SUMMARY JUDGMENT AGAINST THE CLAIM DUE THE EXTINCTIVE PRESCRIPTION AND VIOLATION OF PRIVATE AUTONOMY

IMPROCEDÊNCIA LIMINAR DO PEDIDO POR PRESCRIÇÃO E A VIOLAÇÃO DA AUTONOMIA PRIVADA

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ABSTRACT

The article examines the assumptions and consequences of the summary judgment against the claim due the verification, by the judge, of the occurrence of the extinctive prescription. To this end, examines the legal provisions of the Brazilian Civil Procedure Code of 2015, pointing out distinctions and approximations in relation to the legal provisions of the Brazilian Civil Procedure Code of 1973, focusing the meddling of the judiciary in private autonomy, which was ensured by the 1988 Brazilian Constitution. In the writings, the inconsistencies of this kind of judgment are indicated, considering not only the civil and procedural civil codifications, but also the Brazilian constitutional discourse. The formalized research, based on bibliography and documents, is exploratory and explanatory in its objective, also adopting the comparative and hypothetical-deductive methods. It elects the neoinstitutionalist theory of the process as a theoretical background.

Keywords: Summary judgment against the claim. Extinctive prescription. Private autonomy.

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RESUMO

O artigo examina os pressupostos e desdobramentos do julgamento liminar pela improcedência do pedido em razão da verificação, pelo juiz, da ocorrência da prescrição. Para tanto, além de abordar os dispositivos que tratam do tema no Código de Processo Civil brasileiro de 2015, indicando distinções e aproximações em relação às normas que dispunham sobre a temática no Código de Processo Civil de 1973, debruça-se sobre a questão da intromissão do judiciário na autonomia privada, cuja existência é assegurada pela Constituição de 1988. No escrito, apontam-se as inconsistências do referido julgamento diante não só das codificações civil e procedimental civil, como também do discurso constitucional brasileiro. A pesquisa formalizada, de base bibliográfica e documental, é, quanto ao seu objetivo, exploratória e explicativa, adotando, ainda, os métodos comparativo e hipotético-dedutivo. Elege a proposição neoinstitucionalista do processo como marco teórico.

Palavras-chave: *Improcedência liminar do pedido. Prescrição. Autonomia privada.*

1. INTRODUCTION

Em 7 de fevereiro de 2006, foi publicada a Lei nº 11.277, que buscava atribuir "racionalidade e celeridade ao serviço de prestação jurisdicional" (BRASIL, 2004). A lei que acrescentou o art. 285-A ao Código de Processo Civil de 1973 previa a possibilidade do julgamento liminar pela improcedência do pedido, que ganhou novos contornos com a edição da Lei nº 13.105, de 16 de março de 2015.

With the advent of the Code of Civil Procedure 2015, the injunction of the application is authorized, among other hypotheses, when the judge verifies the occurrence of the prescription, even before determining the citation of the defendant. It is, however, a questionable faculty, including from the perspective of private law, since, by the exercise of the option provided in art. 332, § 1º, from CPC/15, the possibility of waiver of the prescription in the pre-decision procedural space is removed and, therefore, the opportunity to fulfill the natural obligation arising from the extinction, by time, of the claim deduced in court by the plaintiff party is excluded.

Thus, in addition to all the difficulties correlated with the recognition of prescription, office, by the magistrate, the current Code of Civil Procedure ceases to consider that, with the establishment of the paradigm of the democratic rule of law in Brazil, "public/private dichotomy and the rationality of the legal system" (CASTRO, 2010, p. 223), which is why, since 1988, the Brazilian State can no longer appropriate a space that was theorized for the exercise of individual freedom.

Therefore, the hypothesis that is aimed to test, in the formalized writing, is that the preliminary dismissal of the request by statute violates the constitutional right to private autonomy, which, in democratic law, can not be removed in favor of efficiency, already from the performance of the committee of notable jurists appointed by the Federal Senate to the preparation of the Preliminary Draft of the Civil Procedure Code, it was announced as one of the scopes to be implemented by the legislation to be published[3].

