THE EXTRAJURISDICTIONAL EFFECT OF PRECEDENTS ON BRAZILIAN CIVIL PROCEDURAL SYSTEM

O EFEITO EXTRAJURISDICIONAL DOS PRECEDENTES NO SISTEMA PROCESSUAL CIVIL BRASILEIRO

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RESUMO

This study aimed to analyze the relationship between binding judicial precedents and arbitration, regulatory agencies and parajurisdictional bodies, in order to verify whether in non-jurisdictional environments the precedents also have binding effect. Through bibliographic research, it was possible to verify that, despite the great doctrinal divergence on the subject, the most appropriate understanding is that according to which the precedents bind the public administration and arbitration, in compliance with constitutional principles that are cornerstones in the Brazilian legal system, such as legal certainty and isonomy, as well as for a systemic coherence between the understandings signed on the same right both in the Judiciary and in extra-jurisdictional environments.

Keywords: Judicial Precedents; Extrajurisdictional; Binding Effect.

ABSTRACT

The main objective of this work was to analyze the relation between judicial precedents and arbitration, regulatory agencies and parajursdictional bodies, in order to verify if in these non-jurisdictional environments the precedents have binding effect. Through a bibliographical research, was possible to verify that, in spite of the great doctrinal divergence about this subject, the more appropriate understanding is that precedents bind the public administration e the arbitration, due to principles that are corner stones in the brazilian legal system,

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such as legal certainty and isonomy, as well as for there to be systemic coherence between the understandings made about the same right, both within the Judiciary and in extrajurisdictional environments. However, it's still necessary that the brazilian system of precedents undergo some adaptations, that this understanding may be strengthened.

Keywords: Judicial Precedents; Extrajurisdictional; Binding Effect.

1. INTRODUCTION

The system of precedents established in our current Code of Civil Procedure has assumed, as the tradition already consolidated in the international experience, the vertical and horizontal linkage. This means that, instituted the precedent, in the manner established by the legislation, the obligation of attendance is required both in relation to the judges attached to a given Court and also in relation to the Court itself that edited it.

Even if, on occasion, one disagrees with the obligatory character of precedents, in fact the introduction of this model in our legal system would have no reason to be other than to ensure the uniformity of judicial decisions. Uniformity, in turn, presupposes the lack of power in the application of the normative standards already fixed by the system of production of precedents understood as a legitimate source. Since progress can be made in refuting all the central theses of this argument, we will not deal with the subject here.

It is true that the standardization, by the Courts, of legal theses by means of judicial precedents directly impacts on socially relevant issues, which ends up causing a legal regulation and control of these issues, particularly as regards public services. Dessarte, if a judicial precedent generates these effects in relation to relevant aspects of a particular right, would this precedent be enforced in extra-jurisdictional environments where there is a conflict over this same right?

The point in question is to investigate the extent to which it is possible to maintain the mandatory adoption of precedents in non-jurisdictional environments, or to put it another way, what is pervasive is the possibility of an extra-jurisdictional binding effect. Therefore, this essay will demonstrate that the field of precedent is a problematic issue and can have serious consequences from the point of view of institutionalized conflict resolution.

2. A LINKAGE OF PRECEDENTS

Judicial precedent consists of a previous ruling applied to future cases that have identity as to factual and legal circumstances. The part of the precedent that gives it binding is called ratio decidendi. In this sense, Cláudia Aparecida Cimardi (2015, p. 43) indicates that:

> [...] it is necessary that, in carrying out the activity of the reasoning elaborated by the judge, is unveiled the part of the previous decision that effectively must be observed with binding force. This part of the decision, called ratio decidendi (or holding), can be considered the core of the precedent (emphasis added by the author).

According to the thoughts of Jean Carlos Dias and Samira Viana Silva, (2017, p. 182), "[a] ratio decidendi is considered to be the binding, binding party of the precedent, in which the court sets out the essential grounds for the decision and the legal solution of the case, which can be linked analogously to other cases". It is interesting the understanding of Hermes Zanetti Jr. (2017, p. 315) about the role of the Supreme Courts in the theory of precedents:

> The theory of precedent is a theory for Supreme Courts. This means two things: first, that the Supreme Courts are the main recipients of a theory of precedents because they are vertex cuts and depend on them the uniformity of the interpretation of the law; second, because also the Supreme Courts must be linked to the precedents themselves from the point of view of the argumentative burden to depart from the application of a precedent or overcome an old precedent in the current application.

