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DIVERGENCE IN THE MOTIVATION OF UNANIMOUS AND NON-UNANIMOUS VOTES AND THE PRESERVATION OF THE DEMOCRATIC RULE OF LAW: ANALYSIS OF RESP Nº 1.495.920

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RESUMO

A divergência na fundamentação das decisões judiciais em sede dos tribunais brasileiros, mesmo quando unânimes, suscita questões sobre o seu impacto no ordenamento jurídico, essencialmente em relação à fundamentação utilizada pelos julgadores em seus votos. Diante desse contexto, surge a problemática central da presente pesquisa: Como a divergência na fundamentação das decisões de votos, unânimes ou não unânimes, afeta o Estado Democrático de Direito? O estudo concentra-se no REsp nº 1.495.920. O objetivo central é analisar a teoria da integridade e os padrões éticos a partir da teoria de Ronald Dworkin como base teórica de análise. Além disso, busca-se avaliar o conceito

de fundamentação das decisões à luz do Código de Processo Civil, de 2015, o qual remete diretamente a uma análise necessariamente à luz dos valores e das normas da Constituição da República Federativa do Brasil, de 1988. Para isso, a pesquisa adota uma abordagem quantiqualitativa, de caráter predominantemente empírico, utilizando fontes bibliográficas, documentais, doutrinas, teorias, artigos e jurisprudência.

Palavras-Chave: Divergências. Votos Unânimes. Votos Não Unânimes. Motivação das Decisões Judiciais.

ABSTRACT

The divergence in the reasoning of judicial decisions in Brazilian courts, even when unanimous, raises questions about its impact on the legal system, essentially in relation to the reasoning used by judges in their votes. Given this context, the central problem of this research arises: How does the divergence in the reasoning of unanimous or non-unanimous decisions affect the democratic rule of law? The study focuses on REsp nº 1.495.920. The main objective is to analyze the theory of integrity and ethical standards based on Ronald Dworkin's theory as a theoretical basis for analysis. In addition, it seeks to evaluate the concept of reasoning of decisions in the light of the 2015 Code of Civil Procedure, which refers directly to an analysis necessarily in the light of the values and norms of the 1988 Constitution of the Federative Republic of Brazil. To this end, the research adopts a quantitative-qualitative approach, of a predominantly empirical nature, using bibliographic and documentary sources, doctrines, theories, articles and case law.

KEYWORDS: Divergences. Unanimous Votes. Non-Unanimous Vote. Rationale.

1 INTRODUCTION

Lênio Streck (2008) states that it seems unnecessary to talk about the duty to give reasons for decisions in a democracy, since it is the main condition for the exercise of the judicial function, guaranteeing transparency and control of judicial activity, a sine qua non condition for the realization of the due process of law, today often seen as synonymous with the Due Process of Law (Allan, 2003, p. 121). In the midst of this debate, it is extremely important to highlight the existence of divergences in judicial decisions, whether they are unanimous or non-unanimous votes, and to understand how the discrepancy between their

grounds, regardless of the final outcome, can impact on the fundamental principles of the Democratic Rule of Law.

In this context, the etymology of the word "unanimous" reveals its essence, derived from the Latin term unanimis, which evokes the idea of sharing feelings and maintaining harmony. Therefore, it can be said that truly unanimous votes are those that are based on the same reason, supported by the same argument, in other words, the same thesis, which would inevitably lead to the same legal foundation.

However, when the same panel of Judges casts an apparently unanimous or even non-unanimous vote, and the decision shows substantial differences in reasoning, even though they all agree on the same provision, the legitimacy of this decision becomes questionable. Given this situation, the central problem of this study emerges: How can divergence in the reasoning of unanimous or non-unanimous decisions affect the democratic rule of law?

Thus, the general objective of this study is to analyze how divergence in the reasoning of decisions affects the Democratic Rule of Law, based on the empirical analysis of the REsp nº 1.495.920, judged by the Superior Court of Justice, essentially with the aim of identifying whether there was divergence in the reasoning of the vote and, if so, to indicate how this affects the Democratic Rule of Law. For this purpose, the theory of integrity and the ethical standards of Ronald Dworkin are taken as a theoretical basis. It also seeks to evaluate the concept of reasoning of decisions in the light of the Code of Civil Procedure of 2015.

