[1] BENTHAM cited by R. C. CAENEGEM, Judges, Legislators and Professors, p. 161.

matters. The measure includes hearing of repetitive special and extraordinary appeals.

Stable social relations are a necessary premise to ensure social peace and order. In the final analysis, that stability is entrusted to the judicial branch through its decision-making pwers. In this light, the system of judicial precedents represents and essetia instrument to guarantee the coherence and prdictability of judicial decisions and, by extension, provide for stable social relations. Similarly to the advances secured recently by the Brazilian legal system as a whole, the application of legal precedent was significantly strengthened with the advent of the 2015 New Brazilian Code of Civil Procedure. In this sense, there is a direct correlation between greater access to precedent and greater stability of social relations, insofar as the process will serve to nuture a mentality within the public at large in line with the predictability of legal matters and the potential consequences of filing legal actions. Of particular importance in this context is the operation of an open and fully computerized justice system capable of providing full access to the decisions handed down by the Courts.

§ 2 – The Repetitive Appeals Regime Designated in The 2015 Brazilian Code of Civil Procedure

A) General Consideration on Repetitive Appeals and the Applicable law

Repetitive appeals were introduced in the Brazilian legal systems as a technique reserved to the High Courts[2] as a means of exercising more consistent jurisdictional control, not only in terms of reasonable duration, but also, with respect to legal certainty,[3] rendering simultaneous

[2] The Federal Supreme Court did not have under the 1973 Brazilian code of Civil Procedure an express provision providing for the repetitive extraordinary appeal modality, but sought to provide this connotation through the appeals submitted to review of the general repercussions of the matters in question. Cassio Scarpinella Bueno writes, "In the light of the fact that the provision in article 543-B went beyond identification of general repercussion based on repetitive cases to include decisions on repetitive extraordinary appeals, it was preferable that the 2015 Brazilian Code of Civil Procedure expressly recognize the instrument, as it did. So much so, in fact, that articles 1,036 – 1,041 regulate, in addition to the special appeal (543-C of the 1973 Brazilian Code of Civil Procedure), repetitive extraordinary appeals giving substance to the provision herein cited." (Manual de Direito Processual Civil, Volume Único, 1º edição, 2015, Ed. Saraiva, pág. 549).

[3] With respect to this dual concern of the legislation, the Opinion of the Constitutional Justice Committee stated in relation to Bill No. 117/07, which gave rise to Law No. 11,672/08: "*Simplification of multiple proceedings, based on the identical matter, in one decision is a healthy and important step to reduce the load on the Courts. This innovation, contained in the Bill*

application mandatory to given precedents of the High Courts, a system incremented following enactment of the New Brazilian Code of Civil Procedure.

There is no basis, therefore, for contextualizing *repetitive special appeals* as a mere corollary to the principle of reasonable procedural times (principle of speedy trial), for while judgments issued under the aegis of this system have unquestionably resulted in a reduction of the caseload, removing some of the burden from the Superior Court of Justice, this does not necessarily represent a direct and immediate contribution to faster proceedings, inasmuch, in fact, as there is the potential for long waiting periods until the matter in question is actually heard.[4]

To be sure, proceedings tied to repetitive special appeals on behalf of legal certainty are marked by detailed processing procedures regulated by article 1,038 of the Brazilian Code of Civil Procedure and, by extension, more elasticity involving the combination of judicial and administrative acts between the Superior Court of Justice and the thirty-three Courts under its Jurisdiction,[5] drawing, in addition, the collaborative participation of third parties (*amicicuriæ*), the intercession of the Office of the Public Prosecutor, and, although only on rare occasions, public hearing marked by more in-depth discussions in relation to conventional special appeals.

The New Brazilian Code of Civil Procedure, fully committed to the principles of constitutional proceedings, strove to imbue the decision-making processes of the Higher Courts more efficient, by developing a system to form and apply precedents through the various measures available to the parties to proceedings, among them the repetitive appeal, including, as components of this category, the Issue of Resolution of Repetitive Claims – IRDR and the Issue of Assumption of Competence – IAC.