3 The commission of notable jurists responsible for the production of the Preliminary Draft Code of Civil Procedure was instituted, in the Federal Senate, by President Act nº 379/2009. Throughout its performance, the assembly of experts was attended by Luiz Fux (president), Tereza Arruda Alvim Wambier (general rapporteur), Adroaldo Furtado Fabrício, Humberto

Regarding the approach to the problem of paradigmatic incompatibility of preliminary dismissal of the application, therefore, the research adopts the comparative and hypothetical-deductive methods (POPPER, 2009, 2004, 1999). Accepting the neo-institutionalist proposition of the process as a theoretical framework (LEAL, 2017, 2016a, 2016b, 2013), the research is exploratory and explanatory as to the objective and, by the techniques employed, it is bibliographic and documentary.

2. DISMISSAL OF THE APPLICATION AND RECOGNITION OF THE LIMITATION PERIOD BY JUDGE SOLIPSISTA

The injunctive dismissal of the application is standardized, in Brazil, although under a different label, since the year 2006, when Law 11.277 came into force, which disposed about the so-called trial of repetitive[4] processes. According to this law, we added art. 285a to the 1973 Code of Civil Procedure, an injunction for the dismissal of the application was authorised when the matter at issue was solely of law and, in the court hearing the proceedings, a judgment of total dismissal had already been issued in other similar cases. According to Law nº 11.277/06, in this case, the summons of the defendant could be waived and, immediately, the sentence delivered, reproducing the content of the previously issued decision.

In fact, by the legislation published in 2006, the verification of the limitation of the claim deduced by the plaintiff, at the first moment for the examination of the original petition, was not considered as an authoritative hypothesis of the preliminary dismissal of the application. In the 1973 Code of Civil Procedure, for its art. 219, § 5, the judge was obliged to pronounce, by letter, the statute of limitations, even before the defendant was summoned, but, contrary to the Code of Civil Procedure 2015, this attitude concerned the rejection of the original petition.

It is for this reason that, focusing on the 1973 Code of Civil Procedure, it is possible to state that not all the determinative hypotheses of the rejection of the original petition were related to the existence of the so-called insane procedural defects, different from what appears in the 2015 Civil Procedure Code. The normative inclusion of the limitation clause as a cause of rejection of the original application required, paradoxically[5], the pronouncement of a decision on the merits even before the citation of the defendant, in a manner opposed to what occurred when the rejection of the original application was based onwhether in the ineptitude of this petition, in the manifest illegitimacy of the party, in the absence of proce-

Theodoro Júnior, Paulo Cezar Pinheiro Carneiro, José Roberto dos Santos Bedaque, José Miguel Garcia Medina, Bruno Dantas, Jansen Fialho de Almeida, Marcus Vinicius Furtado Coelho, Elpídio Donizetti Nunes and Benedito Cerezzo Pereira Filho. (BRAZIL, 2010).

4 To access a summary of the legislative procedure preparatory to Law 11,277/06, check out, mainly, the scientific article called Critical notes on the injunctive dismissal of the application, which was produced by Vinícius Lott Thibau (2019).

5 The paradoxical character of this possibility is that, according to the explicit prediction of art. 267, I, of the CPC of 1973, the rejection of the initial petition was determinative of the extinction of the process without resolution of merit. By art. CPC 269 of 1973, however, the statute of limitations was pointed out as one of the hypotheses in which the judge should render a final sentence, that is, a resolution of merit. The confrontation of referred assistance is relevant, since the expression "of logo", present only in art. 295, IV, of the CPC of 1973, could indicate the existence of two possibilities of judgment related to the verification of the statute of limitation: no resolution of merit, if the statute of limitation had already been perceived in the first judicial review of the initial petition, or, on the contrary, with resolution of merit, if this perception had occurred in a subsequent procedural moment.

dural interest, and in the failure to carry out the amendment, that they were presented as situations that were impositive of the delivery of a terminative sentence.

The taxionomic framing of prescription as a determining hypothesis of the rejection of the initial petition has always caused concern, since prescription is a legal institute that relates to the so-called material law. The standardisation of the occurrence of the prescription as one of the situations that imposed the rejection of the original petition, however, did not mean a one-off slip by the legislator, but a deliberate attempt to conceal the possibility of a meritorious decision to close the proceedings even before the so-called procedural relationship was formed.

If this possibility were openly foreseen by the law, many could be the obstacles imposed on its approval, as shown in the Magisterium of Araken of Assisi (2015, p. 128, v. III):

The 1973 CPC proved to be advanced for its time. The original version of the second unitary procedural code already authorized the rejection of the initial application in case the judge ascertains the expiration of the limitation period or decay. It was forecast of wide range, partly camouflaged among the terminative sentence hypotheses to avoid more forceful resistances. [...]

