CONTROLLING THE ABUSE OF POWER AND JUDGMENT OF REASONABLENESS

CONTROLE DO ABUSO DE PODER E JUÍZO DE RAZOABILIDADE

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Felipe Teles Tourounoglou[1]

ABSTRACT

It is not possible to dismiss the Jurisdiction of the Public Administration. The peaceful pacification of social conflicts must be based on the current structure of legality. Therefore it is the duty of the Judge, the maximum duty of the law enforcer, in saying the law, to apply the legal order in all its complexion, without abuse of power. It is very important to reveal that reasonableness is closely linked to legality. Date of conclusion, this is not an unfolding of the principle of proportionality, is not in line with the idea of applying what is necessary to reach the desired goal. Reasonability, in this analysis, has the power to establish the magistrate's position as a managerial public administrator. Reasonability must link the enforcer to the law itself. Obviously, this link to the law does not refer to law in the strict sense of its cold letter, which little glimpses the social claims. The link referred to here can be interpreted within the "inventive" activity, in the words of the best, "creative" doctrine of the Judge, an activity that contemplates the interpretation of legal rules and principles, contemplates the application and interpretation of all juridical framework, including , the own jurisprudential production. In this sense, it is when the interpretation and application of the law escapes the antecipated and predicted by the legislator, and when the social demands are dissociated from the common, that the Judge can not abuse its power, it is at this moment that must be reasonable, it is in this time that can not turn its back on its mission as a public administrator, which is bound to parameters and guiding criteria.

Keywords: Reasonability. Jurisdiction. Public Administration. Power Abuse. New Code of Civil Procedure.

RESUMO

Não é possível afastar a Jurisdição da Administração Pública. A escorreita pacificação dos conflitos sociais precisa estar calcada na estrutura vigente de legalidade. Portanto é mister do Juiz, dever máximo do aplicador da lei, ao dizer o direito, aplicar o ordenamento jurídico em toda sua compleição, sem abuso de poder. É assaz importante desvelar que razoabilidade tem íntima ligação com legalidade. *Data máxima vênia,* não se trata de um desdobrando do princípio da proporcionalidade, não se coaduna com a ideia de aplicação do necessário para o alcance do objetivo almejado. Razoabilidade, nesta análise, tem o condão a firmar a posição do magistrado enquanto administrador público gerencial. Razoabilidade deve vincular o aplicador da lei à própria lei. Por óbvio, esta vinculação à lei

[1] Master's degree in Law. Universidade de Marília (UNIMAR). E-mail: felipeteles.adv@gmail.com

não se refere a lei em sentido estrito a sua letra fria, a qual pouco vislumbra os reclamos sociais. A vinculação aqui referida, pode ser interpretada dentro da atividade “inventiva”, nos dizeres da melhor doutrina, “criativa” do Juiz, atividade esta que contempla a interpretação de regras e princípios jurídicos, contempla a aplicação e interpretação de todo arcabouço jurídico, inclusive, a própria produção jurisprudencial. É neste sentido, é quando a interpretação e aplicação da lei escapa ao antevisto e previsto pelo legislador, e quando os reclamos sociais estão dissociados do comum, que o Juiz não pode abusar de seu poder, é neste momento que deve ser razoável, é nesta hora que não pode dar as costas para sua missão de administrador público, o qual está vinculado à parâmetros e critérios norteadores.

Palavras-chave: Razoabilidade. Jurisdição. Administração Pública. Abuso de Poder. Novo Código de Processo Civil.

RESUMEN

No es posible separar la jurisdicción de la Administración Pública. La adecuada resolución de los conflictos sociales debe basarse en la estructura legal vigente. Por lo tanto, es deber del juez, el máximo deber del agente del orden, al dictar la ley, aplicar el ordenamiento jurídico en su totalidad, sin abuso de poder. Es fundamental destacar que la razonabilidad está íntimamente ligada a la legalidad. Con el debido respeto, esto no implica un desarrollo del principio de proporcionalidad; no se alinea con la idea de aplicar lo necesario para lograr el objetivo deseado. La razonabilidad, en este análisis, tiene la facultad de establecer la posición del magistrado como administrador público directivo. La razonabilidad debe vincular al agente del orden con la propia ley. Obviamente, esta vinculación con la ley no se refiere a la ley en sentido estricto, a su fría letra, que rara vez considera las demandas sociales. El carácter vinculante al que se hace referencia aquí puede interpretarse dentro de la actividad "inventiva" o, en palabras de la mejor doctrina, "creativa" del juez. Esta actividad abarca la interpretación de las normas y principios jurídicos, la aplicación e interpretación de todo el marco jurídico, incluyendo la propia producción jurisprudencial. Es en este sentido, cuando la interpretación y aplicación de la ley escapan a lo previsto y predicho por el legislador, y cuando las demandas sociales se disocian de lo común, que el juez no puede abusar de su poder. Es en este momento que debe ser razonable; es en este momento que no puede renunciar a su misión como administrador público, sujeto a parámetros y criterios rectores.

