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THE ACTION FOR REVERSAL OF ARTICLE 525, §15 OF THE CPC: CONFLICT BETWEEN RES JUDICATA AND CONSTITUTIONAL SOVEREIGNTY IN THE BRAZILIAN LEGAL SYSTEM

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ABSTRACT

This scientific article investigates the conflict between res judicata and constitutional sovereignty in the context of the action for reversal provided for in article 525, §15 of the Brazilian Code of Civil Procedure (CPC). It proposes to address the following question: Does this action for reversal, by allowing the review of final and unappealable decisions in cases of unconstitutionality, violate the principle of res judicata, or, on the contrary, does it protect constitutional sovereignty? The objective is to analyze whether the unconstitutionality of a given matter can justify the disregard of res judicata, as established by the aforementioned provision. The methodology involves the analysis of works that address constitutional sovereignty, res judicata, and the use of the action for reversal, such as classic writers, contemporary doctrines, and the jurisprudence of the Federal Supreme Court. It is concluded that it is crucial to carefully weigh the fundamental elements to form an opinion on the (un)constitutionality of this provision in the light of the Constitution itself. The complexity of the issue and the need for a careful approach that considers not only the principles of res judicata and constitutional sovereignty but also the legal nuances and practical repercussions of their interactions are highlighted.

Keywords: Res judicata. ACTION FOR REVERSAL OF JUDGMENT. Unconstitutionality. Constitutional Sovereignty. Code of Civil Procedure.

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INTRODUCTION

An issue directly linked to procedural law and its techniques is discussed here, in order to analyze the impacts that the proposition of the action for reversal of judgment, in the form of article 515, §15, CPC, may generate.

The theme evaluates procedural aspects, especially res judicata, which were made more flexible by constitutional issues, the formation of conviction for the (un)constitutionality of a certain matter, and the analysis of whether the flexibility of legal certainty would not affect the purest concept of justice and confidence in the Judiciary.

Thus, the research uses a critical bias on the (un)constitutionality of article 525, paragraph 15, of the Code of Civil Procedure, in which it will be weighed between constitutional sovereignty and the institute of res judicata to reach this conclusion.

By discussing the Institute of res judicata, its effects, objectives, and limits, as well as the unique role played by the Federal Supreme Court in the protection of the constitutional order, it is intended to form a study on the clash between the Institute of res judicata, as well as the principle of legal certainty, and the protection of constitutional sovereignty.

Therefore, the objective of the study is to inquire whether the unconstitutionality of a certain matter is capable of justifying the disregard of res judicata, removing the protection of the principle of res judicata, based on article 525, § 15 of the Code of Civil Procedure.

This means analyzing whether the possibility of undoing a final and unappealable judgment, due to the establishment of an understanding of the jurisprudence of the Federal Supreme Court for the unconstitutionality of a certain matter, based on Article 525, § 15 of the Code of Civil Procedure, would generate exacerbated damage to the institute of res judicata and the principle of legal certainty.

The clash will consist of the doubt of which should prevail: the institute of res judicata, in the evaluation of the principle of res judicata, or constitutional sovereignty, in which that unconstitutional rule should never have existed, and all the effects arising from it will be considered null and void.

With this, the study intends to discuss the understanding of whether article 525, §15, CPC should be considered (un)constitutional, taking into account all the values associated with that issue.

For the theoretical framework of this work, an analysis was carried out on constitutional sovereignty, its principles, and the role played by the Federal Supreme Court

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as a Constitutional Court. As well as the function of the Institute of res judicata and legal certainty in the legal system and the way they clash with Article 525, paragraph 15, CPC

The methodology to be used in this work consisted of the analysis of published works that discuss constitutional sovereignty, the institution of res judicata, as well as the hypothesis of using the action for reversal provided for in article 525, §15, CPC. Nevertheless, the study will rely on the content published on the subject, in scientific articles, dissertations, and theses.

In the first topic, an analysis of the implications of paragraph 15 of article 525 of the Brazilian Code of Civil Procedure was carried out, highlighting its effects and the controversy over the vigorous departure from the principle of res judicata. This is because the provision establishes two years for the filing of the action for reversal, regardless of the time that has elapsed since the end of the conflict in question.