The location of the issue of prescription and decay in the context of the rejection of the original application is formally inappropriate. The judge judges the merits. However, at the time when the 1973 CPC came into force, autonomous and prominent device would arouse sensitivity and tenacious opposition and, in any case, the legislator did not dare to bold step.

It should be noted that, precisely because linked to the so-called material law, the prescription never occupied the list of preliminary matters referred to by art. 301 of the 1973 Code of Civil Procedure. In this regard, moreover, no changes were made to the 2015 Code of Civil Procedure, which, however, took care to exclude the issue of the limitation of the determinative hypotheses of the rejection of the original petition, in order to standardise the approach to the situations that they provide, by terminative sentence, the judgment of negative admissibility of that petition.

Thus, at the present time, the rejection of the initial petition will only occur when any of the hypotheses foreseen in the art are identified. 330 of the Code of Civil Procedure. By the labeled New Brazilian[6] Code of Civil Procedure, the verification of the prescription of the claim deduced by the plaintiff at the time of the first analysis of the initial petition is authorizing the injunctive dismissal of the application (art. 332, § 1º, of the CPC), which receives criticism that, although under the previous codification they could already be formulated in relation to the rejection of the original petition by statute, they gained great repercussion with the advent of the Code of Civil Procedure 2015.

This is because, unlike what happened with the 1973 Code of Civil Procedure, which was in force during the period of democratic restriction in Brazil, the 2015 Code of Civil Procedure expressly undertook to align its rules to constitutional[7] provisions, promise to which Law

6 To access a criticism about the novelty of the Civil Procedure Code 2015, check out the scientific article entitled Proof and Jurisdictionalism in the new Brazilian CPC, authored by André Cordeiro Leal and Vinícius Lott Thibau (2017).

7 In the Explanatory Statement of the Code of Civil Procedure 2015, which, strangely, reproduces what was presented by the committee of notable jurists appointed by the Federal Senate, it states that the "the need to make clear the harmony of the ordinary law in relation to the Federal Constitution of the Republic made it possible to include in the Code, expressly, constitutional principles, in its constitutional version. On the other hand, many rules were conceived giving concretion to

13.105/15 failed, ostensibly, also by the ruling of the injunctive dismissal of the request. It's just, by the norm in art. 332, § 1º, the Code of Civil Procedure 2015 violates the right to private autonomy that is constitutionally conferred on the legal community of those legitimated to the process (art. 1º of the CB)[8], thus devaluing what Jürgen Habermas announces as "untouchable private life configuration domain" (2003, p. 137, v. II).

The verification of the statute of limitations by the judge, at the first moment dedicated to the examination of the original petition, is, however, just one of the questionable hypotheses of the possibility of the injunction for the dismissal, which, in the Code of Civil Procedure 2015, is regulated as follows:

> Art. 332. In cases which dispense with the opening procedure, the judge, regardless of the defendant's summons, shall dismiss the request contrary to:
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> I - statement of summary of the Supreme Federal Court or the Superior Court of Justice; II - judgment delivered by the Supreme Federal Court or by the Superior Court of Justice, in trial of repetitive appeals; III - understanding signed in incident of resolution of repetitive demands or assumption of competence; IV - statement of summary of court of justice on local law.
>
> § 1º. The judge may also dismiss the application if it is found, from the outset, the occurrence of decay or prescription.
>
> § 2º. The defendant shall not be summoned from the judgment under Art. 241.
>
> § 3º. Upon appeal, the judge may recant within 5 (five) days.
>
> § 4º. If there is retraction, the judge will determine the continuation of the process, with the summons of the defendant, and, if there is no retraction, determine the summons of the defendant to present contrarrazões, within 15 (fifteen) days. (BRAZIL, 2015).

Thus, by a comparative analysis of the standards drawn from the arts. 285a of the 1973 Code of Civil Procedure and 332 of the 2015 Code of Civil Procedure shall be assessed by the legislation in force, the judge is obliged to dismiss the application from the outset if it contravenes a mandatory precedent or a summing statement of the Supreme Court, the Superior Court of Justice or the Court of Justice, in which case if the statement concerns local law. Different from what the norm laid down in art. 285a of the Code of Civil Procedure 1973[9], in the Code of Civil Procedure 2015, to dismiss the request from the outset is not a faculty granted to the magistrate, except when it ascertains, from the outset, the prescription and decay.

