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AN ANALYSIS OF THE RATIO DECIDENDI IN BRAZILIAN LAW: THE ROLE OF ARGUMENTATION IN THE SYSTEM OF JUDICIAL PRECEDENTS

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ABSTRACT

This article analyzes the construction and application of the ratio decidendi in Brazilian law, focusing on its role in the formation of precedents and in well-structured legal argumentation. Epistemic (factual) rationality is differentiated from normative (legal and axiological) rationality in legal reasoning, highlighting its importance in sound judgments. The text explores how the weighing of fundamental rights and the principle of proportionality instrumentalize the creation of ad hoc weighting norms, which, when reiterated, become precedents. Methods for identifying and applying precedents in the national scenario are also examined, with emphasis on the provisions of the CPC/2015 (articles 926 and 927). In this sense, it was emphasized that the success of a decision as a precedent depends on the clear identification of its determining basis (ratio decidendi). The article contributes in practice, guiding the various procedural actors in the formation and use of precedents, and theoretically, reinforcing the importance of a rigorous, dialogical legal argumentation committed to the integrity of the legal system. It seeks to contribute to a more structured debate on the future of Brazilian law, reconciling legal certainty, practical rationality and sensitivity to new social demands.

Keywords: Ratio Decidendi. Rationality. Weighting. Previous.

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INTRODUCTION

The consolidation of an effective system of judicial precedents has been occupying a prominent place in the Brazilian legal scenario, especially after the innovations introduced by the Code of Civil Procedure (CPC) of 2015. In this context, the understanding of the process of construction and application of the *ratio decidendi* – understood as the binding core of a judicial decision – emerges as a central challenge for contemporary legal theory and practice. Far from being a mere formality, the correct extraction of the *ratio decidendi* is essential to ensure coherence in the legal system, predictability of decisions and legitimacy of judgments, especially in a society whose complexity and plurality of demands do not stop growing.

The main objective of this study is to clarify how the production and incorporation of the *ratio decidendi* in the Brazilian judicial process takes place, with emphasis on its importance for the formation of precedents and for the development of a well-structured and dialogical legal argumentation. To this end, it is based on the notion that legal reasoning is not reduced to a merely mechanical application of norms. It is necessary to articulate different dimensions – especially the epistemic (factual and evidential) and normative (hermeneutic and axiological) dimensions – as proposed in theoretical approaches that value, on the one hand, constitutional interpretation and the weighing of principles, and on the other, objectivity and rigor in the examination of facts.

The analysis that is developed throughout this work begins with the differentiation of epistemic and normative rationalities, demonstrating the relevance of each one for the formation of solid judgments, and then the role of legal reasoning as a hermeneutic and dialogical process is highlighted, that is, as an argumentative path that transcends the mere subsumption of facts to norms. In an order such as the Brazilian one, marked by normative overlaps and increasingly complex practical challenges, such a hermeneutic perspective sheds light on the decisive role of the Courts in the resolution of conflicts that require more than the application of traditional criteria for resolving antinomies.

In the second part, the text moves on to demonstrate how the weighing of fundamental rights and the principle of proportionality provide legal reasoning with instruments capable of creating the so-called "*ad hoc*" weighting norms. In this construction, the incorporation of constitutional values and the application of a weighting methodology are crucial to simultaneously confer legitimacy to the Judiciary's power of conformation and allow a flexible and responsive action to social needs. From there, a

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"network" of weighting rules is formed that can extrapolate the concrete case, projecting broader effects and becoming precedents of general application.

Finally, the study focuses on the *ratio decidendi* itself. This is a time when methods of identifying and applying precedents are examined, especially the mechanisms provided for in the CPC/2015 (especially in its articles 926 and 927) to provide security and stability to judicial decisions. It seeks to demonstrate that the success of a decision as a precedent – whether it is endowed with binding force or just persuasive – depends on the clarity with which its determining foundation is isolated. Only a *properly explained ratio decidendi* allows legal operators to replicate or distinguish, in a justified manner, a certain paradigmatic decision. Statement No. 11 of ENFAM: "The precedents referred to in items V and VI of paragraph 1 of article 489 of the CPC/2015 are only those mentioned in article 927 and item IV of article 332". (ENFAM, 2015, p. 1)

Thus, the article proves to be significant not only for its practical contributions – to those who operate in the Law in the formation and correct use of precedents – but also for reinforcing, at a theoretical level, the importance of a rigorous, dialogical legal argumentation committed to the integrity of the legal system. In the end, it is expected to contribute to a more structured debate about the direction of Brazilian Law, signaling paths that combine legal certainty, practical rationality and sensitivity to new social demands.