Palabras clave: Razonabilidad. Jurisdicción. Administración Pública. Abuso de Poder. Nuevo Código de Procedimiento Civil.

1 INTRODUCTION

The Principle of Reasonableness must be understood as a vector for prohibiting the abuse of power, within the civil procedure, by the magistrate. Thus, the new civil adjective law inaugurates a new bias, a new feeling about the principle of reasonableness, separating it from the principle of proportionality and giving it its own dimensions.

Thus, reasonableness should be seen as a care of the principle of legality. The Democratic Rule of Law, without a doubt, is a curator of the principle of legality, ensuring that the acts emanating within it, whether state or private, can be backed by the rule of law in a broad sense, by the entire legal framework I contemplate, including the guiding principles of fundamental rights.

In this vein, the magistrate, the state-judge, the applicator of the law, cannot dissociate himself, when the act of saying, from the notion of administrative function. It should be noted that social pacification should be considered as an administrative act, a state act, and its delivery is carried out in such a way as not to exceed the limits of what is reasonable, that is, the limits of what is imposed by the legal system itself.

This time, the first research problem is revealed: is the majority definition of the principle of reasonableness sufficient for its understanding, together with the new Code of Civil Procedure? Can reasonableness, in its best definition, as a brake on the abuse of power, be used in the magistrate's performance, limiting or refining his creative power in the application of the norm?

In this crack, the new civil law brings numerous institutes, some listed in this work, which, among other principles, enshrine reasonableness as a prohibition against the abuse of power of the magistrate in the judgment of civil disputes. In this way, a new order is developed in the civil procedure, which places the judge as a promoter, procedural collaborator and imposes a duty on him, which is: the need to respect the system and the current legal structure, under penalty of incurring in illegalities and seeing his judgment vitiated.

The research aims to demonstrate the best facet of the principle of reasonableness and its importance, as a way to combat the abuse of power, demonstrating its practical applicability through institutes collected in the current Code of Civil Procedure.

The deductive and bibliographic method permeate the development of the research, which is initially carried out in an investigative way.

2 PRINCIPLE OF REASONABLENESS AS A COROLLARY OF THE CURRENT CONSTITUTIONAL ORDER

2.1 DEMOCRATIC RULE OF LAW AND THE PRINCIPLE OF LEGALITY

The expression Rule of Law refers to a juridical-political thought that has developed essentially since the sixteenth century, being considered as a corollary of contractualism and a presupposition of individual ethical autonomy, having as its essential object the legal limitation of the State's intervention in relation to the individuality of citizens, thus assuming an individual characteristic, even though there are previous concepts for this expression as in the Platonic-Aristotelian opposition between "government of laws" and government of men" and also in the medieval doctrine that had a legal basis for sovereignty.

In the words of Torrão, the Rule of Law means the practical realization of liberal thought, in which the States are subordinated to the law, which is the expression of reason, as well as respecting natural rights, opposing the absolutist form of the Police State.

For Canotilho[2], in the Rule of Law, the State and all its respective political organs are subject to the law, that is, to a form of ordering that is rational and binding on an organized society, in which it articulates measures or material rules, manifesting values of justice and with forms and procedures establishing legal-formal guarantees aiming at the fulfillment of its axiological program.

Thus, it was only after the occurrence of violations in the legislative sphere through abuses by this power during totalitarian regimes, that he realized the need for formal and material legal limitation regarding the legal production, that is, laws. Thus, the relevance of control not only of the exercise of power, but also with regard to the content of decisions, through a fundamental normative diploma, the Constitution, which is endowed with supremacy and normative force that binds the Legislative Power, thus associating legal production with an ethical-axiological model that aims at respecting the dignity of the human person and fundamental rights, these being primordial foundations to materialize the limiting idea of rights and freedoms related to the Rule of Law. In the meantime, norms protecting fundamental rights were considered to be of normative supremacy in many Western Constitutions and with the post-war period, the basic historical peculiarities of the concept of the Rule of Law were rescued with the constitutionalism of this time, reflecting not only in the legal limitation and control of the power of the state, but also in the delimitation of the purposes of this power.