This thought corroborates the fact that not only the lower instances are linked to the precedents emanating from the Supreme Courts, but they themselves, even more correctly, are linked to them. This is because the Supreme Courts' respect for their own precedents demonstrates that the standardization of understandings - in order to ensure consistency and integrity to the organization - must be taken seriously.

It is imperative to point out that the connection of a previous system is not automatic. Even in the English tradition the precedent was "born" binding, that is, not even the country known for having a legal tradition marked by deciding on the basis of precedents had, at its origin, a system of mandatory precedents. According to Daniel Mitidiero (2017, p. 27),

> [...] the meaning of precedent in English law has changed profoundly from its medieval origins to the contemporary era. It is an evolution that can be well synthesized in three significant expressions: illustration, persuasion and linkage (emphasis added).

The author (2017, p. 28-30) teaches that since the Middle Ages judges used precedents in cases. However, they did so only as a way of illustrating or explaining the Law to be applied in the specific case, which thus demonstrates the illustrative function of the precedent in the formation of English law, so that any case was considered precedent, indistinctly. Neil Duxbury (2008, p. 32-33):

> [...] the notion of precedent which existed in the medieval courts was very Different from that which was to emerge later. The medieval judicial precedent was, Strictly speaking, Nothing more than the judgment entered on the plea roll [...] Certainly, a precedent could make an Impression on Lawyers because it was Evidence of common Learning, but no single precedent would be accepted as Authority in preference to such Learning. Indeed Although, in the medieval courts, precedents Were sometimes treated as Evidence of what the law was commonly Held to be, the Occasional Judge or serjeant would precedent Remark that precedents must not be mistaken for law.

In the sixteenth century, more specifically in the early Tudor era (DUXBURY, 2008, p. 33), the precedents took another step towards linkage. As preleciona Mitidiero (2017, p. 31), the precedents began to play a slightly more relevant role than before in the decision-making process, serving as a criterion for the decision of the case - since they are not contrary to the Common Law -, thus achieving a persuasive function, which marks the beginning of the theory of precedent.

In this passage, the judicial precedent came to be seen as evidence of the very existence of Common Law (MITIDIERO, 2017, p. 32). Duxbury (2008, p. 34) states that "[t]his subtle shift in emphasis was certainly Evident to Coke in his Commentary upon Littleton: ?our book cases are the best Proofs what law is '[...]". That is, there was a great advance between the phases of transition concerning the linkage of precedent in England, since before the precedent could never be confused with the law, now it becomes an evidence of what it is.

Although the precedent, in its persuasive phase, had its relevance to the English legal system, in the words of Mitidiero (2017, p. 35) "the persuasive precedent did not amount to a standard itself, insofar as it was in the hands of the later judges, while acknowledging that the precedent conformed to the case, to deny its application to the solution of the case". This shows that the merely persuasive character of a precedent is not sufficient grounds for, as opposed to the interpretative freedom of the magistrates, causing the judges to abandon their freedom to decide and adopt a precedent not endowed with binding, even though they should. According to Cimardi (2015, p. 39):

> It is important to note that the so-called English doctrine of the Tare decisis was not born before the eighteenth century, and, despite the different meanings that the expression may have, it corresponds to the principles and rules that guide the use of precedents and their status as binding authority (Binding precedent).

In the nineteenth century, therefore, the precedent left its persuasive character and effectively passed to the link, especially from the influence of Bentham and Austin and with the advent of the Law Reports of 1865 and the Judcature Acts of 1873-1875 (MITIDIERO, 2017, p. 36). However, it is important to note that for the system of English precedents to reach the stage in which it is today, there was a long process that began in the nineteenth century.There is only one case, dated 1898, in which all the Lords of the House of Lords unanimously said that court precedents were binding. And only in 1966, from a Practice Statment, the Court understood that it could overcome its precedents (MITIDIERO, 2017, p. 37).

Such facts demonstrate that a system of precedents does not consolidate quickly, many adaptations and maturation are necessary, both of the Courts, and of society, to understand and learn to ration and work with precedents, as well as living a culture of valuing the precedent. In the case of Brazil, the first record of binding precedent comes from the Portuguese seats, at the time of Imperial Brazil. After this, in 1963, through Minister Victor Nunes Leal - then Minister of the Supreme Court (STF) -, It occurred the creation of case law summaries of the Supreme Court, which did not have binding character.