LEGAL REASONING: STRUCTURE, FORMALITY AND PRACTICAL FUNCTION

Legal reasoning is presented as a specialized and systematized modality of thought, with its own methodological structure, aimed at resolving conflicts based on legal, doctrinal, jurisprudential and principled foundations. While everyday practical reasoning usually shows a certain flexibility or even informality in weighing consequences, legal reasoning, according to Jonathan Dancy, operates within more rigorous and pre-established normative parameters (2018, p. 59).

This distinction between general practical reasoning and legal reasoning is manifested above all in the existence of formal guidelines – norms, precedents, dogmatics – and a methodology aimed at the objective and reasoned application of these references. Robert Alexy, in this sense, recalls that legal discourse is not identical to general practical discourse, but represents "a special case of general practical discourse", submitting to specific "restrictive conditions" (ALEXY, 2015, p. 548). However, even though the legal discourse is more restricted, it is no less complex: the requirements of reasoning,

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coherence and adequacy impose on the legal operator a robust set of argumentative procedures.

A relevant theoretical framework to understand this complexity is the three-dimensional theory of Law, developed by Miguel Reale, which articulates facts, values and norms in an inseparable way. This three-dimensional structure is accomplished, in methodological terms, through the integration between two complementary rationalities: the epistemic and the normative. While epistemic rationality is concerned with the analysis and verification of concrete facts (relevant to the case) and the identification of the underlying social or legal values, normative rationality focuses on the interpretation and application of norms, promoting the necessary balancing between legal principles and values. Each of these dimensions plays an essential role in the construction of a robust and reasoned judgment.

The great virtue of this articulation is to enable what can be called an "adequate qualification" of the facts according to the current legal system. It is not enough to recognize which facts occurred, it is necessary to frame them legally in the light of the applicable rules, constitutional values and consolidated jurisprudence. In this process, the mere mechanical application of rules hardly meets the practical needs of an increasingly complex Democratic State of Law, which deals with intense social, economic and moral conflicts.

> "Non-legal certainty is something that stems purely and simply from the method. If, as seen above, rationality in legal discourse is, to a large extent, a possibility of intersubjective dialogue, legal certainty is also a result of this dialogue. But for there to be dialogue, a two-way discourse is necessary. Not only does the legal community receive the decisions of the Supreme Court (or other courts), but it also has the duty to react to them, to demand coherence and consistency when it understands the question of the courts, I am not deciding according to their precedents" (Silva, 2010, p. 149-150)

Finally, it is important to remember that judicial decisions, by relying on consistent legal reasoning, serve to resolve specific conflicts, but also to contribute to the evolution of the legal system as a whole. Each decision may form precedents – especially if adopted in higher courts and within the formal requirements provided for by law. In this way, legal reasoning not only solves the concrete case, but leaves a legacy of interpretation, serving as a guide for future similar controversies and promoting the integrity of the legal system.

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EPISTEMIC AND NORMATIVE RATIONALITY

The proper understanding of legal reasoning necessarily involves the distinction between the epistemic (factual) dimension and the normative dimension (evaluative and hermeneutic). As will be seen, these two sides are inseparable in the formation of any judicial decision, as they deal with complementary and crucial aspects for the grounds of sentences.

Epistemic rationality refers to the determination of the relevant facts for the case, the investigation of the available evidence, and the analysis of causal links that allow the judge to decide based on concrete elements. In this sense, the legal operator is required to have knowledge of the rules of evidence, investigative skills (even if exercised to a degree different from that of the police investigation or technical expertise), and critical capacity to evaluate the credibility of the parties and witnesses.

For example, epistemic rationality is manifested when determining whether there was fault in a traffic accident, whether or not a medical conduct caused a certain harm to the patient, or even whether a document presented is authentic.

Normative rationality, on the other hand, refers to the application of legal norms, the identification of the principles and values underlying the legal system, and the weighting of these elements in cases of conflict or legislative gap. It is in this domain that the hermeneutic activity itself is carried out, interpreting the normative text according to traditional methods (grammatical, historical, systematic, teleological) and broader constitutional principles (dignity of the human person, proportionality, reasonableness, etc.). It is also in this field that apparent conflicts of norms are resolved, fundamental rights in conflict are confronted, and precedence between legal values is established.