This work is justified by the aim of tackling divergence in the reasoning behind judicial decisions, in an attempt to strengthen the cohesion and consistency of the legal system. By deepening the analysis of this complex phenomenon, the aim is to provide a comprehensive understanding of its effects and implications.

As for the methodology, the first two sections adopt a qualitative approach, based on theoretical research incorporating bibliographical and documentary research as sources to explain the theory of Ronald Dworkin of integrity and how this theory promotes uniformity in the reasoning of judicial decisions, with a predominance of deductive and hypothetical-deductive logic in this part. The third section also follows a qualitative approach, carrying out an empirical study based on the REsp No. 1.495.920 of the Superior Court of Justice, complemented

by documentary and bibliographic elements, with inductive logic predominating in this last part.

This paper is organized into three parts, each aimed at achieving its specific objectives. The first part contextualizes the theory of integrity of Ronald Dworkin and its contribution to promote uniformity in the reasoning of judicial decisions. The second part deals with the concept of reasoning of decisions in the light of the Code of Civil Procedure. Finally, the third part evaluates the REsp nº 1.495.920 to identify divergences in the reasoning of the vote and, if confirmed points out its implications for the Democratic Rule of Law.

2 THEORY OF INTEGRITY BY RONALD DWORKIN

With regard to the reasoning behind judicial decisions, it is necessary to highlight the lessons of Ronald Dworkin in order to understand the extent to which divergent reasoning in votes can damage the Democratic Rule of Law and the legal security of the legal system.

The author is extremely important for the analysis of this article. Throughout his works, he has argued that law is not just a set of rules or norms, but a complex system of moral principles that are applied coherently and based on the idea of justice. Renowned philosopher and jurist of the general theory of law, one of his most outstanding works is undoubtedly "Taking Rights Seriously" (Dworkin, 2002), where the chapter "The Rules Model I" stands out. In this work, Dworkin elaborates a critique of legal positivism, based on the arguments presented in the book by Hebert Hart: "The Concept of Law".

Dworkin presents three main criticisms: the first refers to the "pedigree thesis"; the second addresses the "conventionality thesis"; and the third turns to the "methodological positivism". In general terms, Dworkin considers positivism to be a system of rules and criticizes it for neglecting the importance of standards that are not strictly rules (MACEDO JUNIOR, 2017).

The work by Ronald Dworkin can be segmented into two distinct phases. In the first, he defends the thesis of rights as a trump card, and the judiciary as a forum for principles, exploring the relevance of moral principles in the legal context and the crucial role that Judges play in applying them in their decisions. In the second phase, Dworkin formulates his theory of law and justice, presenting the idea that law is an interpretive concept that shares similarities with literature. The author uses the metaphor of the "novel in a chain" to illustrate the concept

that the decision-making process of Judges does not take place in isolation, but in a continuous dialogue with history and the constructive interpretations of the past, emphasizing the conviction that there is only one correct answer in judicial decisions, which must be achieved through an accurate interpretation of the law (Dworkin, 2007).

Within the framework of his convictions, Dworkin positions his theory of law and justice in the liberal tradition. Thus, he proposes a form of liberalism based on equal respect and consideration, which requires a theoretical basis of rights to support its system. Furthermore, he establishes a clear distinction between rules and principles, arguing that the latter are applied according to their magnitude of weight and importance, which in turn facilitates a deeper understanding and more effective resolution of complex cases (Dworkin, 2007).

Finally, for Dworkin it is not possible to describe the law, but it is necessary to interpret it in its best light, based on rules and principles, proposing a technique for interpreting legal norms, based on integrity, which is a third virtue of politics, alongside due process and justice. Thus, integrity is part of collective political morality, not just that of the authorities, in which everyone must act in accordance with principles (Dworkin, 2007). The principles establish connections between ethics, morality, law and politics, seeking to ensure the best possible interpretation, inferring that the main objective of Dworkin was precisely to articulate these elements in order to achieve a coherent interpretation.

