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PRINCIPLE OF REASONABLE: THE CONTROL OF ABUSE OF POWER IN THE NEW CODE OF CIVIL PROCESS

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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. This way, the new civil procedure code, which brings institutes of braking to those who have jurisdiction, contains this creative process, and does not allow the power of the Judge rests from the sphere of delivery of law and goes to the sphere of the making of law.

Keywords: Reasonability, Jurisdiction, Public administration, Power abuse, New Code of Civil Procedure.

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 adjective civil 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.

> This time, reasonableness must be seen as an observance of the principle of legality. The Democratic State 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 supported by the rule of law in a broad sense, by the entire legal framework contemplated, including by the guiding principles of fundamental rights.

In this vein, the magistrate, the state-judge, the enforcer of the law, cannot dissociate themselves, in the act of saying, from the notion of also administrative functions. See, social pacification must be considered an administrative act, a state act, and its delivery is translated in a way that does not exceed the limits of reasonableness, that is, the limits 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 improving his creative power in applying the rule?

> In this crack, the new adjective civil law brings numerous institutes, some listed in this work, which, among other principles, enshrine reasonableness as a prohibition against the magistrate's abuse of power in the

judgment of civil disputes. This way, a new order emerges in the civil procedure, which places the judge as a promoter, procedural collaborator and gives him a duty, namely: the need to respect the established system and the current legal structure, under penalty of incurring wrongdoings and see your judgment vitiated.

The research aims to demonstrate the best facet of the principle ofreasonableness and its importance as a way of combating 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 initially unfolds in an investigative way.

PRINCIPLE OF REASONABLENESS AS A COROLARY OF THE CURRENT CONSTITUTIONAL ORDER

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 16th century, being considered as a corollary of contractualism and a presupposition of individual ethical autonomy, having as its essential object the legal limitation of State intervention in relation to the individuality of citizens, thus assumed an individual characteristic, even though there are previous concepts for that expression, such as in the Platonic-Aristotelian opposition between "government of laws" and the government of men" and also in the medieval doctrine that had a legal basis of sovereignty.

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

To Canotilho[1], in the Rule of Law, the State and all its respective political bodies 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 material measures or rules, manifesting values of justice and with forms and procedures establishing formal legal 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 noticed the need for formal and material legal limitation regarding the legal production, that is, the laws. Thus, the relevance of control not only of the exercise of power, but also with regard to the content of decisions, was perceived through a fundamental normative diploma, the Constitution, which is endowed with supremacy and normative force that binds the Legislative Power, this way, it associates legal production to an ethical-axiological model that aims to respect the dignity of the human person, the fundamental rights and liberty that are related to the rule of law. In the meantime, norms protecting fundamental rights were considered as normative supremacy in many of the Western Constitutions and with the post-war period, the fundamental historical peculiarities of the concept of the Rule of Law were rescued with the constitutionalism of this time, reflecting not only on the legal limitation and control of state power, but also in the delimitation of the purposes of that power.

According to Canotilho[2], the Rule of Law must essentially be a tool to limit and also

1. CANOTILHO, José Joaquim Gomes. **Direito constitucional e teoria da Constituição**. 7. ed. Coimbra: Almedina, 2003, p. 243.
2. CANOTILHO, José Joaquim Gomes.op.cit.,p.245.

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 it attributes to the state order and acts of public powers measure and form, 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 to achieve this guaranteeing objective it must there is a limitation of the rule of law through the legal system with regard to the power of legal production itself, and this way the law itself must be limited. This limitation causes the law to 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 guarantee of fundamental rights.

The principle of the rule of law thus reflects on 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[3].

The Democratic Rule of Law is founded on the principle of popular sovereignty, which establishes the active and active participation of the people in public affairs, and this participation is not limited to the formation of representative institutions, as these only constitute a stage in the evolution of the Democratic State, however it does not configure its full development, the purpose of this principle goes beyond that, as it aims to present the Democratic State of Law as a form of real guarantee of the fundamental rights of the human person[4].