As Neil MacCormick points out, a correct judicial decision must simultaneously meet factual correctness (coherence with established facts) and normative adequacy (coherence with applicable norms), because the best possible interpretation of a norm is useless if it is supported by erroneous factual premises, and vice versa (2005, p. 186). This double commitment gives the decision its solidity and legitimacy. In summary, epistemic rationality ensures that the matter of fact is properly understood, while normative rationality ensures that the Law is correctly applied.

When this approach is transposed to the field of precedents, it is clear that the *ratio decidendi* of a case is often born exactly from the intersection between the factual (epistemic) analysis and the normative construction carried out by a Court. Understanding

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to what extent the facts were essential to the judge's conclusion is essential to delimit the "essential core" of a decision and, consequently, to know whether or not the subsequent case is close to that precedent. As will be seen later, the technique of *distinguishing* or *overruling* requires this refined perception of the facts – and not only of the legal rule applied.

The relevance of this distinction becomes even more evident when considering the constitutional duty to state reasons for judicial decisions (art. 93, IX, FC/88). It is imperative that the judge explains, in writing, both the legal grounds and the analysis of the relevant facts and evidence that support his conclusion. The guarantee of reasoning dialogues, therefore, with the two faces of rationality outlined here, signaling the importance of a transparent and reasoned decision before the legal community and society in general.

LEGAL REASONING AS A HERMENEUTIC AND DIALOGICAL PROCESS

Contemporary legal reasoning transcends the mere mechanical or subsumptive application of norms, configuring itself as a complex process that integrates interpretation, dialogue and argumentation. This evolution accompanies the metamorphosis of Law, which, historically, moves from the conception of natural law, through classical normative positivism and arrives at interpretative and principled theories, adapting to the demands of a plural and technologically dynamic society.

In this scenario, legal reasoning cannot be linear or merely deductive, but must include a hermeneutic and dialogical dimension, in which the parties involved present arguments, evidence and reasons, which are later analyzed, confronted and reconstructed until a decision is formed. As Norberto Bobbio points out, "legal argumentation does not belong to the field of demonstrative logic, but to that of argumentative logic or rhetoric" (2004, p. 81), showing that legal arguments are always inserted in a context of debate, and can be questioned, refuted or corroborated.

This understanding is in line with what Virgílio Afonso da Silva explains, when he points out that "rationality in legal discourse is, to a large extent, the possibility of intersubjective dialogue, and legal certainty is also a result of this dialogue" (2010, p. 150). In this way, the legal discourse gains democratic contours, as the adversarial and broad defense work as guarantees that foster the discussion of factual and legal issues, contributing to a more robust and transparent judgment.

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Friedrich Müller's structuring methodology, for example, reinforces this conception. By distinguishing *normative text* and *legal norm*, Müller points out that the norm results from the conjugation between the normative program (the interpretative possibilities of the text) and the normative scope (the elements of social reality that interact with that text). In the words of Barroso (2020, p. 275), "the legal norm results from the combination of the normative program with the normative scope". This view goes beyond the merely literal or exegetical approach to interpretation, emphasizing the need for a dialogical process that incorporates the social reality in its surroundings.

Robert Alexy, by characterizing legal discourse as a special case of general practical discourse, recognizes the existence of specific conditions – linked to law, precedents and dogmatics – but also emphasizes that such conditions do not determine, by themselves, a single possible solution. Thus, "a field is entered in which deductions from pre-existing normative material are no longer sufficient, in which independent valuations are necessary" (Alexy, 2015, p. 182-183), especially when fundamental rights and constitutional principles are at stake.

This reality gains special relevance in contexts of legislative gaps or overlapping norms, when the Judiciary inevitably needs to assume a creative role in selecting applicable principles, deciding axiological priorities and, frequently, weighing collisions of rights. As Chaim Perelman observes, legal knowledge does not seek an "absolute truth", but intends to identify "the means of sustaining a given decision as being more just, equitable, reasonable, opportune or in accordance with the law than many other equally appropriate decisions" (1996, p. XVI). It is, therefore, an argumentative logic that privileges reasonableness to the detriment of an unattainable absolute certainty.