According to Rodolfo Mancuso, "Federal legislation, in an effort to prevent the accumulation of cases, especially in the Higher Courts, allowed itself to be seduced by the idea of hearing multiple and repetitive Special Appeals and Extraordinary Special Appeals that the statistics of the Federal Supreme Court and the Superior Court of Justice

under review, hearing of interested third parties to the matter, strengthens the principle of legal certainty, the right to adversarial proceedings, and right to a full defense for purposes of the final judicial decision."

[4] Emblemático citar a esse respeito que o primeiro recurso especial julgado sob a técnica dos recursos repetitivos, o RESP 1.091.443/SP (Corte Especial – Relatora Min. Maria Thereza de Assis Moura), fora afetado como tal em outubro de 2008, mas incluído em pauta somente na sessão do dia 30/11/2011, cujo julgamento, interrompido por pedido de vista, veio a ser concluído, mais de três anos depois, em maio de 2012.

[5] Existem atualmente 27 Tribunais de Justiça e 5 Tribunais Regionais Federais.

identified as the principal villains for the untenable caseloads carries by the two Higher Courts."

It is evident that the physical expansion of jurisdictional bodies, concomitantly with a growing shortage of judges, never represented a solution consistent with the progressive increase in litigiousness. Legal scholars and experts themselves never placed a priority, in their discussions on the slowness of the justice system, the causes for the problem, identifying, in short, as an inevitable product based on the conclusion that legal priority should be given to legal certainty through fair and equitable dispensation of justice. For its part, the legislation, while implementing consecutive amendments to the applicable procedural norms, also failed to see the issue from an adequate perspective, relegating the case law to the status of mere reference guidelines.

But in placing the discussion on the agenda, in a context Cândido Rangel Dinamarco called the march toward valuing case law, the legislation, influenced by the German and Spanish experiences, adopted another position, giving rise to norms designed for this purpose (i.e. giving weight to precedent), including Law No. 8,038/90 (Law of Appeals), on binding judgments and general repercussion, in addition to successive amendments to the revoked Code, as. For example, article 285-A of the 1973 Brazilian Code of Civil Procedure.

Subsequently, in 2008, article 543-C was incorporated in the 1973 Brazilian Code of Civil Procedure through enactment of Law No. Law 11,672/2008, which created the serial sample case judgment modality within the scope of the Superior Court of Justice based on the identical legal theory, known as the Law of Repetitive Appeals.

As the target Court of the provision, the Superior Court of Justice issued Resolution No. 08/2008 (preceded by Resolution No. 07/2008, which was revoked even before entering into effect, as it was inconsistent with Law No. 11,672/2008), regulating within its scope, the repetitive appeal procedure.

A full seven years later, based on the extensive experience amassed with the legal provision in question (article 543-C of the 1973 Brazilian Code of Civil Procedure), reflected in ruling on approximately 1,000 repetitive appeals, the 2015 New Brazilian Code of Civil Procedure was enacted, entering into force on March 18, 2016, articles 1,036 – 1,041 of which address the Judgment of Repetitive Extraordinary and Special Appeals.

As such, the repetitive special appeal is currently governed by a set of norms and is subject directly to Law No.

13,105/2015 – New Brazilian Code of Civil Procedure , with the amendments thereto introduced by Law No. 13,256/2016.

In addition to the provisions of sub-section II, section II, chapter IV, title II, book III, special part of the New Brazilian Code of Civil Procedure, there are several other articles that directly address repetitive appeals, namely: article 69, VI, on acts of legal management and cooperation; article 927, III, §§2 – 4, governing the effectiveness of decisions handed down in proceedings on repetitive appeals and procedures for the subsequent amendment or revocation of the respective precedent; article 928, II and sole paragraph, in respect of the context of repetitive cases, indicating the matters covered under the provision; article 955, sole paragraph, II, which enables lower courts to hear cases involving conflict of jurisdiction based on the theory of legal precedents; article 979, §3, which mandates wide dissemination of decisions on the matter provided in article 1,037; article 998, sole paragraph, on the possibility of applying the theory of legal precedents, even if the reference appeal is withdrawn; article 1,.022, sole paragraph, I , which expressly finds any decision or judgment that fails to apply the repetitive appeal precedent flawed and incomplete.