Article 1 of the Federal Constitution of 1988 states 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 still provides for fundamental rights and guarantees, providing mechanisms for them to be effective, such as their immediate applicability and the constitutionality control of norms.

According to Silva[5]:

> The principle of legality is also a fundamental principle of the democratic rule of law. It is essential to its concept to be subordinate to the Constitution and 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 the equalization of the conditions of the socially unequal. Therefore, the relevance of the law in the democratic rule of law must be highlighted, not only in terms of its formal concept of abstract, general, mandatory and modifying the existing legal order, but also in terms of its function as a fundamental regulation, produced under a qualified constitutional procedure. The law is effectively the most prominent official act in political life.

It becomes evident then the need to apply the above as a way to limit and bring reasoning to the power of the State, including in the exercise of jurisdiction. As for the Judiciary, it is important 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

3. CANOTILHO, José Joaquim Gomes.op.cit.,p.243.

4. SILVA, José Afonso da. **O Estado Democrático de Direito**. Revista de Direito Administrativo. Rio de Janeiro, n. 173, p.15-34 jul./set. 1988. Disponível em http://bibliotecadigital.fgv.br/ojs/index.php/rda/article/viewFile/45920/44126>. Acessed in december 10th, 2018, p.20.

5. SILVA, José Afonso da. op.cit., p.23.

Federal Constitution of 1988.

Thus, article 5, item II, and article 37 caput, both of the new constitution, do not cover only the private, they cover public affairs, the public administration and its duty to comply with the law, with the dictates of this democratic instrument of social control.

Thus, a judiciary that does not judge according to the law in the 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 reasonable.

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

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

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

> Neoconstitutionalism represents the current, contemporary constitutionalism, which emerged as a reaction to the atrocities committed in World War II, and has given rise to a set of transformations responsible for defining a new constitutional right, based on the dignity of the human person. In this context, neoconstitutionalism stands out 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 value load.[6]

Therefore, it was through the Constitutional Rule of Law that Neoconstitutionalism emerged, proposing that the validation of a norm must 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 drafting of laws, but rather that valid laws are those that submit "the 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".[7]

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 measure, the principle of legality, as well as the formal procedure for drafting norms, must be analyzed in a constitutional manner, contemplating a generic normative framework and guiding principles.

It is in this neoconstitutional context that the Constitution of the Federative Republic of Brazil is inserted, that is, it can be said that the Brazilian Constitution currently in force was elaborated under an evaluative axiological aegis, in order to ensure the dignity of the human person and fundamental rights, so that it aims at the realization of constitutionalized values and the guarantee of minimum decent conditions.

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

6. CUNHA JÚNIOR, Dirley da. **Curso de Direito Constitucional**. 7ª. ed. Bahia: Juspodivm. 2013. p. 39.

7. Ibidem, p. 39.

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> Furthermore, the recognition of the normative force of the principles was especially decisive for the design of this new Constitutional Law, a situation that has provided the rapprochement between Law and Ethics, Law and Morals, Law and Justice and other substantive values, to reveal 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 neoconstitutionalism succeeded in providing recognition of the normative-axiological double 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 on 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.[8]

Taking into account the characteristics of this post-modern constitutionalism, as well as that our new constitution was created under the influence of its values, it is extremely important to analyze the constitutional principles that underlie the new Code of Civil Procedure.

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

> Article 8: When applying the legal system, the judge will meet the social purposes and 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 under the bias of neoconstitutionalism, it is noted that reasonableness is fully covered and provided for in the mandatory rule. Although its express constitutional provision is absent, said institute has subsistence and constitutional foundation that justifies 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 abuse of power, enabling the application of the legal system not to be influenced by discretion, preventing each judge from having their own procedural rules, in the words of Humberto Teodoro Júnior, I encourage the judge to apply the law in an adequate way to the current moment, and this application must not be contemporaneous with its production, but contemporary with its application.

For all of the above, it is noted that the influence of neoconstitutionalism in our current new constitution raised and guided the possibility of the infraconstitutional legislator and even the components of the Judiciary Power to foster and institutionalize the principle of reasonableness, making it concrete in the new Code of Civil Procedure, as we will see later.