The so-called New Hermeneutics, which emerged especially in the context of constitutional states, further intensifies the relevance of argumentation, as it reintroduces values, principles and purposes into the interpretative process, breaking with the dogma that the legal text would be self-explanatory. In this way, legal argumentation becomes more open to axiological factors, impelling the judge to justify his choices in the light of the Constitution and the concrete demands of society.

In short, the hermeneutic and dialogical dimension of legal reasoning makes room for a richer, more reasoned and legitimate decision-making process. The refusal of the mechanical application of the rules, added to the attention to the particularities of the

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concrete case, result in decisions that, although not immune to criticism, tend to reflect a more refined balance between legality, justice and effectiveness.

NORMATIVE COMPLEXITY AND THE NEED FOR CONSIDERATION

The Brazilian Courts, especially the Superior Courts, have been faced with scenarios of great legal complexity, characterized by the presence of normative conflicts that go beyond the simple confrontation between infra-constitutional norms. This complexity stems both from the vast existing legislative arsenal (the result of a tripartite federalism and hyper-legislation) and from the intense judicialization of social, political, and economic issues, many of which involve fundamental rights and constitutional principles of high normative density.

Traditionally, Brazilian jurisprudence has used classical criteria to resolve legal antinomies, such as the principles lex superior, lex posterior, and lex specialis. Although such methods are satisfactory in many contexts, in conflicts that require a more accurate value judgment – especially in the constitutional sphere – these criteria are insufficient. This is the case, for example, of collision between fundamental rights, such as freedom of expression and the right to privacy, among other situations that require a finer and more argumentative consideration.

In this sense, the Brazilian legal system incorporated the weighting techniques, widely developed in German doctrine and often associated with the practice of the German Federal Constitutional Court (*Bundesverfassungsgericht*). The work "Theory of Fundamental Rights", by Robert Alexy, systematizes this procedure, proposing a methodology for weighing principles that often clash in concrete application.

The weighting was remarkably adapted to the structure of Brazilian Constitutional Law, which, because it has an extensive list of rights and principles, demands a methodology to identify, in each case, which right or principle should prevail, and to what extent (although the others are not totally disregarded). This role of the Judiciary in the examination of constitutional collisions reflects, therefore, an institutional design in which, through argumentation and reasoning, judges legitimize their choices.

JUDICIAL DISCRETION IN THE WEIGHTING

Weighting, in its essence, involves a degree of discretion on the part of the judge, insofar as it requires the attribution of "weights", in the axiological sense, to conflicting

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principles or values. However, discretion here is not synonymous with arbitrariness, since in a Democratic State of Law, the exercise of this power of conformation by the Judiciary must observe constitutional limits, the coherence of the system and the duty to justify decisions.

The legitimacy of the Judiciary to exercise this function contrasts with the political legitimacy of the Legislative Branch, conquered by popular vote. If the Legislature legitimizes itself by the will of the electorate, the Judiciary does so through an "argumentative rationality", as Martim Shapiro (2002, p. 149–183) explains. In this way, the "judicial decision is in conformity not only with the rules of positive law, but also with the general rules of practical reasoning", adds Alexy (1994, p. 234)

Beatty, when dealing with the subject, warns that judges do not have the legitimacy to decide based on "their own prejudices and personal points of view", and must submit their choices to a constitutional argumentation structure that, due to its coherence, guarantees the conformity of these decisions to the legal system (2004, p. 5). Such a requirement highlights the importance of presenting a clear, consistent and principled reasoning, when "weighing" rights and interests.

For the foregoing, decisional discretion, in view of its practical importance, especially in a legal system such as the Brazilian one, which sustains the prohibition of 'non liquet' and which constitutionalized the principle of the inalienability of judicial control, cannot be seen as a failure of the legal system, but as a true 'technical necessity'.

In this vein, judicial discretion, understood as the choice between several legally possible solutions, is an intrinsic characteristic of the judge's role in the face of principled conflicts. As Hart (1961, p. 273), Joseph Raz (1975, p. 843) and Matthias Klatt (p. 506-529) point out, discretion in the application of the law is not an unrestricted power, but limited to a "space of conformation" in which solutions are acceptable as long as they respect constitutional and legal boundaries, as well as are duly motivated. This balance between freedom to decide and duty to state reasons is what preserves legal certainty and legitimizes judicial action.