The repetitive special appeal incorporated in Brazilian civil law in 2008 (Law No. 11,672/08) constitutes a guarantee of legal certainty, to the extent it is intended, with reasonable effectiveness, at mandatory standardization (article 927, III, of the 2015 of the Brazilian Code of Civil Procedure), the consolidated position on a certain matter (questions of legal precedent) based on the application of precedents to an infinite number of proceedings involving the identical matter of law (article 1.036, heading, of the 2015 Brazilian Code of Civil Procedure) in sample judgments involving two or more representative special appeals on the dispute at hand.

It could be said, in addition, that the method for hearing and judging these matters is endowed with a dual legal profile: standardization based on the high reputation and authority of the those sitting in judgment and, in addition, the simultaneous application of precedents to all proceedings verified to have the identical legal basis.

Ultimately, the principal feature of the process is the effort to contribute toward stable civil proceedings and greater legal certainty, while reducing case flow, combined with the specific ends of the appeal procedure, namely: (i) final and simultaneous consensus solutions to large-scale claims, involving identical principles; and (ii) concentrated development of mandatory precedents.

To summarize, in other words, the repetitive special appeal can be defined based on its two central purposes (micro appeal systems), one tied to a final decision on large-scale matters, and another on developing binding precedents consisting, in this way, of an optimal method to develop mandatory precedents on the basis of the management and judgment of repetitive appeals and claims involving identical legal grounds.

In spite of the legal nature of this important and innovate procedural strategy, it is important to note, first, that the repetitive appeal does not, from a technical standpoint, have the same legal nature as general appeals or even class-action suits and, as such, cannot be considered mere continuations of the respective claim.

The current Brazilian Code of Civil Procedure, drafted to augment the establishment and status of precedents, providing, in this way, greater effectiveness to the Justices on the respective High Courts, regulates repetitive appeals in detail, enabling (in fact, requiring) a greater level of understanding of the procedure.

The procedure for repetitive appeals begins and is conducted as provided in articles 1,36 – 1,038 of the Brazilian Code of Civil Procedure, with the selection, assignment, and submission of the representative appeals --- also referred to as the pilot or paradigmatic appeals ---, and proceeds through formulation of a broadly applicable precedent, for purposes of reaching a final decision on numerous cases (articles 1,039 – 1,041 of the Brazilian Code of Civil Procedure), giving rise to an informed and well-found judgment that closely represents the consensus position of the Superior Court of Justice, rendering subsequent amendment highly unlikely, an aim that requires an intricate procedure (article 927, § 3, of the 2015 Brazilian Code of Civil Procedure).

The mechanics of the repetitive special appeal is divided into four stages, namely: (1st) selection and assignment of the representative appeals involving the repetitive matter, suspending, to this end, all proceedings involving the same matter of fact – articles 1,306 and 1,037, Brazilian Code of Civil Procedure; (2nd) hearing, in preliminary motions prior to review by the full Court – article 1,038; (3rd) judgment, aimed at establishing the theory of precedents based on examination of the pilot appeals,– article 1,039; and (4th) application of the respective precedent, which is mandatory and immediately enforceable, the suspended proceedings, extendable, in addition, to future case – articles 1,040 and 1,041.

The first stage is divided into two stages, intrinsically interconnected, prescribed in articles 1,036 and 1,037 of the 2015 Brazilian Code of Civil Procedure and which result in the suspension of multiple proceedings. In summary, the first stage is limited to the selection, by a the Chief Justice of the Federal Supreme Court or the Superior Court of Justice, of two or more special appeals involving the matter of fact replicated in multiple proceedings, followed by the second stage, when the representative cases to a decision by the rapporteur of the Superior Court of Justice, which, restricted to the representative legal issue, will affect the special appeals submitted thereto for this purpose or any other deemed to be eligible to this end, whereupon all proceedings and appeals containing the repetitive matter under the Court's direct jurisdiction will be, from the first stage, provisionally dismissed. The precedent will then be extended nationally to all proceedings involving the legal issue on which the presiding Justice has rendered a decision.