Other instruments, whether procedural or constitutional, were created before the Civil Procedure Code of 2015 (CPC/15), which can be considered as binding precedents. Among these, are the decisions coming from Direct Action of Unconstitutionality (ADI) and Declaratory Action of Constitutionality (ADC), whose Law is from 1999; the binding summary and the

general repercussion on extraordinary appeal, both instituted by Constitutional Amendment 45/2004; the repetitive special appeal, which was inserted in the Code of Civil Procedure 1973 through a Law of the year 2008.

The objective of the work is not to enter into the details of such institutes, however, it is necessary to recall a fact always commented by the doctrine: the CPC/2015 did not bring the idea of binding precedents for the first time in recent Brazilian procedural history, which does not rule out the fact that the novel code has taken a big step towards systematization of matter.

In the words of Ravi Peixoto (2019, p. 138), "[o] CPC/2015 appears as a consolidator of the previous reforms to try to establish the decisis Stare in Brazilian law". Such consolidation took place through a series of articles placed in the new code in order to ensure the application of precedents and especially through art. 927, which deals with the obligation to observe the precedents. The forecast contained in art. 927 of CPC/15 is considered by the doctrine as a fundamental norm of the new code, although it is not in the list of the first twelve articles of the Code, because it is not exhaustive. Among other authors, Carlos Frederico Bastos Pereira (2018, p. 107-110) and Fredie Didier Jr (2017, p. 71).

It should be noted that the formal binding process - that is, the legislative changes that were made until the CPC/15 was reached - represented the first step in the course of the adaptations necessary for a Brazilian system of precedents to be consolidated (PEIXOTO, 2019, p. 140). In fact, assuming that the linkage is a process, that is, it is not something automatic and that, currently, Brazil goes through a phase of adaptation to a system of binding precedents and that this is a system with its particularities, to what extent the binding of precedents influences extra-jurisdictional decision-making environments?

The question is extremely relevant, since the obligation reaches, according to the theory of precedents, the Court that edited the precedent (horizontal effectiveness) and lower courts and judges (vertical effectiveness). Therefore, traditionally, the effects of the binding precedent radiate only within the Judiciary. But what about extrajurisdictional sectors that are affected by court decisions? From then on, the possibility of binding effect in non-jurisdictional environments will be analyzed.

3. THE IMPACT OF PRECEDENTS ON ARBITRATION IN LAW

The relationship between arbitration and judicial precedents is very thorny. Long before the 2015 Civil Procedure Code was in force, it was discussed whether the arbitrators would be bound by the precedents of the court. However, with the advent of the new code, the discussion has intensified and there are currently at least three distinct positions on this subject. There are authors who defend the full sovereignty of arbitrators, so that judicial precedents are not mandatory in relation to arbitration. Other authors, differently, adopt a mixed position, advocating the linkage of the arbitrators only to binding summits and decisions of the Supreme Court in concentrated control. On the other hand, there are those who advocate refereeing to precedents.

Rômulo Greff Mariani (2018, p. 37) believes that jurisdiction, as a means of social pacification, can be exercised by both the judge and the arbitrator. The author says that such activity has been effectively recognized and that although the judicial activity is typical, it is not exclusive. Moreover, the aforementioned author understands that "arbitration will provide jurisdiction analogous to what would occur if the parties had sought the state judiciary, in what they resemble, in view of being arbitration, also a mechanism that proclaims the right" (MARIANI, 2018, p. 38-39).

In accordance with Mariani's thought (2018, p. 75), the arbitration process and the judicial process have in common their "conflict resolution" nature, that is, both seek the pacification of disputes through an organized path, in such a way that the prerogatives and guarantees of the parties are respected. However, despite this similarity, they are not confused. According to Ricardo Dalmaso Marques (2013, p. 8), three main premises can be established regarding arbitration:

> [...] it is important to establish the premises that (i) the arbitration office (in general, in the international context, and not only as established in the Brazilian legislation by Law No 9.307/1996 consists of a specific system, with its own rules, and marked, primarily, procedural flexibility and the autonomy of the will of the parties to the laws that must be applied; (ii) between those rules, those for the creation and application of precedents or jurisprudence (judicial or arbitral) also have, in arbitration, nuances quite diverse from those applicable in the judicial sphere, and (iii) the procedural and procedural rites (which includes the Recursal procedure, based on the hierarchy, and the eminently procedural tools and remedies) existing.