Along the same lines, says Streck (2008):

> Dworkin, contrapondo-se ao formalismo legalista e ao mundo de regras positivista, busca nos princípios os recursos racionais para evitar o governo da comunidade por regras que possam ser incoerentes em princípio. É nesse contexto que Dworkin trabalha a questão dos hard cases, que incorporam, na sua leitura, em face das dúvidas sobre o sentido de uma norma, dimensões principiológicas, portanto, não consideradas no quadro semântico da regra.

Therefore, according to Marinho (2017), to observe law as integrity is to accept the true political history of the community where the parties to the process are inserted, restricting the political convictions of the Judge. For this reason, principles link ethics, morality, law and politics. Therefore, principles have an essential function throughout the process of building these four elements, ensuring the preservation and harmonization between them in the interpretation and application of the law (Guimarães; Marques; Castro, 2019).

According to Guimarães, Marques and Castro (2019), the identification of gaps or anomalies in the legal system can lead the magistrate to decide each specific case without considering political morality and legitimacy, resulting in undemocratic and authoritarian decisions. In this context, discretionary decisions can be guided by the judge's own standard of ethics and conduct and, therefore, according to the authors, the search for the correct interpretation of the judgment must derive from their impartiality.

In this sense, Pedron (2020) understands that broad discretion allows the Judge to create a new law, apply it retroactively or surprise the parties to the case. On the other hand, for the author, exacerbated legal positivism makes law incompatible with democratic rules, because it dismembers law and morality, making the magistrate a mere mouth that pronounces the words of the law.

To combat this possibility, Dworkin, in his theory, links ethics, morality, law and politics, based on a constructive interpretation, integrated by principles, rules and political guidelines of that society. For him, the best interpretation involves what has been decided previously, such as case law, as well as the way in which these decisions have been substantiated. Not only considering the outcome of the decision, but also what encompasses the whole process.

3 STATEMENT OF REASONS FOR DECISIONS

The judicial decision, according to Vitor Almeida (2012), is an act that enables the realization of a legal norm, as well as imposing on the Judge the duty to give reasons, as provided for in the article 93, IX, of the Constitution of the Republic of Brazil of 1988, under penalty of nullity.

In addition, the article 489 of the Code of Civil Procedure of 2015 deals with the essential requirements of the sentence, namely: a) Report, which contains the names of the parties and the main points of the case; b) Grounds, in which the judge analyzes the issues of fact and law; c) Dispositive, at which point the Judge decides the case submitted (Brazil, 2015).

As pointed out at the outset, according to Streck (2008), it seems, at least at first, unnecessary to talk about the duty to give reasons for decisions in the context of a Democratic State of Law, since it is the main condition for the full and effective exercise of judicial power, function and activity.

Streck says that before the emergence of liberal democracies, the duty to state reasons was already being discussed. He cites pre-unitary Italy as an example,

under the reign of King Ferdinand IV of Bourbon, because in order for "judgments to be more likely to be free of arbitrariness" the obligation to give reasons for decisions was established, with the aim of preserving "Judges from any suspicion of partiality" (Streck, 2008). Therefore, no matter how undemocratic a given government was, it would be possible to verify that the reasoning behind the decision was "a weapon against the arbitrariness of Judges" (Streck, 2008).

In addition, the author points out that, even before the Civil Code of 2015, there were already discussions about the difference between unreasoned decisions, poorly reasoned decisions, insufficiently reasoned decisions and sufficiently reasoned decisions, in which all the elements that the court considered in deciding should be included. There were also so-called complete decisions, which should contain the factual and legal elements that, according to the arguments of the parties, led the court to decide. In this scenario, the author states that sentences could have sufficient reasoning, and judgments, complete reasoning (Streck, 2008).

It so happens that even with the advent of the Code of Civil Procedure of 2015 and the provision contained in the article 489, which sets out guidelines for judicial reasoning, it is observed that there are still occasions when magistrates and courts ignore the duty to give reasons, since they do not justify their reasons with all the arguments put forward in the case.