When implementing the system under study in relation to the paradigmatic appeals selected for review, the President or Vide-President of the Court of Origin and the rapporteur of the Superior Court of Justice will determine, first, where a multiplicity of interconnected appeals exists, in which a specific matter in dispute appears. However, the cases under review are not required to be restricted to a single appellate petition but may address other issues under discussion, treated as separate matters (article 1,037, §7, of the 2015 Brazilian Code of Civil Procedure).

By virtue of article 1,037 of the heading, which makes reference to the requirements listed in article 1,036, heading, the *prima facie* presence of the extrinsic requirement for processing each pilot appeal must be confirmed (article 1,036, §6, first part) for purposes of ensuring in-depth arguments on the matter under appeal to ensure that based on the broad debate of such issue a precedent of unquestionable substance is formulated.

Upon selection of the representative special appeals in connection with the dispute in question, the President or Vice-President of the Courts of Origin or the Rapporteur of the Superior Court of Justice will render a decision on the assigned matter, in which, pursuant to article 1,037 of the 2015 Brazilian Code of Civil Procedure the theory of legal precedents must be identified precisely (heading, sub-section I, of the article above), ordering through the same decision that all pending proceedings throughout the national territory be suspended (sub-section II, following). The Justice will then direct the remaining Ministers of the

Superior Court of Justice and the Presidents and Vice-Presidents of all federal state and/or regional courts in Brazil to implement the measure adopted within their respective jurisdictions.

Following reporting of the decisions adopted on the pilot appeals (which, pursuant to article 979, § 3, of the 2015 Brazilian Code of Civil Procedure, will be widely disseminated), interested parties, bodies, or entities may within a period of fifteen days file amicus curiae briefs, as per articles 138 and 1,038 of the New Brazilian Code of Civil Procedure.

The respective pilot appeals will then be entered in the docket, except in cases involving detained defendants or habeas corpus, whereupon the proceeding will be given priority in the sessions of the pertinent Sections or Special Court, the competence of which is contingent on the cases prescribed in the Internal Rules of Procedure of the Superior Court of Justice.

Following the vote and obtainment of a majority, the President will announce the result, directing publication of the judgment, which will enter into immediate force, irrespective of the filing of motions to clarify. All appeals provisionally dismissed by the decision taken within the Superior Court of Justice entered against judgments consistent with the decisions taken will be dismissed, while all remaining appeals will be subject to the position adopted by the Court.

After publication of the decision confirming the paradigm precedent, the respective precedent will be immediately applicable to all proceedings involving the same legal matter throughout the national territory and extend to all future proceedings, including, in addition, filings in respect of this modality of judgment.

Pursuant to the procedural stage of each dismissed proceeding, as per articles 1,040 and 1,041 of the 2015 Brazilian Code of Civil Procedure, the Federal Regional Courts and the Courts of Justice will adopt one of the following solution: (i) continued hearing of the special appeals subject to the judgment that have already been filed, dismissed on the merits, and contain claims other than the matter ruled on by the appellate court will be denied; (ii) a new hearing will be held by the full Court to apply the precedent in relation to proceeding involving special appeals awaiting a judgment on the merits, where the judgment under appeal violates the paradigmatic precedent; (iii) repetitive proceedings suspended in the first or second instances, including prior to filing of special appeal, will

continue normally so as not to affect the proper procedural stage for application of the paradigmatic precedent.
Not that article 1,040, heading, of the Brazilian Code of Civil Procedure clearly states that the steps listed above will be adopted following publication of the paradigmatic decision, which, for purposes of hearing and ruling on dismissed repetitive proceedings, would, in fact, waive mandatory communication through the pertinent notices to the Courts of Origin, to which end the precedent may --- in truth, should --- be applied immediately upon publication in the Electronic Judicial Register.
This legal analysis leads to the conclusion that the precedent emanating from the repetitive appeal is effective, in addition to mandatory, and instantaneous, arising without any conditions from the respective judgment, notwithstanding, by extension, the possible submission of motions to clarify to which the Court may be subject, pursuant to article 1,022 of the 2015 Brazilian Code of Civil Procedure, in theory, or, additionally, filing of an extraordinary appeals in the event of a breach of the Constitution.