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constitutional principles". (BRASIL, 2015, p. 26). However, "it is taken from the CPC of 2015 that, on the pretext of offering answers to the changes required by the Constitution to which it appeals, only colonizes the constitutionality itself with concepts rooted in a traditional civil procedural law, which present themselves absolutely misaligned to the Brazilian democratic project that aims to overcome the aging ideological foundations of the Liberal and Social States. Hence, when referring to the Brazilian Constitution, what announces the 2015 CPC Explanatory Statement is a reading contrary to the constitutionality that he claims to obey, since it is based on concepts that, by their origin, they are irreconcilable with a democratic project not welcoming from the historical-civilizing perspective of the conquered peoples." (LEAL; THIBAU, 2018, p. 42). The text makes reference to the archaism of the concepts of action, jurisdiction and process adopted by Law 13.105/15.

8 The expression juridical community of legitimized to the process is adopted as synonym of total people by the neoinstitutionalist theory of the process. In this sense, check out the publications of Rosemiro Pereira Leal (2017a, 2017b, 2016a, 2016b, 2011, 2010, 2009, 2008, 2006).

9 To access fourteen consistent questions concerning the normativity set forth in art. 285-A of CPC/73, check out the writings produced by Cassio Scarpinella Bueno (2011), Ronaldo Brêtas de Carvalho Dias and Carlos Henrique Soares (2011), Humberto Theodoro Júnior (2009), Elpídio Donizette Nunes (2009), Antônio da Costa Machado (2008), Rosemiro Pereira Leal (2007), Luiz Guilherme Marinoni and Sérgio Cruz Arenhart (2007), Nelson Nery Junior and Rosa Maria de Andrade Nery (2007), Paulo Roberto de Gouvêa Medina (2006) and Eduardo Cambi (2006).

In addition, by the norm of preliminary dismissal of the application in the Civil Procedure Code of 2015, other amendments are noted as to what was established by Law 11.277/06. As stated by Trícia Navarro Xavier Cabral (2016), by art. 332 of the current Code of Civil Procedure:

[...] (b) the legislative criterion of application is no longer the existence of a matter solely of law, but the causes that dispense with the investigative phase; (c) the requirement of others judged in the same judgment has been withdrawn; (d) the legal requirement became only the existence of understandings signed by hierarchically superior courts; (e) there was express provision for cases of prescription and decay; and (f) in procedural aspect, in case of no retraction, the defendant shall be subpoenaed from the final decision.

For all this, part of the specialized literature adds that the current normative forecast of the injunction of the application represents a theoretical advance. Studies by José Eduardo Arruda Alvim Netto (2017), Trícia Navarro Xavier Cabral (2016), Cassio Scarpinella Bueno (2015a, 2015b), Guilherme Rizzo Amaral (2015), Georges Abboud and José Carlos van Cleef de Almeida Santos (2015) explain the occurrence of an improvement in the thematic regulation, since, by the provisions of art. 332 of the Code of Civil Procedure of 2015, no longer support some of the criticisms that were offered, specifically, the standards provided in art. 285a of the 1973 Code of Civil Procedure.

It should be considered, therefore, that not all technical-scientific deficits related to the injunction for the dismissal of the application were removed by the rules of the Code of Civil Procedure 2015. It is not even feasible to state that, with the publication of Law 13.105/15, the preliminary dismissal of the request aligned itself with the legal democraticity. The regulation of the injunction judgment by the dismissal of the request in the Civil Procedure Code 2015 only made possible the offer of problematizations that, based on the determinations of Law 11.277/06, could not be formalized, including the solipsistic verification of the statute of limitations by the judge.

3. PRELIMINARY RULING ON THE NON DETERMINATION AND THE IMPOSSIBILITY OF WAIVER OF THE STATUTE OF LIMITATIONS IN PRE-DECISION PROCEDURAL SPACE

The Code of Civil Procedure 2015 provides for the judicial recognition of the prescription of the claim deduced by the plaintiff through various provisions. As for the procedures for settling rights, the norms set out in the arts stand out. 332, § 1, and 487, single paragraph, which, although they are agreed upon as to the possibility of recognition of the statute of limitations, ex officio, by the judge, diverge in part from the necessity that, before the occurrence of the statute of limitations is affirmed, the parties are offered the opportunity to make their views known.