Just as a small example of these violations that have occurred in decisions such as those observed in the Interlocutory Appeal of the TJSP No. 2099249-60.2018.8.26.0000, in which the interlocutory decision of the court of first-degree was annulled for lack of reasoning in a tax foreclosure action, in relation to the denial of the treasury claim. Another example, taken from the same Interlocutory Appeal of the court No. 2144249-83.2018.8.26.0000, highlights key points to be considered in relation to the need to provide reasons for judicial decisions:

> DECISÃO INTERLOCUTÓRIA - AUSÊNCIA DE FUNDAMENTAÇÃO ADEQUADA - VIOLAÇÃO AOS ARTIGOS 93, INCISO IX, DA CONSTITUIÇÃO FEDERAL E 489, § 1º, INCISO IV, DO CÓDIGO DE PROCESSO CIVIL - AGRAVO INTERNO PREJUDICADO - NULIDADE RECONHECIDA DE OFÍCIO. A omissão, pelo magistrado, da fundamentação de sua decisão com base nos elementos técnicos constantes dos autos, além de afrontar o inciso IX, do artigo 93, da Carta Magna, impossibilita à parte o seu eficaz ataque pela via recursal própria, inviabilizando, ainda, a aferição, no grau superior, da pertinência e correção do ato recorrido [...]

> Não se afigura lícito, portanto, estendê-la à agravante, que não integrou a relação processual do despejo, isso sem falar que a decisão agravada padece de fundamentação adequada, uma das características do processo contemporâneo, calcado no due process of law, representando uma garantia inerente ao Estado de direito, implicando maltrato a norma inscrita no art. 93, inciso IX, da Constituição Federal que obriga sejam fundamentadas todas as decisões judiciais, sob pena de nulidade. [...]
>
> Na verdade, só o conhecimento das razões de decidir podem permitir que os interessados recorram adequadamente e que os órgãos superiores controlem com segurança a justiça e a legalidade das decisões submetidas à sua revisão (José Carlos Barbosa Moreira, Temas de Direito Processual, segunda série, p. 86, Saraiva). Os litigantes têm o direito de conhecer precisamente as razões de fato e de direito que determinaram o sucesso ou insucesso de suas posições de tal modo que as questões submetidas devem ficar claramente resolvidas, sem obscuridades ou omissões, inclusive para proporcionar o reexame da matéria pela Superior Instância, verbis: "Elevada a cânone constitucional, a fundamentação apresenta-se como uma das características do processo contemporâneo, calcado no 'due process of law', representando uma 'garantia inerente ao Estado de direito'" (REsp. 131.899 - MG - STJ - 4ª T. - Rel. Min. Sálvio de Figueiredo Teixeira). [...]

Therefore, as exemplified, this inappropriate conduct, when practiced by the State-Judge, results in a "judicial protagonism incompatible with the Democratic Rule of Law, since, in this, the parties are no longer seen as if they were subject to the discretion of a judge who is the owner of the process" (Streck, 2008).

Article 489 of the Code of Civil Procedure of 2015, in its first paragraph, establishes that judicial decisions, whether interlocutory, sentences or judgments, must be duly reasoned, without being limited to the mere transcription of articles, but rather explaining the framework of the legal norm in the specific case. In addition, the same statute states that decisions must not use imprecise legal terms, nor invoke generic reasons that could serve for any other decision, and must address all the arguments presented by the parties capable of contesting the conclusion adopted, as well as the provision establishes that a court decision that mentions precedents, statements or precedents without identifying their grounds and demonstrating their application to the case on trial is not considered reasoned (BRAZIL, 2015).

In this context, it is essential to highlight the difference between justification and motivation. According to the lessons of Pedron (2020), there is a delicate line between the crisis of positivism and the openness of magistrates to escape the "bonds of the law", which, according to the author, results in the construction of

the general theory of the process based on the "solipsism" of the Judge, a German term meaning selfish.

As a result, the phenomenon called the illegitimacy of judicial decisions arises, since magistrates base their decisions on their own personal sense of justice. Pedron (2020) also points out that the classic General Theory of Procedure naturalized the free conviction, although he argues that it is necessary to overcome this thesis that allows the judge to decide according to his own conscience, transforming the decision into a solitary act of the magistrate, which inevitably leads to the illegitimacy of decisions.