[2] CANOTILHO, José Joaquim Gomes. **Constitutional law and theory of the Constitution**. 7. ed. Coimbra: Almedina, 2003, p. 243.

According to Canotilho[3], the Rule of Law should essentially be a tool to limit and also bind political power in a Constitutional State, as it implies a normative constitution that structures a fundamental legal-normative order that binds all public powers, which attributes measure and form to the state order and to the acts of the public powers, legally binding them in the formal and material aspects.

It is considered that the function of the Rule of Law, with regard to its liberal-contractualist character, is to guarantee the rights of citizens with regard to external interventions, both by the State and by other citizens, and in order to achieve this guarantor objective there must be a limitation of the Rule of Law through the legal system with regard to the power of legal production itself, and thus the right itself must be limited. This limitation makes the law program its forms of production through procedural norms, as well as its substantial contents, which refer to the protection of the dignity of the human person and the guarantee of fundamental rights.

The principle of the Rule of Law is then reflected in the legality, constitutionality, respect and guarantee of fundamental rights and aims to respond to the problem of the content, extent and way of proceeding of the state's activity, determining it according to these guidelines[4].

The Democratic State of Law is founded on the principle of popular sovereignty that establishes the active and operative participation of the people in public affairs, and this participation is not simply limited to the formation of representative institutions, as these only constitute a stage in the evolution of the democratic State, but do not configure its complete development. the purpose of this principle goes beyond that, as it aims to present the Democratic Rule of Law as a form of real guarantee of the fundamental rights of the human person[5].

Article 1 of the Federal Constitution of 1988 provides that Brazil is a Democratic State of Law, having in its essence human dignity as a fundamental value, which informs and guides the entire legal order. The Federal Constitution of 1988 also provides for fundamental rights and guarantees, having mechanisms for these to be put into effect, such as their immediate applicability and the constitutionality control of norms.

According to Silva[6]:

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[3] CANOTILHO, José Joaquim Gomes.op.cit.,p.245.
[4] CANOTILHO, José Joaquim Gomes.op.cit.,p.243.
[5] SILVA, José Afonso da. **The Democratic Rule of Law**. Journal of Administrative Law. Rio de Janeiro, n. 173, p.15-34 jul./set. 1988. Available at http://bibliotecadigital.fgv.br/ojs/index.php/rda/article/viewFile/45920/44126>. Accessed on: 10 Dec. 2018, p.20.
[6] SILVA, José Afonso da. op.cit., p.23.

> The principle of legality is also a basic principle of the democratic rule of law. It is of the essence of its concept to be subordinated to the Constitution and to be based on democratic legality. It is subject, like any State of Law, to the rule of law, but to the law that realizes the principle of equality and justice not by its generality, but by the search for equalization of the conditions of the socially unequal. Therefore, the relevance of the law in the democratic State of Law should be highlighted, not only in terms of its formal concept of an abstract, general, obligatory and modifying legal act of the existing legal order, but also in terms of its function as a fundamental regulation, produced according to a qualified constitutional procedure. The law is effectively the most prominent official act in political life.

It then becomes evident the need to apply the foregoing as a way to limit and bring reasonableness to the power of the State, including in the exercise of jurisdiction. As for the Judiciary, it is relevant to mention the importance of its decisions and interpretations in the sense of instrumentalizing and protecting fundamental rights, correlating them to the principle of the Rule of Law, which can be observed through another principle, namely: the principle of legality, provided for in the Federal Constitution of 1988.

Thus, article 5, item II, and article 37 caput, both of the Magna Carta, do not only cover the private sector, they cover public affairs, public administration and its duty to be based on the law, on the dictates of this democratic instrument of social control.

Thus, a judiciary that does not judge according to the law in a broad sense, an inventive judiciary in its most pernicious way, is against the rule of law, is against the democratic rule of law, acting without control, abusing power and doing acts beyond what is reasonable.

Reasonableness is linked to the democratic rule of law. Reasonableness is linked to legality, it is linked to compliance with the law in all its dimensions, and it prevents the abuse of power in the distribution of rights.