The understanding of Dalmaso Marques (2013, p. 9) is that when arbitration is elected as a procedural system to be applied to the specific case, it renounces the state procedural system and the analysis of the merits by the judiciary, so that this implies the renunciation, also, the rules and procedural tools that are inherent to the judicial system and that, therefore, would not extend to the arbitral. From Mariani's perspective (2018, p. 76-87), the arbitration procedure would be an autonomous subsystem in relation to the state process and based on this, highlights three main conclusions: the Code of Civil Procedure does not apply to the arbitration procedure, judicial precedents also do not apply to arbitration proceedings and the arbitrator is sovereign in its decisions:

As a logical consequence, it is possible to establish a general rule that the agents involved in the arbitration are not subject to state institutions, especially for what matters here, the trial and binding techniques laid down in the state procedural diploma, so that these "precedents" do not bind the arbitrator. The provisions contained in the current Code of Civil Procedure, as a rule, do not apply, even if in a supplementary or subsidiary way, to the arbitral procedure, except where the parties so agree or even provide for the rules applicable to the arbitral procedure (not recommended) (MARIANI, 2018, p. 87).

For the author, to point out that the arbitrator is sovereign in the application of the Law means to say that it is not linked to the view of the State Judiciary, because even in English Law, the English Arbitration Act was motivated by the fact that the arbitration is not an annex of the State Judiciary (MARIANI, 2018, p. 88). However, the precedent, as a technique of uniformization of jurisprudence, ends by expressing the view on the concrete application of State law, a view that the arbitrator may not agree to, and if he does not agree, will be applying the

law, even if not in the same way as the state judge and will be sovereign to sustain that position (MARIANI, 2018, p. 88-89).

In addition, the author asserts that the desire for coherence and integrity in the application of the law would determine the necessary adoption by the arbitrator of precedents, which, in his view, would subvert the logic of arbitration for being an undue advance in relation to the autonomy of the arbitrator, which exercises its function vis-à-vis the parties and not vis-à-vis the company. Therefore, he would not have the duty to safeguard the integrity or coherence of the legal order, thus demonstrating that the arbitrator's relationship with the law is different from the judge's relationship with the law (MARIANI, 2018, p. 90).

Therefore, according to the author (2018, p. 91), there is no need to talk about the linkage of the judicial precedents in the arbitral process, because the procedural law does not find shelter in the arbitral process (not even in a subsidiary way) and because the arbitrators are sovereign. Thus, the judicial precedent in relation to arbitral decisions would have merely persuasive effect, not due to undue interference of the judicial precedent in the arbitration, but with a view to a natural persuasive influence that precedents possess (MARIANI, 2018, p. 94). In the words of the author:

Thus, there may be a persuasive effect in the previous state decision, and it is natural that this is so. [...] Here the authority already mentioned that the past decisions enjoy, with greater or less force depending on some elements, as the quality of the reasons brought by the decision. And that's something you can't control. If the parties guide their conduct, if the lawyers make use to build their case and if the arbitrators may, in theory, be influenced by the state court, there is nothing that can be done to prevent this (MARIANI, 2018, p. 94).

Marcos Serra Netto Fioravanti (2017), on the other hand, takes a mixed position on the problem. For the author, the binding officers have mandatory observance by the arbitrators, as well as all the sources of the right chosen by the parties at the time of the arbitration election, so that summary entries cannot be ignored or contradicted by the arbitrators without distinction being made (FIORAVANTI, 2017, p. 82).In addition, the author argues that the decisions of the Supreme Court in concentrated control of constitutionality are mandatory observance by the arbitrators, since they have erga omnes effect and binding effectiveness. Thus, the arbitrators must apply them as a way to decide in accordance with the Brazilian legal order, as expected by the parties that elected the arbitration (FIORAVANTI, 2017, p. 91).

However, as for the other species of precedent listed in art. 927 of CPC/15, the author is emphatic in declaring that the arbitrators are not bound by such precedents. He defends the binding of arbitrators to binding summits and the decisions of the Supreme Court in concentrated control due to the integrity of the normative system and the arbitration agreement, and not, according to him, the mistaken idea of application of the Code of Civil Procedure to the arbitration process, so that the other chances of art. CPC/15 927 are not binding on arbitrators (FIORAVANTI, 2017, p. 96).