In the second topic, took care to analyze the constitutional matter involved in the conflict, studying in depth the constitutional principles that justify the declarations of unconstitutionality and their *ex-tune* effects. In the same sense, it delves into what res judicata consists of, its impacts, limits and importance for the legal system.

The third topic took care of making brief considerations on the subject of legal certainty and maintenance of the Democratic Rule of Law. That said, there is no urgent need to analyze the subjective and objective limits linked to the effects of res judicata, but the true *material* alteration of res judicata, and its flexibility in favor of constitutional sovereignty.

Thus, the fourth topic of this work was intended to analyze the comments made by scholars on this jurisprudence of the courts, taking care to impose a judgment on the negative or positive character of the aforementioned position and its impacts on the formulation of the judgment of (un)constitutionality of article 525, §15, CPC. Having made these considerations, the jurisprudence of the Federal Supreme Court on the possibility of using an action for reversal in the form of the questioned legal provision will be analyzed, in particular the tacit suppression of Precedent 343, of the STF, as well as its theses of general repercussion involving the issue.

After these analyses, the main aspects were applied to the formation of the conviction for the (un)constitutionality of the aforementioned provision in the light of the constitutional norm itself.

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In the end, it is important to highlight that it is not the intention of this work to exhaust the study of the institute of rescission action and res judicata, given the breadth of the theme and the impossibility of treating it with the necessary rigor, which is why the work is limited to a specific hypothesis, that of article 525, paragraph 15, of the Code of Civil Procedure.

ANALYSIS OF THE IMPLICATIONS OF PARAGRAPH 15 OF ARTICLE 525 OF THE BRAZILIAN CODE OF CIVIL PROCEDURE

It is important to clarify that the provision of Article 525, paragraph 15, of the Code of Civil Procedure, proposes to expand the cases of use of the action for reversal, allowing the review of the final judgment in cases where there is a subsequent decision rendered by the Federal Supreme Court. More specifically, when the unenforceability of an obligation contained in a judicial enforcement order is recognized by a declaration of unconstitutionality by the Federal Supreme Court, whether by diffuse or concentrated control.

The hypothesis listed by the article is a kind of expansion of the hypotheses contained in article 966 of the Code of Civil Procedure, *in verbs*: "if the decision referred to in paragraph 12 is rendered after the final and unappealable decision of the enforceable decision, an action for reversal of judgment shall be allowed, the term of which shall be counted from the final and unappealable decision rendered by the Federal Supreme Court". In other words, it sets a new deadline for the parties to file an action for reversal, which is disconnected from the date on which the action for which the reform is sought became final.

In this new case, it is necessary to start counting the two years provided for the filing of the action for reversal of the final and unappealable decision of unconstitutionality rendered by the Federal Supreme Court.

The motivation for changing this time frame is due to the high impact of unconstitutionality decisions, linked in particular to the theory of nullity, in which "the legislative act, as a rule, once declared unconstitutional, must be considered, under the terms of the majority Brazilian doctrine, [...] null, irrational, and, therefore, devoid of binding force".[3] In summary, this sentence is null and void and should not have any effects.

[3] LENZA, Pedro. *Constitutional Law*. 27. ed. São Paulo: SaraivaJur, 2023. p. 437.

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This is because Brazil is subordinated to the understanding that the existence and application of a rule contrary to the Constitution is the same as the negative of the constitutional text itself, being known as the principle of constitutional supremacy, which places the other normative texts subordinated to the Magna Carta, which is the parameter for all other laws and decisions rendered in the country.

That said, if that issue is considered unconstitutional, it has *ex tunc effects,* as if it never existed, given the fragility of recognizing the effects of something that, since its existence, violated a constitutional precept.

Given this, the purpose of this work is to analyze whether the unconstitutionality of a certain matter is capable of so vehemently removing what was sought to be protected with the principle of res judicata, initiating two years for the filing of the action for reversal regardless of the time in which that conflict had ended.

PRINCIPLES OF RES JUDICATA AND LIMITS IN THE LIGHT OF CONSTITUTIONALITY

On the other hand, the Federal Constitution itself took care to recognize the importance of res judicata for the maintenance of society, as extracted from article 5, XXXVI, *in verbs:* "the law shall not prejudice the acquired right, the perfectly legal act and res judicata."