BALANCING AND THE PRINCIPLE OF PROPORTIONALITY

When talking about weighting, one cannot ignore the principle of proportionality, which acts as a methodological instrument for controlling decisions that imply restrictions on fundamental rights. This principle acts as the most sophisticated means to resolve the

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complex and intricate collision involving competing fundamental rights (Klatt and Meister, 2024, p. 243).

This principle was initially applied by the German Federal Constitutional Court and later received by the Federal Supreme Court of Brazil (STF) and by other major constitutional courts and even supranational courts (the Court of Justice of the European Union and the European Court of Human Rights stand out), being a three-level control structure, according to the criteria of adequacy or conformity (the intervention measure must be appropriate, in the sense of technically suitable, to promote the intended ends), necessity or enforceability (the measure must be, among those available, the least restrictive possible) and the so-called proportionality in the strict sense, where the balancing itself is carried out, that is, the verification of whether the measure, although adequate and demandable, is really proportional and preserves a relationship of "fair measure" between the means used and the desired end" (Sarlet, Marinoni and Mitidiero, 2022, p. 342).

Thus, it is possible to say that weighting and proportionality go together. The first provides the process of weighing principles and values, while the second provides objective guidelines to verify whether or not the solution found exceeds the limits of reasonableness, ensuring that there is no disproportionate restriction on fundamental rights and guarantees.

In this sense, what was highlighted in the vote rendered by Justice Gilmar Mendes, in the Regimental Appeal in the Suspension of Injunction No. 47, judged on March 17, 2010, gains relevance

> "As I have analyzed in doctrinal studies, fundamental rights do not only contain a prohibition of intervention (Eingriffsverbote), but also express a postulate of protection (Schutzgebote). Thus, to use an expression of Canaris, there would be not only a prohibition of excess (Übermassverbot), but also a prohibition of insufficient protection (Untermassverbot) (Claus-Wilhelm Canaris, Grundrechtswirkungen um Verhältnismässigkeitsprinzip in der richterlichen Anwendung und Fortbildung des Privatsrechts, Jus, 1989, p. 161.)." (STF, SL-AgR 47, 2010, p. 8)

In this sense, proportionality acts as a guide to balance possible state faults and excesses, ensuring that unreasonable sacrifices are not imposed on one right, but also that the protection of another is not neglected.

The conjunction between weighting and proportionality ensures, therefore, that the judge's discretion is exercised in conditions of rationality and justification, in line with

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constitutional values and the needs of social life. This is the synthesis of Alexy's speech, when he suggests that judges should not only observe the rules of positive law, but also ensure that their decisions are consistent with the general rules of practical reasoning, notably reasonableness, coherence and proportionality.

AD HOC WEIGHTING NORMS AND THE FORMATION OF A NETWORK OF WEIGHTING RULES

When the traditional methods of solving antinomies (hierarchical, chronological and specialty) are unable to resolve a normative conflict, the judge, under the inspiration of the dialogical and hermeneutic process, creates the so-called 'ad hoc' weighting norms for that specific case.

This process, according to Kelsen's perspective, reveals that the Judiciary not only applies the law, but to a certain extent creates it, even if individually and focused on the concrete case. Hans Kelsen (1998, p. 170) recalled that "the court is given the competence to create only an individual rule, valid only for the case before it. But this individual norm is created by the court in application of a general norm considered by it as desirable, as 'just', which the positive legislator has failed to establish".

It is in this context that the expression "ad hoc weighting norm" flourishes, which designates a singular product of judicial activity. It is a rule that emerges from the weighing and that, at first, is applicable exclusively to the specific case for which it was elaborated. However, as some scholars point out, this rule may gradually acquire a broader scope, especially if reiterated by subsequent decisions in similar cases.

It is from this reiteration or even evocation in other decisions that the phenomenon of the formation of a "network of interpretative decisions" is born, composed of norms of precedents that are connected and consolidated. This network, instead of being static, presents itself as a flexible structure, which can expand or adjust to new contexts without losing fundamental coherence.

In concrete terms, imagine a Superior Court that decides a case involving a conflict between freedom of the press and the privacy of a public person. If this decision was made based on a highly thorough weighing process, in which an "ad hoc" rule was established that defines criteria to assess whether there is "public interest" in a given report, this rule can be applied later in analogous cases. Each time the Court returns to the subject, those criteria will acquire greater consistency and clarity, forming a "network of weighting rules".