This position, therefore, assumes that among the precedents, as systematized in the current Code of Civil Procedure, there are distinct degrees of binding, and only those arising from constitutional jurisdiction are mandatory. The arguments raised by the author, in a way, refute the idea defended by the current of the inapplicability of precedents, but it lacks a deeper foun-

dation derived from the theory of law itself, which, as will be shown below, could not assume the existence of competing and incompatible regulatory systems.

4. THE IMPACT OF PRECEDENTS ON THE REGULATION OF PUBLIC SERVICES

Regulatory agencies are considered to be special municipalities in view of certain peculiarities they possess, such as decision-making autonomy, which means that they have a wide autonomy to decide administrative issues involving regulated agents, as well as the users of the service regulated by it. That is, the regulatory agencies hold revisional power of their acts in last administrative instance (CARVALHO FILHO, 2018, p. 577).

Although the decision-making autonomy of these municipalities, nothing prevents the concessionaires, permissionary or authorized to provide public services, in case of disagreement with the administrative decision, enter the Judiciary with action against these administrative acts, especially if they are against the legal system, either in contradiction with the law or with precedent. And, if such acts reach a large number of stakeholders, especially users of the service, it is entirely possible that a Repetitive Demand Resolution Incident (IRDR) will be instituted if all the authorization requirements of the installation are met.

In this regard, the great discussion revolves around art. 985, §2º, of CPC/15, which deals with the relationship between precedents and regulatory agencies. The aforementioned article stipulates that when the thesis adopted in the outcome of the IRDR judgment deals with the provision of service granted, permitted or authorised, the decision will be communicated to the regulatory body, entity or agency responsible for monitoring the effective implementation.

André Guskow Cardoso (2016, p. 12-15) added that the ratio legis would be in the sense that the communication mentioned in the aforementioned legal provision does not refer to a command, order or determination to regulatory agencies. For the author, it is, differently, a communication for such agencies to become aware of the thesis adopted within the scope of the IRDR, so that such decision would not have binding effect in relation to regulatory agencies.

Another argument contrary to the incidence of precedents in relation to regulatory agencies is the argument of the unconstitutionality of art. 985, §2º, of CPC/15, which is being discussed in ADI 5492, proposed by the State of Rio de Janeiro in 2016. Weber Luiz de Oliveira (2019, p. 163) deals with the Law of Regulatory Agencies (Federal Law nº 13,848/2019), which, in its art. 6º, provides that the amendment of normative acts of general interest of economic agents, consumers or users of the services provided must be preceded by the Regulatory Impact Analysis (AIR).Oliveira (2019, p. 164), then, affirms the impossibility of imposing, through the jurisdictional route, the theses adopted in the trial of repetitive cases to the regulatory agencies without prior RIA. In addition to this argument, the author states that the Code of Civil Procedure usurps the constitutional competence defined in art. 175, sole paragraph, section I, of the Federal Constitution, as well as in art. 174 of the Magna Carta, in order to undermine the principle of separation of powers.

This means that, according to the author, the civil procedural law would not have the power to assign the judicial decision as would be the way the regulatory agencies act, because only specific law could do it (OLIVEIRA, 2019, p. 167). However, the understanding of both authors have inconsistencies. Initially, it should be clarified that the provisions in the art. 985, §2º, of the Code of Civil Procedure does not refer to a mere communication to be made to regulatory agencies. On the contrary. The article makes the following mention: «regulatory agency competent to monitor the effective implementation» (BRASIL, 2015).This means that the regulatory agency will be communicated, but for it to effectively apply the understanding conveyed in the decision that established the thesis in IRDR. That is, it will be communicated to apply understanding to which it is bound, because it has to effectively monitor the application of the understanding adopted in the decision.

