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 - (a) Paper size: A4
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- (d) Justified alignment
 - (e) Font: Times New Roman, regular. Size 12 for title, text, quotations and summary; and size 10 for footnotes (please do not use endnotes)
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 - (g) For emphasis, use italics (not bold nor underlined)
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Editorial Board

A GARANTIA DA MOTIVAÇÃO E O ARTIGO 935 DO CÓDIGO CIVIL: A INCONSTITUCIONALIDADE DA VINCULAÇÃO DO JUÍZO CÍVEL ÀS SENTENÇAS DO TRIBUNAL DO JÚRI

*REASONED DECISIONS AND THE ARTICLE 935 OF THE BRAZILIAN CIVIL CODE:
UNCONSTITUTIONALITY OF THE BINDING EFFECTS FROM
THE JURY'S DECISIONS TO THE CIVIL JUSTICE*

DANIEL DE OLIVEIRA PONTES

Mestrando em Direito Processual na Universidade
do Estado do Rio de Janeiro (UERJ). Advogado.
danielop@globo.com

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ÁREAS DO DIREITO: Processual; Civil; Penal.

RESUMO: No presente artigo, destaca-se a problemática dos julgamentos do Tribunal do Júri, em que os jurados decidem por íntima convicção e em sigilo. Diante dessas peculiaridades, pretende-se analisar se as sentenças prolatadas nesse rito especial do processo penal podem repercutir no cível, em especial pela garantia da motivação das decisões jurisdicionais.

PALAVRAS-CHAVE: Motivação – Garantias – Júri – Vinculação – Inconstitucionalidade.

ABSTRACT: The present work seeks to analyze this problem regarding Jury's decisions, because they are confidential and unjustified. Such characters could prevent the application of the article 935 to obey the right of the parts to reasoned decisions.

KEYWORDS: Decisions – Rights – Jury – Binding – Unconstitutionality.

SUMÁRIO: 1. Introdução e delimitação do tema. 2. O conteúdo da garantia da motivação em um Direito Processual constitucionalizado. 2.1. O neoconstitucionalismo e seu impacto no Direito Processual. 2.2. O princípio da motivação como garantia estrutural da prestação jurisdicional. 3. O artigo 935 do Código Civil e a influência do juízo penal no cível. 4. Os julgamentos no Tribunal do Júri: a peculiaridade do sigilo do voto e da soberania dos veredictos. 5. A inconstitucionalidade da incidência do artigo 935 do CC nos casos de Tribunal do Júri frente à garantia da motivação. 6. Conclusões. 7. Referências.

1. INTRODUÇÃO E DELIMITAÇÃO DO TEMA

Ao longo do tempo, o exercício do poder jurisdicional já comportou relações diversas com a exigência da fundamentação de seus atos: a íntima convicção, a prova tarifada e o livre convencimento motivado. No Código de Processo Civil (CPC) atual, afloram críticas de que não haveria liberdade na formação do convencimento, de modo que nos encaminharíamos para um novo momento histórico, tendo em vista que o direito processual deve servir como mecanismo de controle às decisões judiciais.¹

Seja como for, é indubitoso que, no atual estado de coisas, a motivação se tornou uma garantia estruturante do processo, que legitima o próprio exercício da jurisdição pelo agente público.

7. REFERÊNCIAS

- BARROSO, Luís Roberto. Neoconstitucionalismo e constitucionalização do direito (o triunfo tardio do direito constitucional no Brasil). *Revista de Direito Administrativo*, v. 240, p. 1-42, abr.-jun. 2005.
- CALAMANDREI, Piero. *Procedure and Democracy*. Trad. John Clarke Adams e Helen Adams. New York: New York University Press, 1956.
- CINTRA, Antonio Carlos de Araújo; GRINOVER, Ada Pellegrini; DINAMARCO, Cândido Rangel. *Teoria geral do processo*. 31. ed. São Paulo: Malheiros Editores, 2015.
- GALDINO, Flavio. A evolução das ideias de acesso à justiça. In: SARMENTO, Daniel; GALDINO, Flavio (Org.). *Direitos fundamentais: estudos em homenagem ao professor Ricardo Lobo Torres*. Rio de Janeiro: Renovar, 2006.
- MARINONI, Luiz Guilherme; ARENHART, Sergio; MITIDIERO, Daniel. *Novo curso de processo civil*. São Paulo: Ed. RT, 2015. v. 2.
- PICARDI, Nicola. *Jurisdição e processo*. Trad. Carlos Alberto Alvaro de Oliveira. Rio de Janeiro: Forense, 2008.
- STRECK, Lenio Luiz. O novo Código de Processo Civil (CPC) e as inovações hermenêuticas. *Revista de Informação Legislativa*, Brasília, ano 52, n. 206, p. 33-51, abr.-jun. 2015.
- TIMOTEO, Gabrielle. Normativos internacionais e escravidão. *Revista Hendu*, n. 4, p. 70-83, 2013. Disponível em: [www.periodicos.ufpa.br/index.php/hendu/article/view/1716/2137]. Acesso em: 27.10.2017.

1. STRECK, Lenio Luiz. O novo Código de Processo Civil (CPC) e as inovações hermenêuticas. *Revista de Informação Legislativa*, Brasília, ano 52, n. 206, p. 33-51, abr.-jun. 2015.