As for the difference between giving reasons and motivating, according to Ramires (2010), giving reasons is not just about explaining your reasons, creating a false appearance of validity. In this case, the judge only explains his reasons, not providing a real justification "when he says that he decides so because this or that legal rule applies to the case" (Ramires, 2010), repeating the normative text. The Judge must, at the same time as justifying why he accepted the reasons of the winner, set out the reasons why he rejected the interpretation put forward by the losing party, reasons which must be reasonable and proportionate, consistent with the legal system in force in his unit.

According to Almeida (2012), unlike the Legislative and Executive Branches, which receive legitimacy for their actions by popular vote, the magistrates, members of the Judiciary, legitimized by their correct actions, within the limits of the law, acquire legitimacy for their actions through the application of the norm, as provided for in the norms and values set out in the Constitution of the Republic of 1988. Therefore, the justification of judicial decisions is essential for the subsequent and diffuse control of legitimacy and legality.

In this sense, Rui Portanova (1999) understands that motivation is a guarantee for everyone, whether the parties to the proceedings, the state or the citizens, and therefore constitutes a fundamental right and duty, which Almeida (2012) says characterizes the extra-procedural nature of judicial decisions, known as "diffuse democratic control".

In line with this epistemological approach, according to Souza (2006), "motive" comes from the Latin motivum, which means cause or reason for something. Thus, for the judge, it is the act of explaining or motivating the reasons behind his judicial decisions. On the other hand, "foundation" comes from the Latin fundamentum, which means base, foundation, reason or argument that is based on a thesis. For the author, the basis of the decision is not to be confused with

the legal rule to be applied. In this context, the word "unanimous" derives from the Latin term unanimis, meaning the sharing of the same feelings and the maintenance of harmonious coexistence.

In this way, it can be said that unanimous votes are those motivated by the same reason and based on the same argument, i.e. the same legal thesis. This consequently leads to the same legal provision or basis. However, when the same panel casts a vote that is considered unanimous or non-unanimous, in this case by a majority of votes, in relation to the final decision, but in this decision there is a divergence in the reasoning and basis of their arguments despite agreeing on the same provision, there are doubts as to whether this decision can in fact be considered legitimate, compromising legal certainty and calling into question the democratic rule of law.

With regard to unanimous votes, an example can be given as follows: suppose that a panel Y, made up of three judges, when analyzing a specific case X, decides to uphold the appeal submitted. However, all the judges base their reasons on different grounds. This results in a unanimous vote, even though the reasons are different. It can be seen that at no point did the panel reach a harmonious consensus when analyzing the case. Therefore, a decision labeled as unanimous can compromise the legitimacy of that decision, the principle of the double degree of jurisdiction and the right of the party to an adversarial proceeding, which will make it impossible for them to argue, participate and influence the outcome of any appeal.

With regard to majority votes, take the following scenario as an example: If a panel X made up of three judges is tasked with deciding case Y, and during the trial session the rapporteur rejects the appeal while the other judges grant the appeal, basing their positions on completely different motivations and reasons, as a result the appeal is upheld by a majority of votes, but based on an illegitimate decision.

A decision that appears to be valid is considered illegitimate, since a judicial decision must rest on the same motivation and grounds. The circumstance in which the panel casts votes with different motives and reasons ends up violating the principle of adversarial proceedings and full defense, as well as undermining the democratic rule of law and the double degree of jurisdiction.

In this scenario, Souza (2006) understands that the reasoning behind a judicial decision has the premise of protecting the parties to the substantive law submitted to judgment, and is a guarantee of access to justice and due process

of law. In addition, it provides legal security for the court itself and for the state, "as guardian of the legal system, whose uniform integration is of interest to it", demonstrating the transparency of its legal reasoning and discussion of the theses submitted.

Also according to Souza (2006), the analysis of court decisions by Judges or Justices begins with an analysis of the reasons for the sentence, in order to see if there were any omissions, illegality, hierarchization of reasonableness, evaluation of the evidence and the circumstances of the fact. Next, the ratio decidendi will be identified as the basis for the decision and the rules applied. This is not to be confused, in other words, giving reasons is not merely a matter of transcribing the legal provision.