The need for society's confidence in the legal system is an inescapable condition for the maintenance of the Rule of Law, with legal certainty and res judicata being the main tools for society to know the consequences of its acts, a fact that was already worked on by the Dane, in 1999, who understood "The advent of definitiveness placates uncertainties and eliminates the anti-social state of dissatisfaction".[4]

Res judicata allows the end of the discussion of that problem and imposes on the litigants that no further reanalysis of the issue will be allowed, it is the certainty that the discussion is over, putting an end to the anguish of doubt that has persisted throughout the process.

In the end, it is possible to affirm that, even if the result is unfortunate for one of the parties, the closure of the issue may bring more benefits to it than the perpetuation of the anguish of doubt, because "psychologically, sometimes, the consummated deprivation is less uncomfortable than the pending conflict: once the latter is eliminated, the anguish

[4] DINAMARCO, Cândido Rangel. *The instrumentality of the Process*. São Paulo: Malheiros Editores, 1999, p. 167.

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inherent to the state of dissatisfaction disappears and it is, if it lasts, it will be deactivated of a good part of its anti-social potentiality".[5]

The relevance of this clash is due to the scope of what will be discussed here, since the Brazilian Constitution is extensive and takes a position on several issues, from fundamental rights to budgetary issues.

That said, the question remains about this expansion of the application of the action for reversal of judgment and its possible incompatibility with the idea of legal certainty and the authority of res judicata.

ANALYSIS OF LEGAL UNCERTAINTY CAUSED BY THE ACTION FOR REVERSAL OF JUDGMENT PROVIDED FOR IN PARAGRAPH 15 OF ARTICLE 252 OF THE CODE OF CIVIL PROCEDURE

As an initial conclusion, it is noted that the Supreme Court is not eternally bound by its decisions. Although it cannot reanalyze a provision taken from the legal system, decisions rendered based on the techniques of "conforming interpretation" and "partial declaration of unconstitutionality without text reduction" can be reviewed if the court is provoked[6].

The change in the court's understanding can occur for the most varied reasons, such as significant factual and legal changes or even by changing the composition of the court, these are popularly known as "turns in jurisprudence". In short, "a new composition may come to understand that the only interpretation considered constitutional is no longer constitutional, or even that others have emerged, or, finally, that the interpretation that is considered null has become constitutional".[7]

With these examples, the legal uncertainty caused by the relaxation of res judicata in favor of constitutional sovereignty is evident, and the weighting of these institutes is the basis that justifies the present study.

This is because constitutional sovereignty "means that the constitution is placed at the apex of the country's legal system, to which it confers validity, and that all state powers

[5] DINAMARCO, Cândido Rangel. *The instrumentality of the Process*. São Paulo: Malheiros Editores, 1999, p. 161.
[6] MARINONI, L. G.; ARENHART, S. C.; MITIDIERO, D. *Civil procedure course*: protection of rights through common procedure. 6. ed. São Paulo: Thomson Reuters Brasil, 2020.
[7] ABBOUD. Georges. *Brazilian Constitutional Process*. São Paulo: Revista dos Tribunais, 2019, p. 637.

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are legitimate to the extent that it recognizes them and in the proportion distributed by it." [8]element.

The concept seems to have a similar meaning in analyses made of constitutions other than the Brazilian one, as observed in Romeo.

> The concept of constitutional supremacy describes constitutions' ability to establish a hierarchical primacy within the sources of law. This is to say that constitutional supremacy entails that the constitution trumps any other norm into the legal system in case of open conflict and/or conditions the interpretation of other norms that show some sort of inconsistency with constitutional imperatives [...][9]

That said, it is evident what the idea of constitutional sovereignty consists of and the impacts it has on the legal system, and its hierarchy is unquestionable, since in case of conflict between this and any other norm, there is no doubt that it will be overcome.

Of such importance, the most varied principles unfold in the idea of protecting its integrity and rigidity, preventing it from being constantly altered in crises. The Magna Carta of a country takes care of imposing the most varied functions, such as:

> (a) legal limitation and control of power; (b) order and order; (c) organization and structuring of power; (d) legitimacy and legitimacy of the legal-constitutional order; (e) stability; (f) guarantee and affirmation of political identity; (g) recognition and guarantee (protection) of freedom and fundamental rights; (h) imposition of programs, purposes and
> state tasks ("imposing" or "directing" function)[10].

For this reason, it is noted that the constitutional text demonstrates what is understood as most important for a given country, taking care to affirm its power structures, main rights and guarantees, and governing policies.