2.2 NEOCONSTITUTIONALISM AS AN INFLUENCER OF THE PROCEDURAL SYSTEM AND PROMOTER OF REASONABLENESS

Initially, on Neoconstitutionalism, it is appropriate to transcribe the concept brilliantly woven by the renowned doctrinaire Dirley da Cunha Júnior:

> Neo-constitutionalism represents the current, contemporary constitutionalism, which emerged as a reaction to the atrocities committed in the Second World War, and has given rise to a set of transformations responsible for the definition of a new constitutional right, founded on the dignity of the human person. Neo-constitutionalism stands out, in this context, as a new legal theory to justify the paradigm shift, from the Legislative State of Law, to the Constitutional State of Law, consolidating the passage of the Law and the Principle of Legality to the periphery of the legal system and the transit of the Constitution and the Principle of Constitutionality to the center of the entire

> system. in view of the recognition of the normative force of the Constitution, with binding and mandatory legal effectiveness, endowed with material supremacy and intense evaluative charge.[7]

Therefore, it was through the Constitutional Rule of Law that Neoconstitutionalism emerged, proposing that the validation of a norm should not be based solely on the criterion of the normative competence of those who drafted it or on the analysis of the procedural legality required for the elaboration of laws, but rather that valid laws are those that submit "legality itself to the Constitution, so that the conditions of validity of laws and other legal norms depend not only on the form of their production, but also on the compatibility of their contents with constitutional principles and rules".[8]

In this way, a profound process of constitutionalization of the Law emerged, to the point that the constitutional rules, the content inserted in the norms, as well as the constitutional principles are highlighted when analyzing the validity of a norm and that, in this context, the principle of legality as well as the formal procedure for drafting norms must be analyzed in a constitutional way, contemplating a generic normative framework and guiding principles.

It is in this neo-constitutional context that the Constitution of the Federative Republic of Brazil is inserted, that is, it can be affirmed that the Brazilian Constitution currently in force was elaborated under an axiological evaluative aegis, in the sense of ensuring the dignity of the human person and fundamental rights, so that it aims at the realization of constitutionalized values and the guarantee of minimum dignified conditions.

The new analysis and importance of Constitutional Law within the legal system was clearly outlined by Dirley da Cunha Júnior:

> Furthermore, it was especially decisive for the delineation of this new Constitutional Law, the recognition of the normative force of the principles, a situation that has led to the rapprochement between Law and Ethics, Law and Morals, Law and Justice and other substantive values, revealing the importance of man and his ascendancy as an axiological filter of the entire political and legal system. with the consequent protection of the fundamental rights of the human person.
> The emergence of neo-constitutionalism succeeded in providing the recognition of the double normative-axiological dimension of contemporary Constitutions, giving rise to the consolidation of a material or substantial legal theory based on the dignity of the human person and fundamental rights. In this context, the legal discourse, previously associated with a formal and proceduralist conception, evolves to reach a substantialist strand concerned with the realization of constitutional values.[9]

[7] CUNHA JÚNIOR, Dirley da. **Constitutional Law Course**. 7th. ed. Bahia: Juspodivm. 2013. p. 39.
[8] Ibidem, p. 39.
[9] CUNHA JÚNIOR, Dirley da., op. cit., p. 40-41.

Taking into account the characteristics of this post-modern constitutionalism, as well as the fact that our Magna Carta was drafted under the influence of its values, it is of paramount importance to analyze the constitutional principles that underlie the new Code of Civil Procedure.

In this sense, it is undoubted that the principle of Reasonableness is rooted in the precepts of constitutional principles, spreading a democratic character over Civil Procedure. Thus, article 8 of the new codex, also enshrining article 5 of the Law of Introduction to the Rules of Brazilian Law, reveals the following text:

> Article 8 When applying the legal system, the judge will meet the social purposes and the requirements of the common good, safeguarding and promoting the dignity of the human person and observing proportionality, reasonableness, legality, publicity and efficiency.

Therefore, when analyzing the principles of civil procedure from the perspective of neo-constitutionalism, it is noted that reasonableness is fully encompassed and provided for in the mandatory rule. Although its express constitutional provision is absent, this institute has subsistence and constitutional grounds that justify its effective implementation, as explained.