At this point, it is important to emphasize that the grounds for the decision do not become final, only its operative part, in accordance with the article 469 of the Code of Civil Procedure (CPC). Therefore, in a democratic state governed by the rule of law, decisions that become final are those that have legitimacy, i.e. are duly substantiated and motivated. Thus, only decisions that have legitimacy can become res judicata.

4 ANALYSIS OF THE VOTES IN THE RESP. Nº 1.495.920

Initially, it should be pointed out that, although the Code of Civil Procedure of 2015 was recently updated to include the fourth paragraph of the article 784, finally considering the contract signed electronically, within the standards of the Provisional Measure 2.200-2/2002 as an extrajudicial executive title, the object of analysis of the votes of the Special Appeal, that is, the analysis of the votes related to the respective Judgment, is due to the fact of the complete substantial divergence regarding the grounds that recognized the executive effectiveness of this document in 2018.

Special Appeal No. 1,495,920 was filed by the Foundation of the Federal Economists (FUNCEF), in response to the judgment handed down by the Court of Justice of the Federal District, which upheld the decision to extinguish the execution without resolution of the merits, on the grounds that the electronic loan agreement signed between the parties in 2008 did not contain the signatures of the witnesses, as provided for in the article 585, II, of the Code of Civil Procedure of 1973, legislation in force at the time the claim was filed and

processed. As a result of this absence, the contract was not effective as an extrajudicial enforcement order.

The plaintiff claimed that there had been a breach of the article 535 of the Code of Civil Procedure of 1973, because the judgment was silent on the facts narrated in the pleadings. In addition, it pointed to a violation of the article 586 of the Code of Civil Procedure, 1973, because the loan agreement executed constituted an extrajudicial executive title, presenting the necessary requirements to be known as an extrajudicial title, including two forms of testimony: (i) the ICP-Brazil registration, (ii) according to the Comprova.com website.

In addition, the statement of reasons for appeal emphasized that the validity requirements for electronic contracts should be the same as those applied to traditional contracts. The difference lies in its conclusion, as the electronic contract takes place online, using electronic networks and systems as the means of communication for its execution. In this context, it was pointed out that in order to meet the demands of the current commercial scenario, the International Trade Law Commission formulated the principle of functional equivalence. In addition, it was argued that the contract was considered valid by www.credinamico.com.br, by means of a digital signature to ensure authenticity, integrity and legal validity. In this context, the need for witnesses would be dispensed with, especially due to the performance of the ICP-Brazil digital signature and certification key standard, which would play a role analogous to that of notaries.

The Third Panel of the Superior Court of Justice decided to uphold the appeal in a non-unanimous decision, i.e. by a majority of votes. The vote cast by Justice Ricardo Villas Bôas Cueva differed from the vote of the Justice-Rapporteur. By a majority, the special appeal was granted, according to the vote of the Minister-Rapporteur. Justice Ricardo Villas Bôas Cueva was defeated in the vote. Justices Marco Aurélio Bellizze (president) and Moura Ribeiro followed the vote of the rapporteur. Justice Nancy Andrighi was unable to vote.

Among other arguments, from votes considering the legal certainty resulting from the ICP-Brazil key standard to even legal certainty considering the machine as an "electronic witness", it appears that the debate does not take place with the due complexity and depth necessary for a reasonable and proportional decision (Santana; Teixeira; Costa, 2023), compromising the reliability of the reasoning, shaking the foundations of a judgment of relative certainty that should hover in

civil procedural cognition, which can compromise the ethical and legal analysis on how to support or refute the validity of the decision.

In order to be able to criticize a system, it is necessary to get to know it, even through the participation of interested parties who are knowledgeable about a particular subject, such as the amicus curiae, the support of specialists, or even by looking into the subject through more targeted studies. Broadening the debate, in this sense, is essential so that a collegiate discussion can clearly take place and be able to be discussed in the light of principles, as envisaged in the Dworkinian doctrine presented above.