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The consolidation of these weighting norms in the system allows the expansion of their effectiveness beyond the concrete case, providing greater predictability to the parties and greater coherence to the system. It is, therefore, a feedback dynamic: each case judged contributes to the improvement of the network, which, in turn, guides future judgments. In this way, the objective is fulfilled of, on the one hand, giving stability to the Law and, on the other, allowing its adaptation to changing realities.

JUDICIAL PRECEDENTS AND THEIR CORRELATION WITH THE WEIGHTING NORMS

The application and consolidation of judicial precedents in Brazilian law are inextricably linked to the idea that many decisions, especially those involving fundamental rights, are the result of a balancing process that generates "ad hoc" weighting norms. These cases, when repeated, become a source of jurisprudential guidance.

Although the Brazilian system has civil law traditions, it is undeniable that the strength of precedents has undergone a considerable increase with the CPC/2015, which instituted, among other innovations, the duty of observance, by magistrates, of the understandings of the Superior Courts in certain cases, as well as the need for "stability, integrity and coherence" of jurisprudence (article 926 of the CPC).

When a Court resolves a particularly complex controversy, weighing constitutional and legal norms, it is natural that this judgment, if it has been produced in accordance with procedural rules (for example, mechanisms of repetitive appeal, general repercussion or incident of assumption of jurisdiction), acquires the force of precedent. Thus, the "ad hoc" weighting norm that was born to resolve that specific collision gains potential projection in subsequent cases with an identical legal background.

In this vein, one begins to question how to recognize the existence and scope of a precedent, which, in Brazilian Law, involves defining the *ratio decidendi* and distinguishing it from the obiter dicta. This is the point at which the method of identifying the decisive reasoning becomes crucial. The *ratio decidendi* is not to be confused with the judge's lateral comments; rather, it is the core that explains why the Court decided in that way, constituting the "proposition of law" effectively applied to the controversy.

THE RATIO DECIDENDI IN BRAZILIAN LAW

The effectiveness of the system of precedents in Brazil depends, to a large extent, on the correct identification of the *ratio decidendi*. Without this precise delimitation, there is

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a risk of invoking supposedly consolidated understandings that, in fact, were not decisive for the outcome of the case.

In the words of the CPC/2015, especially in its arts. 10, 489 and 927, it is possible to infer a methodology aimed at extracting the legal thesis that grounded the result of the trial. This thesis, if approved by the competent collegiate, will guide the judges in the lower courts. However, there are cases in which the wording of the judgment is not entirely clear as to which part of the reasoning is the decisive ground. In these cases, it is up to the legal operator to make an interpretative effort to isolate the essential core of the decision.

> "This SUPREME COURT, in the judgment of RE 593.849-RG, Rel. Min. EDSON FACHIN, DJe of 4/5/2017, submitted to the rite of general repercussion (Topic 201), established a thesis in the sense that: The refund of the difference in the Tax on the Circulation of Goods and Services - ICMS overpaid in the forward tax substitution regime is due if the effective calculation basis of the transaction is lower than the presumed one." (STF, RE 1442960 AgR, 2023, p. 1)

In this example, the Federal Supreme Court expressed, in its summary, the core of the decision, facilitating the interpreter's hermeneutic work. In other hypotheses, however, the work of extracting the *ratio decidendi* can be much more complex. When the Court does not explicitly establish a thesis, it is up to the applicator to verify which basis was essential to the result. It is also important to distinguish situations in which multiple independent grounds could each justify the outcome. In these cases, all of them are considered part of the *ratio decidendi*, since each alone would support the final conclusion.

Another peculiarity of the Brazilian system is that, in addition to the merits, preliminary or preliminary questions can also generate precedents, if they are the subject of a sufficiently reasoned and discussed decision. Not infrequently, the Court decides, for example, on the prescription or decay of a right, establishing there a thesis that becomes a binding precedent for future analogous controversies.