There is no possibility of interpreting the civil procedural system by ruling out a type of expedient such as reasonableness. The constitutional civil procedure becomes elevated in the face of principles such as reasonableness, as a systemic guarantee of the prohibition of the abuse of power, allowing the application of the legal system not to be influenced by arbitrariness, preventing each judge from having his own procedural rules, in the words of Humberto Teodoro Júnior, encouraging the judge to apply the law in a way that is appropriate to the current moment, this application should not be contemporary to its production, but contemporary to its application.[10]

For all the above, it is denoted that the influence of neo-constitutionalism in our current Magna Carta has elevated and guided the possibility of the infra-constitutional legislator and even the components of the Judiciary to foster and institutionalize the principle of reasonableness by making it concrete in the new Code of Civil Procedure, as we will see later.

[10] JÚNIOR, Humberto Theodoro. **Curso de Direito Procedual Civil**, 56 ed.- Rio de Janeiro: Forense, 2015, p. 90.

3 PRINCIPLE OF REASONABLENESS: EFFECTIVE CRITERIA WITHIN THE NEW CODE OF CIVIL PROCEDURE.

3.1 DIMENSIONS OF THE PRINCIPLE OF REASONABLENESS:

According to the most respectable doctrine, reasonableness and proportionality are synonymous principles, they are consistent and translate the same feeling of the need to apply the necessary means to achieve the desired objective.

Thus, the reasonableness and proportionality of the public administration must be observed both by the legislator at the time of the issuance of legislative acts and by the law enforcer, at the time the administrative act is issued. In the first case, the legislator must weigh the need for legal protection on the one hand and the impact of this protection when applied to the specific case on the other. While in the second case, the magistrate as part of the public administration, in the concrete case, must apply the law respecting its purposes.

In the words of Celso Antônio Bandeira de Mello, the principle of reasonableness should be noted:

> It is stated with this principle that the Administration, when acting in the exercise of discretion, will have to obey criteria acceptable from a rational point of view, in line with the normal sense of balanced people who respect the purposes that presided over the granting of the competence exercised.[11]

Thus, it is clarified that certain acts or attitudes of the public administration will not only be inconvenient, but also illegitimate, unreasonable, bizarre, incoherent or practiced in disagreement with the purpose provided for by law.

Regarding the principle of proportionality, the author, Celso Antônio Bandeira de Mello, admired by us:

> This principle enunciates the idea – simple, by the way, although often disregarded – that administrative powers can only be validly exercised to the extent and intensity corresponding to what is actually required to fulfill the purpose of the public interest to which they are linked. [12]

It can be seen, therefore, that both principles, reasonableness and proportionality, hold the same central idea, that is: acts that exceed what is necessary to achieve the intended objective are tainted by illegitimacy.

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[11] BANDEIRA DE MELLO, Celso Antônio. Discretion and jurisdictional control. 2nd ed.. São Paulo: Malheiros, 2014, p. 111.
[12] Idem, p. 113.

Diverging from the brilliant author mentioned above, as well as being in line with the vision of Cláudio Pereira de Souza Neto and Daniel Sarmento, the principle of reasonableness has different dimensions from the principle of proportionality, unveiling a greater content than that of marking acts necessary to achieve the purpose pursued. With such dimensions, proportionality gains the contours of a prohibition, a prohibition against the abuse of power.

As already stated elsewhere, this abuse of power is revealed in excesses in the interpretation of the rule, exceptions in the application of the law in a broad sense, or non-observance of this law.

Thus, although the parties to the proceedings may also abuse their power, inherent to the participatory pole, in this analysis we deal with the possibility of abuse of power perpetrated by the judge, as public administrator of the jurisdiction.

Thus, it is necessary to consider reasonableness in these dimensions:

> a) Reasonableness as requirements of public reasons for the conduct of the State, which demands that State acts can be justified by means of arguments that, at least in theory, are accepted by all;
> b) Reasonableness as coherence prohibits the state from acting in a contradictory manner;
> c) Reasonableness as congruence prohibits the issuance of measures that are not supported by reality; and finally,
> d) Reasonableness as equity allows, in exceptional cases, the general rules to be adapted in their application [...] or even to deny the application of the rule when it causes serious injustice. [13]

Thus, such dimensions, as forms of control of the abuse of power in state acts, specifically as a form of control of the abuse of power of the magistrate in the application of the law, can be understood, according to this analysis, as follows, with regard to reasonableness as requirements of public reasons for the conduct of the state, this should be seen as democratic arguments, In other words, the decisions of the judge-state, when applying the rule, must be permeated by democratic arguments. The general principles of law, jurisprudence, analogy, in short, the entire legal framework must be applied in a democratic way, seeking the social claims that are mostly accepted.