In this scenario where votes are not unanimous (not only in relation to the outcome but also in relation to the grounds), especially in the face of a completely new situation for the Judiciary, such as the controversy over the extrajudicial enforcement status of an electronic loan agreement entered into without the signature of two witnesses, to what extent can disagreement between the justices compromise the Democratic Rule of Law?

Justice Ricardo Villas Bôas Cueva dissented as follows:

> Dos elementos constantes dos autos, contudo, não é possível verificar se quem possui o certificado eletrônico nos moldes da ICP-Brasil é acredora FUNCEF, o devedor ou mesmo a plataforma eletrônica utilizada para a celebração do negócio jurídico, indicada apenas como "Comprova.com". Como bem observado pelo Relator, não há maiores explicações no especial a respeito do serviço denominado Comprova.com, o queo levou a inferir que poderia corresponder à empresa "Docusign" (http://www.docusign.com.br), tendo em vista que, ao se digitar o primeiro endereço em um navegador, há o redirecionamento automático para o segundo diretório. Apenas a título argumentativo, supondo que se trate do mesmo serviço, é oportuno observar que a sua utilização também não possui o condão de reforçar o pleito da recorrente. Isso porque, como descrito na própria página da referida empresa, a utilização de certificado da ICP-Brasil é apenas uma entre as formas admitidas de assinatura digital por meio da plataforma que gerencia.

In his opinion, the judge emphasizes the need to determine whether the holder of the electronic certificate, according to ICP-Brazil standards, is the creditor institution FUNCEF or the debtor. In addition, he stresses the importance of clarifying the identity of the electronic platform used to formalize the legal agreement, referred to only as "Comprova.com".

Furthermore, he points out that the special appeal does not provide substantial information about the service called Comprova.com, which has led to

an assumption that it may be associated with the company "Docusign", given that, when entering the address in a browser, the page is automatically redirected to another site. In the view of the minister, this situation highlights the legal uncertainty of the site; moreover, there is no express provision in the law that gives executive force to this new modality.

However, Justice Paulo de Tarso Sanseverino understood:

> O contrato eletrônico, em face de suas particularidades, por regra, tendo em conta a sua celebração à distância e eletronicamente, não trará a indicação de testemunhas, o que, entendo, não afasta a sua executividade. Não há dúvidas de que o contrato eletrônico, na atualidade, deve ser, e o é, colocado em evidência pela sua importância econômica e social, pois a circulação de renda tem-no, no mais das vezes, como sua principal causa. Aliás, é preciso que se diga, impérios são construídos atualmente em vários países do mundo com base exatamente na riqueza produzida mediante contratos eletrônicos celebrados via internet no âmbito do comércio eletrônico.
>
> (...)
>
> Pela conformação dos contratos eletrônicos, o estabelecimento da necessidade de conterem a assinatura de 2 testemunhas para serem considerados executivos, dificultaria, por deveras, a sua satisfação. Se, como ressalta a referida doutrinadora, agrega-se a eles autenticidade e integridade mediante a certificação eletrônica, utilizando-se a assinatura digital devidamente aferida por autoridade certificadora legalmente constituída, parece-me mesmo desnecessária a assinatura das testemunhas.
>
> [...]
>
> Ainda assim, em face destes novos instrumentos de verificação de autenticidade e presencialidade do contratante e adequação do conteúdo do contrato, penso ser o momento de reconhecer-se a executividade dos contratos eletrônicos.

In summary, an analysis of the votes shows a clear divergence in extremely valid arguments. Justice Ricardo Villas Bôas Cueva highlights his concern about the legal uncertainty of the site and the lack of a rule that precisely addresses the issue under discussion. In his view, the lack of regulatory clarity could compromise the validity of the title in question. On the other hand, the Judge-rapporteur defends the validity of the electronic certificate, emphasizing its role in conferring authenticity to the document.

It is clear, therefore, that the various interpretations of the same issue reflect its intrinsic complexity, which is aggravated in this context by the new scenario

introduced into the legal field: technology. In this case, the question arises as to why the Comprova.com website has led to the assumption that it is linked to the company "Docusign". This is due to the fact that when you enter the address in one browser, the page is automatically redirected to another.