PRINCIPLE OF REASONABLE: EFFECTIVE CRITERIA WITHIN THE NEW CIVIL PROCESS CODE.

DIMENSIONS OF THE REASONABLENESS PRINCIPLE:

According to the most respectable doctrine, reasonableness and proportionality are principled synonyms, they are consistent

8. CUNHA JÚNIOR, Dirley da., op. cit., p. 40-41.

and reflect the same feeling of the need to apply the necessary means to reach the desired objective.

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

Note, in the words of Celso Antônio Bandeira de Mello, the principle of reasonableness:

> It is enunciated with this principle that the Administration, when acting in the exercise of discretion, will have to comply with acceptable criteria from a rational point of view, in line with the normal sense of balanced people and respectful of the purposes that presided over the granting of the exercised competence.[9]

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

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

> This principle enunciates the idea - simple, in fact, although often disregarded - that administrative powers can only be validly exercised to the extent and intensity corresponding to what is actually demanded to fulfill the purpose of the public interest to which they are linked. [10]

This way, it can be seen that both principles, reasonableness and proportionality, have the same central idea, namely: acts that go beyond what is necessary to achieve the intended objective are tarnished by illegitimacy.

Maximum honor date, diverging from the brilliant author mentioned above, as well as 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, revealing a greater content than that of delimiting acts necessary for the achievement of the end pursued. With such dimensions, proportionality gains sealing contours, sealing off the abuse of power.

As stated elsewhere, this abuse of power reveals itself in excesses in the interpretation of the norm, exceptions in the application of the law in a broad sense, or non-compliance with this law.

Thus, although the procedural parties can also abuse their power, inherent to the participatory pole, in this analysis we address the possibility of abuse of power perpetrated by the judge, as a public administrator of the jurisdiction.

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

> a) Reasonability as requirements of public reasons for the conduct of the State, which demand that State acts can be justified through 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 editing of measures that are not supported by reality; and finally,
>
> d)Reasonableness as equity allows, in exceptional cases, that the general rules are

9. BANDEIRA DE MELLO, Celso Antônio. Discricionariedade e controle jurisdicional. 2ª ed.. São Paulo: Malheiros, 2014, p. 111.
10. It is the same, p. 113.

> adapted in their application [...] or even the application of the rule is denied when it causes serious injustice.. [11]

Thus, such dimensions, as ways of controlling the abuse of power in state acts, specifically as a way of controlling the magistrate's abuse of power in law enforcement, can be understood, according to this analysis, as follows, with regard to reasonableness as demands of public reasons for the conduct of the state, this must be seen as democratic arguments, that is, the decisions of the judge-state, when applying the norm, must be permeated by democratic arguments. The general principles of law, jurisprudence and analogy, in short, the entire legal framework must be applied in a democratic manner, seeking the majority-accepted social claims.

Furthermore, when it comes to reasonability by coherence, this must be understood as the prohibition of contradiction, that is, the judge-state must maintain solid jurisprudence, ensuring legal certainty.

Nevertheless, reasonableness as 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 happen in flagrant injustice, in what is eye-catching and does not declare a loser and a winner, however, it declares all insufficient and does not deliver the right to nobody.

CONCRETE EXAMPLES OF REASONABLENESS, WHILE CONTROLLING 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 civil proceedings, for example, article 373 of the adjective law, which allows the inversion of the burden of proof in matters other than consumerist matters, here an analysis of the reasonableness only with regard to the role of the magistrate as a prolator of state decisions.

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

> The judge will direct the process in accordance with the provisions of this Code, being responsible for:
>
> [...]
>
> 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 the payment of money;
>
> [...].

It remains clear that article 139 of the Civil Adjective law provides for other responsibilities of the magistrate, however, item IV innovates and unveils the reasonableness, prohibition of abuse of power, when the search sought by the creditor, enabling the condemnatory actions to be treated as an action executive and giving the execution greater efficiency. Well, it seems to us an abuse of power not to make plurisy and effective decisions in the search for credit satisfaction, the judge-state cannot transform credit satisfaction into a utopia.