[13] NETO, Claudio Pereira de Souza; SARMENTO, Daniel. *Apud,* WAMBIER, Teresa Arruda Alvim; CONCEIÇÃO, Maria Lúcia Lins; RIBEIRO, Leonardo Ferres da Silva; MELLO, Rogerio Licastro Torres de. **First Comments on the New Code of Civil Procedure Article by Article**, São Paulo: Revista dos Tribunais, 2015, p. 64.

Furthermore, when talking about reasonableness for coherence, it must be understood as a prohibition of contradiction, that is, the judge-state must maintain a solid jurisprudence, ensure legal certainty.

Nevertheless, reasonableness as a support in reality prevents symbolic, fictional measures, which have no influence on reality, however, make the judiciary maintain a sense of power and control.

Finally, the last dimension of reasonableness allows the suppression of the norm, however this suppression can only occur in flagrant injustice, in what stands out and that does not declare a loser and a winner, however, declares all insufficient and does not hand over the right to anyone.

3.2 CONCRETE EXAMPLES OF REASONABLENESS, AS A CONTROL AGAINST THE ABUSE OF POWER, IN THE NEW CODE OF CIVIL PROCEDURE

It is necessary to reiterate, although the abuse of power, through reasonableness, is prohibited for the party in the civil proceeding, as an example, article 373 of the adjective law, which allows the reversal of the burden of proof in matters other than consumer law, an analysis of reasonableness is made here only with regard to the magistrate's performance as a prolator of state decisions.

Therefore, reasonableness, due to the bias of prohibiting judicial decisions, emerges from the Code of Civil Procedure, for example, in article 139, IV:

> The judge shall conduct the proceedings in accordance with the provisions of this Code, and it shall be incumbent upon him:
> [...]
> IV - to determine all inductive, coercive, mandatory or subrogatory measures necessary to ensure compliance with a court order, including in actions that have as their object a monetary payment;
> [...].

It is clear that article 139 of the Civil Law provides for other responsibilities of the magistrate, however, item IV innovates and unveils reasonableness, prohibiting the abuse of power, when searching desired by the creditor, allowing condemnatory actions to be treated as an executive action and giving the execution greater efficiency. Now, it seems to us an abuse of power not to make multiple and effective decisions in the search for satisfaction of the credit, the state-judge cannot transform the satisfaction of the credit into a utopia.

Continuing with the analysis, it is important to glimpse article 140:

The judge is not exempt from deciding on the grounds of lacuna or obscurity in the legal system.
Sole Paragraph. The judge will only decide on equity in the cases provided for by law.

An important demonstration of reasonableness, it is not possible to decline jurisdiction, it is not possible to remove the burden of delivering the right. And see, equity is unveiled within the legal framework within the structure, and it is impossible to apply equity within an unfounded creative activity.

There is more, article 141 is another trimmer or limiter of abusive powers: "The judge shall decide the merits within the limits proposed by the parties, and it is forbidden to hear issues not raised in respect of which the law requires the initiative of the party". Here reasonableness is linked to congruence and inertia, limiting, hindering the law enforcer, reminded of his limited power in the face of the Democratic Rule of Law.

The civil liability of the judge is also important encouragement regarding the prohibition of the abuse of his power, as stated in article 143:

The judge will be liable, civilly and regressively, for damages when:
I - in the exercise of his functions, to act with intent or fraud;
II - refuses, omits or delays, without just cause, a measure that must be ordered ex officio or at the request of the party.
[...].

Of course, it is not about strict civil liability, not without being able to speak of guilt, however, the concern with this state power is demonstrated.

Article 489. The essential elements of the sentence are:
[...]
§ 1 Any judicial decision, whether interlocutory, sentence or ruling, which:
[...]
VI - failing to follow the statement of precedent, jurisprudence or precedent invoked by the party, without demonstrating the existence of a distinction in the case under trial or the overcoming of the understanding.

Article 489, paragraph 1, item VI, cited above, brings the need for reasonableness in its dimension of coherence, legal certainty must be encompassed, under penalty of abuse of power. It is the judge's duty to elucidate the discussion and the invocations of the courts, to verify whether the understanding raised by the party is still valid and can be applied to the specific case.