It's just, despite the art. 5th, LV, the Constitution, ensure the contradictory to the parties - which is also extracted from the fundamental standards of civil procedure (arts. 7º, 9º and 10 of Law 13.105/15) -, by art. 487, sole paragraph, of the Code of Civil Procedure 2015, the

opportunity to pronounce the parties on the limitation period must be installed, provided that the hypothesis provided in art is not fulfilled. 332, § 1, Law 13.105/15.

Hence, the mood in the arts. 332, § 1, and 487, sole paragraph, final part, of the 2015 Civil Procedure Code, except for the mandatory hearing of the parties prior to the issuing of the decision acknowledging the occurrence of the statute of limitations, with explicit violation of constitutional rule; and also, of fundamental norms integral to the codification itself, since, according to the art. 9th, sole paragraph, of the current CPC, only in the hypothesis of provisional protection of urgency, of provisional protection of evidence based on items II and III of art. 311 And in proceedings brought against a party, a judgment contrary to one of the parties may be rendered without its prior hearing.

For these reasons, what is arranged in the final part of the art. 487, sole paragraph, of the Code of Civil Procedure 2015, which ratifies the provisions of art. 332, § 1º, of the same Code, has been especially criticized by Fredie Didier Júnior (2018), José Miguel Garcia Medina (2017), Ronaldo Brêtas de Carvalho Dias, Carlos Henrique Soares, Suzana Oliveira Marques Brêtas, Renato José Barbosa Dias and Yvonne Mól Brêtas (2016), Flávio Tartuce (2016), Georges Abboud and José Carlos van Cleef de Almeida Santos (2015) and Humberto Theodoro Júnior, who, when pronouncing on the judicial recognition of the prescription of the claim deducted, states:

> Despite the Code dispenses with the previous manifestation of the litigants in the hypothesis under analysis, no judge has, in practice, conditions to, by the simple reading of the initial, recognize or reject a prescription. It is not just a question of law, as is the decay, which is measured by a simple calculation of the time after the birth of the potestative right of predetermined duration. The prescription does not operate ipso iure; it necessarily involves facts verifiable outside the legal relationship, the presence or absence of which are decisive for the configuration of the extinguishing cause of the dissatisfied creditor's claim. Undoubtedly, the questions of fact and of law are deeply interwoven, so that one cannot treat the prescription as a simple question of law that the judge can, ex officio, raise and resolve preliminary, without the contradictory between the litigants. The prescription involves, above all, questions of fact, which, for dealing with events not known by the judge, inhibit premature pronouncements and unrelated to the allegations and conveniences of the holders of the conflicting interests.
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> If it is difficult for the judge to decree ex officio and liminally the objective prescription of the Civil Code (arts. 189, 205 and most of the paragraphs of art. 206), it will be impossible to do so in cases of subjective prescription, as that of art. 27 of the Consumer Protection Code and some items of art. 206 of the Civil Code. In these cases, besides the interference of impediments, interruptions and suspensions, there is the imprecision of the initial term of the prescription that relates to a personal and subjective data: the date of the "knowledge of the damage and of its authorship".
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> Other laws that authorize decree of prescription in the tax land, without provocation of the debtor party, do not, however, without conditioning the decision to a prior hearing of the Treasury creditor (Law 6.830/1980, art. 40, § 4º), caution that, with due notice, could not have been omitted by the new Code of Civil Procedure on the pretext of preliminary rejection of the application. (2015, p. 761).

The practical and theoretical weaknesses alluding to the decree of prescription without the previous reading of the author are not presented as novelties. Even before the advent of the 2015 Civil Procedure Code, Caetano Levi Lopes (2007, p. 14) already announced that the Brazilian legislation no longer considered that the prescription "is much more complex and requires a broader deepening of the test than the decay. It happens that the term of the last institute is peremptory and nothing prevents, suspends or interrupts its course. Thus, it is extremely easy for the judge to pronounce, of office, the decay", contrary to what happens with the prescription.

However, that is not all that should be problematized. By authorizing the judicial recognition of the limitation period to take place without, before, being granted the opportunity to pronounce the defendant, the Code of Civil Procedure 2015 also causes legal prejudice, because, despite the decision rendered on the basis of art. 332, § 1º, is unfavorable to the plaintiff, the dismissal of the hearing of the defendant is an obstacle to the exercise of the faculty of waiver of the prescription, which, in addition to being expressly guaranteed by the rule provided in art. 191 of the Civil Code, is ensured by the right to private autonomy that is imposed as one of the normative bases of the paradigm of the Democratic State of Law (art. 1º of the CB)[10].