> "Within the reasoning are present the determining reasons for the decision. By analysing the reasoning, it is possible to isolate the decisive reasons or the *ratio decidendi*. A ground or reason, although not necessary, may be sufficient to reach the decision. The sufficient reason, however, becomes decisive when, individualized in the reasoning, it is shown as a premise without which the specific decision would not be reached. A decisive reason, therefore, is the reason that, considered in the reasoning, is essential to the decision that was taken. This reason, as indispensable, is essential, or rather, it is decisive in the decision. It constitutes the *ratio decidendi*." (MARINONI, 2011, p. 293)

Thus, the *ratio decidendi* is not limited to the final result, but includes the necessary and indispensable argumentation that supported the decision. This requires the applicator

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of the Law to carefully read the entire judgment, analyzing how the Court constructed the reasoning that led to its conclusion, what is the role of each argument, and which of them are just incidental or illustrative comments (*obiter dicta*).

THE ARGUMENTATIVE PROCESS FOR THE PRODUCTION OF THE *RATIO DECIDENDI*

The formation of the *ratio decidendi* is, above all, an argumentative and dialogical process. It is not born ready-made, but results from the confrontation between the positions of the parties, the issues raised, the interpretation of the rapporteur and the debates in the collegiate. In this sense, the adversarial and the broad defense are vital elements for a *solid ratio decidendi*, since the judicial debate obliges the Court to consider different points of view and to refine its own understanding of the facts and the applicable law.

Initially, the Court receives the facts and theses of the parties, inserted in a factual and evidential context that makes up the epistemic rationality. Next, the central legal problem to be solved is identified, which involves normative rationality – what rules and principles are at stake, what are the possible conflicts of norms or principles, and what is the best way to interpret them in the light of constitutional values. Then, we move on to the analysis of the arguments presented by the litigants, confronting them with the existing jurisprudence, the specialized doctrine and the applicable legislation.

During this process, the judge (or the Collegiate) builds a **justification** that establishes which rules are applicable and in what way, as well as the reasons for choosing one solution over others. What characterizes the *ratio decidendi* is precisely the set of reasons without which the final decision would not be the same. There may also be subsidiary grounds, that is, arguments that reinforce but do not determine the result. These, strictly speaking, are not part of the *ratio decidendi*, although they often appear in the reasoning and may exert some persuasive influence.

> "For the foregoing, the incorporation of the *ratio decidendi* may also involve a process of adaptation and development of the legal rule (overturning). The judge may consider the *ratio decidendi* of the precedent as a starting point, adapting or developing it to meet the specificities of the new case." (STJ, REsp 1.656.322, 2019)

This excerpt summarizes in an exemplary way how the *ratio decidendi* can be developed in a dialogical way over time. Each concrete case, when dialoguing with the previous precedent, may require a complement or refinement of the previous reasoning, as

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long as it remains faithful to the central foundation that legitimized the precedent. The limits for this adaptation lie in the duty of coherence, reasoning and respect for constitutional guidelines.

APPLICATION OF THE RATIO DECIDENDI

After identifying and isolating the *ratio decidendi*, the task of applying it in future litigation arises. This process is also not automatic. The subsequent judge needs to assess whether the current case is analogous or, at least, sufficiently similar to the one on which the precedent was based. If so, the "following" is justified, that is, the acceptance of the precedent. If there are relevant factual or normative distinctions, "*distinguishing" can be made* (art. 1.037, §§9 to 13), showing why the rule of precedent does not apply to the present case. Finally, it is possible that a new context, or an evolution in social values, will make the precedent obsolete, recommending its "*overruling*" (art. 927, §§2 to 4 and 986 of the CPC), something that requires, however, parsimony and very solid justification in a system that values stability.

The CPC/2015 affirmed these techniques and gave greater emphasis to the duty of reasoning of the judge who intends to diverge from precedents, obliging him to demonstrate the existence of a distinction in the specific case or the overcoming of the previous understanding. This innovation seeks to ensure the coherence and predictability of decisions, essential pillars of the Democratic Rule of Law.

However, it should be borne in mind that, even in precedents that seem rigorous and of general application, there may always be some room for interpretative creativity, as long as it is motivated by objective differences in the facts or in the legal framework. This movement is relevant to avoid the fossilization of the Law, because the legal system, while valuing security, also needs to remain sensitive to social changes and constitutional mutations.

INTEGRATION OF LEGAL REASONING, WEIGHTING AND PRECEDENTS

The previous chapters outlined the structural elements of legal reasoning – epistemic and normative rationality, the hermeneutic and dialogical role of this process, the need to weigh in conflicts of fundamental rights, and the importance of extracting the *ratio decidendi* for the effectiveness of the system of precedents. This chapter integrates these

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dimensions, demonstrating how they are related in the daily practice of the courts and in the activity of legal operators.