Moreover, regarding the argument of need for prior realization of RIA, it is essential to clarify that such an argument is inconsistent in systematic and thus practical terms. First, it must be said that art. 6 of Federal Law 13.848/2019 states that if there is a proposal to amend a normative act of general interest, this should be preceded by AIR. Normative act to which the device refers are all normative acts made by the regulatory agencies themselves, in their regulatory power. Extending the argument, the suggestion would be to subject judicial decisions to a judgment of convenience and opportunity, which is obviously incompatible with the rule of law. Also,With regard to the argument of separation of powers, there is a consolidated shared understanding in contemporary studies that judicial control is warranted when dealing with issues in which fundamental rights are under debate, essentially those served by the public services. This level of judicial review has become everyday, addressing issues ranging from the realization of the right to health, past the right to education and even achieved social rights. In this regard Dias (2016, p. 190), in a specific study, pointed out:

> It is worth saying that judicial control is a very effective technique of institutional arrangement, in which the Judiciary Power assumes the custody of the Constitution, being able to exercise this function in order to put it to the Executive Power and the Legislative Power. We have already demonstrated that the actions of the Cortes do not represent in itself a violation of the democratic principle, but a true way of its guarantee from the protection of citizens who for that democratic purpose compete and interact. Judicial control is closely related to a constitutional democracy. Since a society is structured in the form of the rule of law, the political line of conduct is submission to the protection of fundamental rights. The control of variant political behavior is therefore an absolutely logical consequence of that system.

Therefore, the contemporary view of control relations between state functions is in no way incompatible with the judicial action of editing precedents that must be incorporated, obligatorily, into the regulatory agenda of regulatory agencies. It is worth saying that the formulation of precedent is derived from the solution of a jurisdictional conflict that, for this reason, is in the proper area of action of the Judicial Power, however, before the fundamental nature must be reinforced by the other state functions.

It should be remembered that the IRDR has as requirements multiplicity of demands (real or potential), that there is no need for evidentiary instruction, as well as demonstration that if there is different treatment, there will be break to the isonomy and legal certainty. Therefore, if there is a matter of mass that deals with service granted, permitted or authorized, but the matter meets the requirements, the IRDR may be instituted. It also needs to be put in place so that

there is uniformity of understanding and so that the regulatory agency itself adopts a single understanding.If the regulatory agency considers that the decision that established the thesis in the IRDR is mistaken, it can appeal to the Superior Courts. However, according to the understanding of Lucas Gil Carneiro Salim, the linkage of the regulatory agencies to the precedents is essential, as it is necessary to open the dialogue between the judiciary and the regulatory agencies, in order to avoid actions and, perhaps increase the efficiency of the court. See:

> As previously demonstrated in the CNJ Report, "100 largest litigants", 24% of the 100 million processes analyzed refer to telephone companies and utilities. In these terms, it is essential to open dialogue between the judiciary and the regulatory agencies, precisely in order to avoid mass litigation, when matters can be decided within the internal administrative framework of the supervisory bodies. (SALIM, 2015, p. 11).

Thus, it is undeniable that the understanding according to which the regulatory agencies are linked to the precedents is the most correct, in view of the observance of something very expensive to the Civil Procedure Code of 2015 and to the whole legal order: the standardization of understandings.

5. THE IMPACT OF THE PRECEDENTS BEFORE THE PARAJURISDICTIONAL COURTS

Parajurisdictional bodies, in a broad sense, are administrative units separate from the Judiciary and the Legislative. For the purposes of this work, the term "parajurisdictional" is used specifically to characterize administrative bodies competent to judge - administratively - appeals.In this article, given the multiplicity of bodies with such functions, the relationship of the judicial precedents with the decision process of the Administrative Council of Fiscal Resources (CARF) will be examined, which, however, can be widely extrapolated to other administrative instances. Before properly entering the relation of precedents with CARF, it is interesting to clarify the understanding expressed by Weber Luiz de Oliveira about the application of precedents in the Public Administration.

According to Oliveira (2019, p. 232-234), only the precedents provided in art. 927 of CPC/15 are applicable to public administration. However, the author makes an unnecessary differentiation between directly and indirectly binding precedents. For the aforementioned doctrinaire, the directly binding precedents are only the binding summary and the decisions in concentrated control, since there is constitutional authorization for them to be applied in relation to the Public Administration.The indirectly binding, on the other hand, are the remaining ones, which would depend on the edition of an authorizing law, that is, it should be edited law that allows the application of the other precedents to the Public Administration. Such a position is mistaken.First of all, one should not differentiate between the precedents, as if one had greater strength than the other. Furthermore, a systematic interpretation of the precedent system should be established. The actions of concentrated control and binding summary were created, respectively, in 1999 and 2004, at which time a whole system of precedents had not yet been considered.