It is to be noted, in this sense, that notwithstanding the express provision that the prescription reaches the claim born of the violation of a right (art. 189 of the Civil Code), nothing prevents the defendant from renouncing the prescription only so that it has the opportunity to makeit was formally resisted, in the exact terms of the Liebmanian cogitations on the work. In such a case, it would be possible to obtain a judgment on the merits against the plaintiff's request, whereby it would be agreed that the defendant never committed the act violating rights imputed to him.

Although the decision acknowledging the occurrence of the statute of limitations by a solitary act of the magistrate is prima facie detrimental only to the plaintiff, it is also detrimental to the defendant, who, in the face of the preliminary dismissal of the request, is unable to do so, at the beginning of the procedure, to choose to add, on account of very personal ethical or moral convictions, a natural obligation arising from the occurrence of the prescription of the claim deduced by the plaintiff, also finding itself prevented from sustaining and seeing right, in its favour, the past absence of infringement of rights.

As stated by Cristiano Chaves de Farias and Nelson Rosenvald (2017, p. 739-740), under private law, the prescription is available and therefore:

> [...] one cannot fail to point out the regrettable misunderstanding of the legislator in allowing it to be known ex officio by the judge. Apart from any justification based on the economy and speed of the procedure, it is true that its private and available nature do not justify its knowledge of a letter of formal notice. However, with the writing of art. 487, II, of the Code of Civil Procedure 2015 the doubts remain dispelled, not without a clear strangeness, remaining settled that, really, the magistrate can, motu proprio, know the prescription,

10 On the democratic status conferred on law by the perspective of the neo-institutionalist theory of the process, check out, above all, the productions of Rosemiro Pereira Leal (2017a, 2016a, 2016b, 2013), Roberta Maia Gresta (2014), André Del Negri (2017), Francisco Dourado Rabelo de Andrade (2017), Luís Henrique Vieira Rodrigues (2019), Vinícius Lott Thibau (2018), Bruno Rodrigues Leite (2017), João Carlos Salles de Carvalho (2018), Dário José Soares Júnior (2016) and Luís Gustavo Reis Mundim (2018), Flávia Ávila Penido (2016) and Luiz Sérgio Arcanjo dos Santos (2016).

> despite being, thereby, meddling in a clearly private relationship (patrimonial).
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> Moreover, it is worth noting that the fact that the Code of Civil Procedure allowed the magistrate to know, ex officio, the prescription did not matter in change of its private nature. So much so that it is still possible to waive the statute of limitations, for example by spontaneously paying a prescribed debt. It is a mere consequence of private autonomy itself, which derives from constitutionally guaranteed freedom itself. In this touch, including, Enunciation 295 of the Civil Law Day was edited stating that the fact that the magistrate can recognize "the office of prescription, does not remove from the debtor the possibility of waiver admitted art. 191 of the Coded Text".

What is not clarified by the speech of Enunciated No 295 of the VII Day of Civil Law of the Federal Court, however, as well as the provisions of the Code of Civil Procedure 2015, is how the waiver of the statute of limitations may be carried out by the defendant, in the event that the judge takes the occurrence of the prescription even before determining the citation, as authorized by the rules provided in the arts. 332, § 1st and 487, sole paragraph, final part, of the 2015 Civil Procedure Code.

In Law 13.105/15, as well as in the speech of Enunciation nº 295 of the VII Civil Law Day of the Federal Court, there is no procedure established to exercise the waiver of the statute of limitations in space-time preceding the time of the injunction trial by the dismissal.

4. CONCLUSION

Based on the articulated, it is concluded that if the magistrate exercises the faculty disposed in art. 332, § 1º, of the Code of Civil Procedure 2015, will be violated the right to private autonomy of the accused party. If the injunction trial is carried out for the dismissal of the request by statute, therefore, there will be an injury to the constitutional rule aligned with legal democracy, authorized by infraconstitutional legislation.

In this case, legal damage is imposed on the defendant, which, in the face of the injunction of the application, will have impeded his right to waive the statute of limitations in the procedural space established to the settlement of rights.

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