B) Repetitive Appeals and Their Importance in Ensuring Parties Have Advance Knowledge as to the Outcome of Their Proceedings

Repetitive appeals have emerged, in essence, as a critical tool to ensure the coherence and rationality of the rulings handed down by the Superior Court of Justice and more recently the Federal Supreme Court to reduce the Judiciary's caseload,[6] developed *at a time of significant dissatisfaction and lack of interest in the Court*, for the specific purpose of optimizing jurisdictional control by the Courts of precedents.
The fascinating phenomenon of mass claims, *which have multiplied nationally, grinding the wheels of justice to a halt by overloading the Court system and, at times, revealing the absolute lack of coherence in the consideration of these matters*,[7] stems from a

[6] "There is no sense in requiring the Federal Supreme Court and the Superior Court of Justice to rule on innumerable and innumerable occasion on the same solution to a given matter. As the Federal Supreme Court and the Superior Court of Justice are High Courts dedicate to interpreting the law and setting precedents, the full review of a given issue in a single proceeding is sufficient to ensure the Courts meet their legal duties. For this reason, group proceedings are perfectly consistent with the new profile of extraordinary appeals and special appeals" (Luiz Gulherme Marinoni Sérgio Cruz Arenhart and Daniel Mitidiero, *in* Novo Código de Processo Civil Comentado, 2015, Editora Revista dos Tribunais, págs. 1.079/1.080).
[7] "Someone might say that various decision for a single case does not mean disorder, but constitutes a reflection of a natural diversity of opinions. It is true that this terrible practice was consolidated in our law for a long time. We must determine, however, if the intention is to perform a critical examination of a situation in the Courts, and whether this violates the principles of equality, impartiality, and legal certainty. Different

variety of causes, from factors tied to outdated legislation, to the progressive increase in litigiousness (the culture of litigation), and to the inefficiency of the justice system (crisis of management) combined with the quantities and qualitative shortage of human resources (not simply in respect of civil servants, but the number of available judges.[8]
The 2015 Brazilian Code of Civil Procedure standardized the procedures for repetitive appeals within the scope of the Superior Court of Justice and the Federal Supreme Court, within application, in addition of the respective Internal Rules of Procedure. It is worth noting that the Labor Courts operate a similar appellate process (articles 896-B and 896-C of the Consolidated Labor Laws).
Implementation of repetitive appeals, in addition to the incorporation of instrument to foster the issuance of mandatory decisions for all other bodies of the judicial branch will undoubtedly contribute to consolidating a more transparent justice system, as citizens will have the opportunity to know in advance or have an idea as to what the outcome of their respective claims will be.

decisions for the same cases cannot be admitted, unless we decide that judges and Courts are not part of a unified system and branch of government.
In truth, the coherence of judicial decisions is not only fundamental to the affirmation, authority, and credibility of the judicial branch, but is essential to the rule of law. In modern-day States in which the adequate distribution of justice requires many judges and a variety of Courts, it is necessary that cases be solved, following a ruling by the respective Supreme Courts, through the same rule or interpretation, or we would not be living under the rule of law, but in a State of multiple and incoherent opinions of those who believe they exercise power to enforce the law." (Luiz Guilherme Marinoni, O STJ no Estado Constitucional, in: O Papel da Jurisprudência no STJ, 2015, Ed. Revista das Tribunais, pág. 696).

[8] In the well-founded opinion of Luiz Guilherme Marinoni "The *crisis of the judicial branch* is based on a complex etymology, which to this day has not been fully dissected, beginning with (i) the *culture of litigation* (fostered by an exaggerated and unrealistic reading of access to the justice system, to the detriment of other single and multiple constituent mechanisms), proceeding to (ii) the *absence* of quality legal provisions and their excessive number (*legislative fury*), in conjunction with poor writing, legal and constitutional deficiencies, overlapping of texts on the same matter, and finally (iii) the lack or insufficient supply of financial resources to adequately organize the State justice system. These factors aggravate uncertainty and the instability of the legal environment as a whole, feeding the *explosion of litigation*, and providing margin for the filing of new legal proceedings, in a vicious and destructive cycle."