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11. 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. **Primeiros Comentários ao Novo Código de Processo Civil Artigo por Artigo**, São Paulo: Revista dos Tribunais, 2015, p. 64.

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

> The judge is not exempt from deciding on the allegation of a gap or obscurity in the legal system.
>
> Single paragraph. The judge will only decide by equity in the cases provided for by law.

Important demonstration of reasonableness, it is not possible to decline jurisdiction, it is not possible to depart from the burden of delivering the right. And see, equity is unveiled within the legal framework within the structure, making it impossible to apply equity within an unfounded creative activity.

What's more, article 141 is more of a trimmer or restrictor of abusive powers: "The judge will decide the merits within the limits proposed by the parties, and it is forbidden to hear questions not raised in respect of which the law requires the party's initiative". Here, reasonableness is linked to congruence and inertia, limiting, hampering the enforcer of the law, remembering his limited power against the Democratic Rule of Law.

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

> The judge will respond, civilly and regressively, for damages when:
>
> I - in the exercise of their functions, proceed with fraud or fraud;
>
> II - refuse, omit or delay, without just reason, an action that must be ordered ex officio or at the request of the party[...].

Of course, it is not about objective civil liability, not without mentioning guilt, however, it demonstrates the concern with this state power.

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

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

In this sense, 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 established manner and according to the presuppositions established in the internal regulations, the courts will issue summary statements corresponding to their dominant jurisprudence.
>
> § 2 When editing summary statements, the courts must adhere to the factual circumstances of the precedents that motivated their creation.
>
> Article 927. The judges and courts shall observe:
>
> I - the decisions of the Federal Supreme Court in concentrated control of constitutionality;
>
> II - binding summary statements;
>
> III - judgments in incident of assumption of competence or resolution of repetitive demands and in judgment of repetitive extraordinary and special 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 guidance of the plenary or the special body to which they are linked.

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

Finally, article 988 of the Code of Civil Procedure must be transcribed here: "the interested party or the Public Prosecutor's Office will be required to: [...] III - 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, supervised, so that he cannot incur in abuses of power and guarantee attention to the legal system as a whole and the constitutional guidelines. Transgressing the constitutionality control of the Supreme Court would be more than abusing power, if not, subverting the very logic of power.

Therefore, although they contemplate other principles and other aspects, the above mentioned institutes undoubtedly demonstrate the principle of reasonableness, within the New Code of Civil Procedure, in a dimension of prohibition of abuse of power and control of state decisions, placing the magistrate at a level of state administrator and disseminator of administrative acts.

CONCLUSION

The overview of the results invites a perceptive 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 the necessary links to the legal structure put in place. When dissolving the social conflict, the state-judge cannot relegate the law in a broad sense, cannot reject 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 an 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 new constitution, is a corollary of the Democratic State of Law, as well as is rooted in the neo-constitutionalist bias given to the interpretation of infraconstitutional norms. Thus, reasonableness, different from proportionality, must be seen through republican dimensions, which attribute to the principle an essential character for the proper functioning of the jurisdiction, in civil procedural matters, limiting the power of judge and even allocating its performance within the criteria of separation of powers and independence of litigants.

The development of the research is justified by the pressing and relevant task of demonstrating that the principle of reasonableness, while prohibiting abuse of power, was widely enshrined in the new adjective civil law, through various institutes. This way, the new Code of Civil Procedure breaks paradigms and places the judge as a great collaborator, fostering 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 procedure, as someone who is linked to the public administration and its efficiency. Legality does not lend itself only to the particular, 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 failing to contemplate the pacified jurisprudence, without failing to pay attention to the principled order. Reasonable, it is the fulfillment of the due legal process, it is a demonstration that the subjective right will be reached through the adjective and not the other way around.

Reasonability, in this analysis, has new reflexes, new aspirations, which, as shown, were released by the new Code of Civil Procedure.

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