In addition, the absence of a legal standard can lead to legal uncertainty over the decision made, because there is a lack of a standard that precisely addresses the issue being analyzed.

From the brief analysis of the Judgment which is the subject of this exemplary analysis, it can be concluded that judges must analyze not only the immediate outcome of the controversy, but must also necessarily take into account elements such as previous decisions and the coherent reasoning between the arguments in an argumentative consensus, even if they differ, establishing a link between ethics, morality, law and politics, based on a constructive interpretation, integrated by principles, rules and political guidelines of society, as precepted by Dworkin (2007).

5 FINAL CONSIDERATIONS

In conclusion to the above, this work has focused on trying to answer the problem question, which is: How can divergence in the reasoning behind unanimous or non-unanimous decisions affect the democratic rule of law, given that due process of law encompasses all the fundamental procedural rights and guarantees, essentially the transparency of the decision that enables an effective adversarial process.

In this sense, the theory of integrity of Ronald Dworkin can help reducing divergence in judicial reasoning, establishing a link between ethics, morality, law and politics, based on a constructive interpretation, integrated by principles, rules and political guidelines of that society.

Complex cases, known as hard cases, cause doubts as to how the law can and should be applied. As an example, the Special Appeal No. 1.495.920, filed by the Foundation of Federal Economists (FUNCEF), was cited and briefly analyzed against the judgment handed down by the Court of Justice of the Federal District, which upheld the decision to extinguish the execution without resolution of the merits, on the grounds that the electronic loan agreement signed did not contain the signatures of the witnesses, even on the grounds that the agreement was

made valid by the website www.credinamico.com.br, by means of a digital signature to ensure authenticity, integrity and legal validity.

This case, judged in 2018, prior to the legal recognition of the contract signed digitally within the ICP-Brazil signature standard, as an extrajudicial executive title in 2023, by means of the Law no. 14. 620, there was majority recognition that the need for witnesses would be dispensed with, especially due to the work of ICP-Brazil, which performs a role analogous to that of notary publics, despite the fact that each minister took different initial points of view in relation to its logic, going so far as to observe in a certain vote that the machine would be considered, in an atheistic way, as a "witness", without even possessing the elements required of a witness, such as capacity, not being impeded or suspected, human attributes incompatible with a machine.

Therefore, even though the decision was upheld by a majority of votes, the controversy remains as to why the Comprova.com website led to an assumption that it was linked to the company "Docusign", because when you enter the address into a browser, the page is automatically redirected to another site. In addition, the absence of a legal standard can lead to increased legal uncertainty under the decision provided, because there is a lack of a standard that precisely addresses the issue analyzed.

This leads to the conclusion that, in these situations, Judges must consider not only the immediate outcome of the dispute, but also factors such as previous decisions and the logical reasoning behind them, and the technical understanding of the facts in search not only of the truth of the facts, but also of an understanding of the context in which they are inserted, essentially in order to assess the values involved and to consider them in conjunction with the standard applied. This implies creating a connection between ethics, morality, law and politics, through constructive interpretation based on principles, rules and political guidelines of society, as advocated by Ronald Dworkin.

Thus, in relation to the objectives of the work, although at first they may have been achieved, in terms of analyzing how divergence in the reasoning of unanimous or non-unanimous decisions would affect the democratic rule of law, there are still questions about the future perspectives that can be applied in relation to prevention and the measures to be taken in the event of divergent grounds, since these do not become final, although they can influence the final result, which cannot be tied to the luck factor in relation to arguments that are not firmly grounded.

The theory of integrity of Ronald Dworkin was also investigated, which is based on the principles, rules and political guidelines of society, even in hard cases.

Nevertheless, the initial hypothesis that divergent reasoning in court decisions can affect the rule of law seems to have been confirmed, as shown in the Special Appeal No. 1.495.920.

As a future perspective, this work has the potential to contribute significantly to a positive transformation in the judicial system, seeking to encourage magistrates, Judges and Ministers to use the ethical, political and moral standards of the society in which they are inserted as a basis, in favor of the legal certainty of judicial decisions.

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