In this vein, with regard to coherence, we can still list the following articles:

Article 926. Courts must standardize their jurisprudence and keep it stable, complete and coherent.
§ 1 In the manner established and according to the assumptions set forth in the internal regulations, the courts shall issue summary statements corresponding to their prevailing jurisprudence.
§ 2 When issuing precedent statements, the courts must stick to the factual circumstances of the precedents that motivated their creation.
Article 927. Judges and courts shall observe:
I - the decisions of the Federal Supreme Court in concentrated control of constitutionality;
II - the statements of binding precedents;
III – judgments in incidents of assumption of jurisdiction or resolution of repetitive claims and in judgments of extraordinary and special repetitive appeals;
IV – the statements of the precedents of the Federal Supreme Court in constitutional matters and of the Superior Court of Justice in infra-constitutional matters;
V – the orientation of the plenary or of the special body to which they are linked.

Still pertinently, the Code brings the possibility of applying a rescinding action in the case of manifest non-compliance with a legal rule, article 966, it may seem obvious, however, the decision, the demonstration of power evoked from the absence of legality, cannot be valid. As already said, the creative and inventive possibility of the judge must encounter barriers in the reasonable, in the legality.

Finally, it is worth transcribing here article 988 of the Code of Civil Procedure: "a complaint by the interested party or the Public Prosecutor's Office may be filed for: [...] III - to ensure compliance with the decision of the Federal Supreme Court in concentrated control of constitutionality; [...]".

This article places the magistrate in a position of being supervised, watched, so that he cannot incur in abuses of power and ensures attention to the legal system as a whole and the constitutional guidelines. Transgressing the Supreme Court's control of constitutionality would be more than abusing power, if not, subverting the very logic of power.

Therefore, although they contemplate other principles and other aspects, the institutes brought above, without a doubt, bring the demonstration of the principle of reasonableness, within the New Code of Civil Procedure, in a dimension of prohibition of the abuse of power and control of state decisions, placing the magistrate on a level of state administrator and disseminator of administrative acts.

4 CONCLUSION

The panorama of the results invites a percussive analysis of the need to understand the principle of reasonableness, as an instrument to control the abuse of power of the magistrate, inserted in institutes within the Code of Civil Procedure.

Certainly, the lack of reasonableness in the Brazilian civil procedure removes the character of public administration from the jurisdiction, which cannot be thought of without necessary constraints to the legal structure in place. By dissolving social conflict, the judge-state cannot relegate the law in a broad sense, cannot reject the established jurisprudence, cannot supplant principles and guarantees. Even during his interpretative act, even during his creative sketch, the judge cannot relegate the legal system, under penalty of incurring in abuse of power and tainting his decision with illegality.

In the present work it was intended to examine the Constitutional legal provision of the principle of reasonableness, which, although not expressed in the Magna Carta, is a corollary of the Democratic Rule of Law, as well as is rooted in the neo-constitutionalist bias given to the interpretation of infra-constitutional norms. Thus, reasonableness, unlike proportionality, must be seen through republican dimensions, which attribute to the principle a character of indispensability for the proper functioning of the jurisdiction, in civil procedural matters, limiting the power of the judge and even allocating its action within the criteria of separation of powers and independence of the litigants.

The development of the research is justified by the pressing and relevant task of demonstrating that the principle of reasonableness, as a prohibition against the abuse of power, was widely enshrined by the new civil law, through various institutes. In this way, the new Code of Civil Procedure breaks paradigms and places the judge as a great collaborator, promoter of the resolution of the dispute. The magistrate is no longer the absent protagonist, he is present and must base his decisions within a systemic and ideological logic achieved by the process.

It is necessary to think about judging, within the civil process, as someone who is linked to the public administration and its efficiency. Legality does not lend itself only to the individual, however, it lends itself to the state to its actors and acts and the jurisdiction needs to commune with this.

The new process requires new powers, new responsibilities and new limitations. Reasonable, according to this analysis, is that magistrate who applies the legal norm without extrapolating its spirit, without ceasing to contemplate the settled jurisprudence, without ceasing to pay attention to the principled order. Reasonable is the compliance with the due process of law, it is a demonstration that the subjective right will be achieved through the adjective and not the other way around.

Reasonableness, in this analysis, has new reflexes, new aspirations, which, as demonstrated, were freed by the new Code of Civil Procedure.

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