The legitimacy of precedents resides, to a large extent, in the quality of the argumentative process that originated them. When a higher court issues a well-reasoned decision, fully demonstrating how it analyzed the facts (epistemic dimension) and how it applied the norms and principles to the case (normative dimension), the decision acquires respect and influence in the legal community. It is this process that gives the precedent its persuasive or binding force, as the case may be. The absence of clarity in any of these steps weakens the precedent, making it susceptible to criticism and making it difficult to apply in future cases.

The use of balancing techniques to resolve complex conflicts – especially conflicts between fundamental rights – further reinforces the consistency and legitimacy of the decision. The judge who applies the proportionality test and explains the weights and values in dispute enables greater social and legal control over the decision, avoiding arbitrariness. A transparent, detailed and grounded in constitutional principles process strengthens the precedent, giving it greater acceptance by the lower courts and by legal operators in general. The absence of this transparency generates decisions that are more vulnerable to criticism and review.

The correct identification of the *ratio decidendi* is crucial for the effective application of precedents. Clarity in the wording of judicial decisions, explaining the essential basis of the decision, facilitates its understanding and application by other judges and legal operators. The lack of this clarity leads to divergent interpretations and an inconsistent application of precedent, undermining the predictability of the system. The use of methods to identify the *ratio decidendi*, as well as the application of the provisions of the CPC/2015 (articles 926 and 927), become essential tools to ensure the coherence and predictability of the system. The ability to distinguish similar cases, but with relevant differences, as well as the possibility of overruling obsolete precedents, guarantee the necessary flexibility to adapt the legal system to social and constitutional changes.

In summary, the construction and application of judicial precedents require the harmonious integration of these dimensions. The precise analysis of the facts (epistemic), the weighing of the principles and the correct application of the norms (normative), in a hermeneutic and dialogical process, are essential to create consistent and legitimate precedents that guarantee legal certainty and contribute to the orderly evolution of the law.

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The interaction between these dimensions is what gives form and substance to the daily practice of the courts and to the activity of legal operators. The absence of this interaction results in inconsistent precedents, which hinder predictability and legal certainty, hindering the proper application of the law.

CONCLUSION

From the theoretical and practical framework presented, we can affirm that the Brazilian system of precedents not only demands a solid legal argumentation but also values it. Magistrates, lawyers and other legal professionals need to understand the stages of formation of legal reasoning, know how to identify the *ratio decidendi*, master the weighting techniques and correctly apply consolidated precedents. Only in this way will due respect be guaranteed for the principles of legal certainty, isonomy and integrity of the legal system.

In addition, this study contributes to clarify certain misconceptions, especially that of confusing precedent with any passage of a judgment or with the simple summary of a decision. By highlighting the centrality of the *ratio decidendi*, it seeks to avoid the superficial instrumentalization of judgments and, at the same time, to offer better parameters for the courts to formulate their positions in a clear and binding manner.

It is necessary to highlight that the strengthening of the precedent system in Brazil still faces important challenges, such as the high number of lawsuits, the complex structure of the Courts, and the cultural differences in relation to the civil law tradition, in which custom and written law have always played a greater role than precedent. There is also a need to improve the training of legal operators in the culture of *stare decisis*, something that involves both university education and the continuous training of judges and civil servants.

Another challenge is to maintain the predictability and stability of decisions without harming the Judiciary's ability to review understandings, when proven to be overcome. In this aspect, the control of discretion through a solid foundation and the constant revisiting of the "constitutional markers" remains an arduous but fundamental task.

At the same time, the consolidation of jurisprudence databases, the adoption of more modern digital platforms, and the facilitation of access to precedents, especially by technological means, can contribute to greater transparency and effectiveness, but there is still a long way to go to integrate them organically into the daily forensic routine.

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In short, the essential purpose of this work was to offer a panoramic view that connects, in a structured way, legal reasoning to the production of precedents, evidencing the way in which the extraction of the *ratio decidendi* depends on a consistent argumentative process. It is hoped that these reflections will serve as an instrument of improvement for all legal operators, contributing to fairer, more coherent and transparent judicial decisions, in line with the fundamental principles of the Democratic Rule of Law.

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