This idea matured over the years and other types of precedents were introduced, gradually, as shown in the second topic. With the advent of the 2015 Civil Process Code, such a system was implemented. Therefore, the systematic reading would be in the sense of interpreting, in the light of the Federal Constitution, the other precedents as also linked to the Public Administration.There are not now only two types of precedent, there are several, of equal weight of the summits and decisions of concentrated control, and they should be interpreted as binding in relation to the Public Administration. Even, the CARF, in its internal regulations, provides in art. 62 that CARF advisers may not depart from understanding treaty, international agreement, law or decree on the grounds of unconstitutionality, unless one of these normative acts substantiate tax credit subject to binding summary or decision of the Superior Court of Justice (STJ) or Supreme Court (STF) in repetitive appeals.

Such a forecast is so serious that it is supported by art. 45 of the aforementioned regiment, according to which the counselor who fails to comply with the provisions of art. 62, may lose the mandate. In addition, there is the forecast in art. 80 that the decisions made in disagreement with binding summary or decision of the STJ or STF in repetitive appeals are void. However, according to the lessons of Cassiano Menke (2018, p. 93), there are two types of normative force, a formal and a material:

> Formal normative force is the binding effect of which the precedent is endowed as a result of express legal provision. These are the situations in which normative statements establish the binding of a certain body to the precedents. An example of this formal link is in art. 62 of the Internal Rules of CARF. Note that, in the hypotheses listed by the aforementioned device, it is due to the members of CARF follow the judicial precedents. Material normative force, on the other hand, stems from the content of the decision and its prolator organ (ÁVILA, 2014b, p. 498). The binding nature of the precedent, in this case, stems from the wish to remain and the definitive nature of these decisions. This is because they have content capable of being universalized to solve similar cases. It also comes from the fact that they were delivered by supreme courts, which, according to CF/88, is responsible for giving the last word in certain matters.

According to the author, in most CARF decisions, only the formal normative force is admitted, that is, CARF understands to be bound only in the hypotheses foreseen in art. 62 of the Internal Rules of Procedure of the Administrative Council of Fiscal Resources (RICARF), so that it would not have the duty to adopt other types of precedents. Egon Bockmann Moreira (2016, p. 321) peremptorily states that it is no longer possible to make administrative decisions that are inconsistent with the case law:

> Thus, the time has passed when it could be considered of prestige to administrative decisions in disregard of jurisprudence. Such obligation of knowledge and obedience is cogent and externalized from various angles. On the one hand, there is a duty to "standardize its jurisprudence and keep it stable, upright and consistent" (art. 926). This device is of high relevance in the administrative process: in the case of administrative courts, the cogent rule of uniformization (quality of something that does not vary in form or content), stabilization (firmness, solidity, constancy and predictability) appliesintegrity (maintenance of its fullness, without aggression) and coherence (cohesion, comprehensibility and respect for consequences) of collegiate decisions (emphasis added by the author).

Moreover, the author (2016, p. 322-323) demonstrates that the duties contained in the art. 926 of CPC/15 aims to preserve the principle of legal certainty and that the Courts, including the administrative ones, must preserve their jurisprudence, since this is also a way of ensuring internal stability, in order to achieve a level of reduction of procedural costs, such as time, volume of proceedings and appeals, etc. And concludes that:

> Soon, all administrative bodies and entities equivalent to Courts - rectius: colegiados decisorios -, without exception, from the Courts of Auditors to the National Council of Justice (CNJ), passing through the Administrative Council of Economic Defense (CADE)as well as advice from taxpayers, Internal Affairs and regulatory agencies, has been assigned the procedural duty to enhance legal certainty stemming from the stability of previous decisions, which need to become uniform over time (the same form and decision-making content) (emphasis added by the author).

Therefore, in view of the principle of legal certainty, the precedents contained in Art. 927 of CPC/15 must be applied by the Public Administration, especially by the Administrative Courts. This is an extremely necessary application, so that there is a consistency of understandings between the judiciary and these courts, so that disputes can be resolved promptly in the Administrative Courts, with a view to avoiding new demands.

