

SUBMISSION INSTRUCTIONS FOR AUTHORS

1. AREAS OF KNOWLEDGE

The Journal of Contemporary Private Law, ISSN 2358-1433, published quarterly by *Editora Revista dos Tribunais* in Brazil, invites academics and researchers to submit unpublished papers for its subsequent issues, in the following areas:

Theory of Private Law; History of Private Law; Roman Law; Legal Education and Private Law; Comparative Private Law; Private Law and Fundamental Rights; Private Law and new rights; Private Law and Consumer Relations; Private Law and Corporate Law; Private Law and Labor Law; Private Law and Procedural Law; Private Law and Tax Law; Private Law and Arbitration; Law of Obligations; Theory of Contracts; Torts; Property Law; Family Law; Inheritance Law; Agrarian, Agribusiness and Land Law; Authors' rights, copyright and trademarks (intellectual property law).

The mission of RDCC, provided in the document of its Editorial Content, is the development of Contemporary Private Law based on internationalization, with respect to the theoretical foundations of Private Law and in the search for the contemporary society problem solving.

- 1.1. The Journal of Contemporary Private Law will be available both in print and online: [www.revistadostribunais.com.br].
- 1.2. We also welcome legal commentaries of rulings and precedents, book reviews and legal opinions. Such texts will not be subject to peer review, as papers are, and may be published according to the desk's convenience.
- 1.3. All authors must previously disclose any conflict of interest and, by submitting the work to the Journal of Contemporary Private Law, authors imply agreement to the Brazilian legislation regarding authorship. After text acceptance, authors will then be required to transfer the copyright to Thomson Reuters *Revista dos Tribunais*, free of charge, for publication.

2. PUBLICATION GUIDELINES

- 2.1. Text format requirements:
 - (a) Paper size: A4
 - (b) Text length: between 15 and 60 pages long, with average of 2,100 characters per page – including footnotes and bibliographical references
 - (c) Margins: top and lower – 2.0 cm; left and right – 3.0 cm

- (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)
 - (f) Line spacing: 1.5.
 - (g) For emphasis, use italics (not bold nor underlined)
 - (h) Quotations in text: quoted and with no indentation.
 - (i) The paper title shall be presented, at least, in English and Portuguese (as well as the original language, if applicable).
 - (j) 5 keywords that shall be presented, at least, in English and Portuguese (as well as the original language, if applicable);
 - (k) Abstract that shall be presented at least, in English and Portuguese (as well as the original language, if applicable). The abstract's length should be approximately 750 words, and it should contain no spaces between lines.
- 2.2.** In order to facilitate our double-blind peer review process, authors are invited to send two electronic files, preferably in MS Word: one (i) containing the text the author would like to submit (with title on the first page and no other author identification) and another (ii) containing author information (the Front Page), including professional/personal e-mail, academic background, titles and position, author's institution, address and telephone for contact.
- 2.3.** The paper and author information electronic files shall be separated and nominated according to the paper's name. The paper cannot be identified by any means.
- 2.4.** Electronic files of text and front page must be sent to the Editorial Committee, via e-mail to aval.artigo@thomsonreuters.com, conveying as subject: "Revista de Direito Civil Contemporâneo".
- 2.5.** The editors appreciate the use of a consistent citation method throughout the paper.
- 2.6.** Only unpublished material will be considered by the Editorial Committee, which might write back to the authors with suggestions, should such need arise, or proceed to desk rejection before forwarding texts to double-blind peer review in case the submitted works do not fit the basic criteria for publication in the Journal. Texts may be submitted in Portuguese, English, French, German, Spanish and Italian. The use of any means of artificial intelligence systems and automated translators on the submitted works is strongly discouraged and will lead to rejection.
- 2.6.1. The double blind review will analyze the abstract, the theories, the legislative references, the consistency, the correct use of language and the conclusions. If there is disagreement between reviewers, the Editorial Board will resolve the question.
- 2.7.** In order to publish in the Journal, authors shall accept the conditions set forth in the electronic form "Assignment of Author's Rights for the Unpublished Work" (*Cessão de Direitos Autorais de Colaboração Autoral Inédita*) and a liability term (*Termo de Responsabilidade*), which will be sent to the author's e-mail after the submission has been accepted.
- 2.8.** Published authors will be given a print copy of the issue in which their work is published in exchange for the copyright transfer.

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

Data de recebimento: 01.11.2017

Data de aprovação: 12.11.2017 e 16.11.2017

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. 442, 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.