6. BY A SYSTEMATIC APPROACH TO LEGAL RULES DERIVED FROM PRECEDENTS.

The current stage of the Theory of Law argues for a comprehensive vision of the juridical phenomenon, as much as possible, seeking a uniformity in the recognition of norms and their application. Profoundly different approaches assume the integrative perspective when establishing criteria that select the standards that, being legal, should be considered mandatory, and therefore be applied by all bodies with authority.Although one cannot summarize all possible theoretical variables here, an illustrative exposition may be adequate to demonstrate that any conception of contemporary law would support a uniform understanding of the norms derived from precedents. It is in this sense that Dworkin, in a non-positivist view, demands that the solutions constructed by the applicators should be integral, taking into account the historical argumentative theme, under penalty of being considered illegitimate. In this sense, Dias (2019, p. 98) teaches:

> It is in this sense that Porto Macedo points out: “For Dworkin, the interpretation of law means to see law as a coherent body, integrated and articulated to an intentionality (which is not confused with the intention of legislators). For him, the description of the measure of the normativity of law presupposes and requires the incorporation of an interpretative dimension”. This explains why the correction of a response is theoretically possible within a proposal that rejects external criteria of correction and requires that conceptual definitions and their practical articulation depend on an interpretative practice conceived in such a way that the due contextualization leads to correct answers.

Therefore, as an integrated normative body, there can be no decisions that recognise rights in one area and, at the same time, deny them in another. Within the framework of Dwor-

kinian thinking, such a system cannot be called Law.In the extreme, that of the exclusive positivists, the definition of the legal system also depends on a system of recognition that gives unity to law, in this exact sense, even under a positivist approach, the coexistence of partially existing decision-making standards could not be accepted. In this sense Dias (2019, p. 148), analyzing the thought of Joseph Raz, points out:

> Raz, however, emphasizes that the key to the identification of an institutionalized system is not in the investigation of the organs that create the norms, but in those that apply them, because they indicate which norms are effectively in force. In this particular case, the aim is to refute the thesis of the normative nature of the source at the legislative level and to justify the multiplicity of recognition rules. These implementing bodies are decisive for the characterisation of a system of norms as institutional, as they ensure the unity of the system, since: a) they establish individual standards of conduct; b) they apply existing norms; c) they exercise binding determinations; that is, that should be decided regardless of the recipient's consent.

The above counterpoint made, between extremes of the current Theory of Law, does not exclude the fact that other competing theories, starting from distinct premises and own formulations, in no way admit the possibility of coexistence of cogent and non-acogent rules on the same right. Although in none of the fields of incidence previously presented there is unanimity of understanding, an approach from the Theory of Law suggests that one cannot admit a partial incidence or no incidence of precedents in the decision-making environments examined.

7. CONCLUSIONS

In view of the different positions exposed, it can be seen that the theme addressed is not peaceful. However, the most correct understanding on the main issue that pervades this article is that the precedents are mandatory not only in the jurisdictional context, but also for the Public Administration, either for parajurisdictional courts, such as CARF, be for regulatory agencies, especially in the case provided for in art. 985, §2º, of CPC/15, in addition to being binding on arbitrators.Thus, Administrative Courts, regulatory agencies and arbitrators are subject to legal precedents due to basic principles of our legal system, such as legal certainty and isonomy. However, not only does respect for such principles lead to the unspeakable conclusion that judicial precedents are binding in non-jurisdictional environments, but in particular from an analysis of different positions within the Theory of Law, which point to an integrity (Ronald Dworkin) or unity (Joseph Raz) of the Law, so that the concomitant existence of diametrically opposed positions in relation to the same right is not admitted.as far as the Public Administration is concerned, if the judicial precedents were effectively adopted and the understanding that they are binding prevailed, there would be greater legal certainty and stability between the decisions of the Judiciary and the Public Administration, without this representing an affront to the separation of powers, because the applied understanding would not be a command of the Judiciary to the Executive, but rather the application of the law in force, uniformly, in both spheres.The arbitrator, on the other hand, remains sovereign under the terms of the arbitration agreement, but he must bind himself to the judicial precedents precisely for the sake of systemic coherence, for he cannot rule contrary to the law, ignoring the precedents

that have become, over the years, the primary source of law.The regulatory agencies, on the other hand, continue to have autonomy of decision-making as municipalities under special arrangements. The binding of precedents in relation to regulatory agencies does not mean the withdrawal of this autonomy. Differently, it represents the compatibility of the administrative and normative acts of these agencies in relation to the law and the precedents, because the ultimate purpose of art. 985, § 2º, of the CPC/15 is the improvement of the provision of public services and their own regulation, in order to better guarantee the rights of users.For this association to occur in the extrajurisdictional context, it is necessary, however, that, as stated in the second topic, the system of Brazilian precedents continue going through its adaptation process, since many adjustments are still necessary.

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