Thus, the protection of the Federal Constitution and its placement as the highest point of the legal system is unquestionable, which justifies the existence of the principle of nullity, which applies the *ex tunc effects* to the normative provision characterized as unconstitutional. In other words, it ensures that the unconstitutional act is considered a null act by operation of law.

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[8] SILVA, José Afonso da. *Course on Positive Constitutional Law*. ed. 37. São Paulo: Malheiros Editores. 2014, p. 47.
[9] ROMEO, Graziella. *The Conceptualization of Constitutional Supremacy:* Global Discourse and Legal Tradition. 21. ed. German Law Journal, 2020, p. 905.
[10] SARLET, Ingo Wolfgang; MARINONI, Luiz Guilherme.; MITIDIERO, Daniel Francisco. *Course on constitutional law*. 6. ed. – São Paulo: Saraiva, 2017, p. 82.

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When speaking on the subject, Justice Barroso[11] exposes the annulment of the unconstitutional act as irrefutable, insofar as:

> If the Constitution is the supreme law, to admit the application of a law incompatible with it is to violate its supremacy. If an unconstitutional law can govern a given situation and produce regular and valid effects, this would represent the denial of the validity of the Constitution in that same period, about that matter. Constitutional theory could not live with this contradiction without sacrificing the postulate on which it is based. That is why unconstitutionality must be considered a form of nullity, a concept that denounces the defect of origin and the impossibility of validating the act.

It so happens that, given the factual situations that the Court had to face, the fixed idea of absolute nullity had to be questioned, which is why the general rule was relaxed, "suppressing or attenuating the retroactive nature of the pronouncement of unconstitutionality, in the name of values such as good faith, justice, and legal certainty".[12]

The idea cited consists of what was understood by the modulation of the effects of the decision of unconstitutionality, in the words of Lenza[13] this phenomenon was already understood as something growing in foreign law, only being "legalized" in Brazil with article 27 of Law No. 9,868/99.

Here is something interesting to the later topic, when deciding on the issue in ARE n.709.212, Justice Celso de Mello considered several other principles that would imply the need to relax the effects of the SHTF's decision of unconstitutionality, as discussed by Lenza[14]:

> This is the so-called, by the doctrine, technique of modulation of the effects of the decision and which, in this context, allows a better adaptation of the declaration of unconstitutionality, ensuring, consequently and as seen, other values that are also constitutionalized, such as those of legal certainty, social interest, good faith, protection of legitimate expectations, as expressions of the Democratic Rule of Law.

It is noteworthy that legal certainty was the first value rescued to justify the modulation of the effects of the sentence. To better understand this relationship between

[11] BARROSO, Luís Roberto. *The control of constitutionality in Brazilian law:* systematic exposition of doctrine and critical analysis of jurisprudence. 7. ed. São Paulo: Saraiva, 2016, p. 33.
[12] BARROSO, Luís Roberto. *The control of constitutionality in Brazilian law:* systematic exposition of doctrine and critical analysis of jurisprudence. 7. ed. São Paulo: Saraiva, 2016, p. 36.
[13] LENZA, Pedro. *Constitutional law.* 27. ed. São Paulo: SaraivaJur, 2023.
[14] LENZA, Pedro. *Constitutional law.* 27. ed. São Paulo: SaraivaJur, 2023, p. 440.

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the modulation of the effects of concentrated control and the idea of legal certainty, the analysis of the doctrinaire Uadi Bulos will be used.

The author[15] understands that the Brazilian Court has been following in the footsteps of the German Constitutional Court, allowing the relaxation of the nullity of the unconstitutional law in several situations, of which the following stands out, due to its relevance to the work:

> Guaranteeing the authority of res judicata – Supreme Court verdicts that decree normative unconstitutionality, despite having general effectiveness (erga omnes), cannot override final and unappealable sentences, rendered based on laws considered constitutional at the time of the fact. Thus, after the two years for filing the action for reversal of the judgment, and the rescission has lapsed, it will no longer be possible to undo the judgment, even if it has been handed down based on a law later declared unconstitutional, under penalty of instability and chaos.

Of all that has been narrated, the highlight lies in the last part of the quote, "under penalty of implanting instability and chaos".

The two-year period of rescission, contact of the final and unappealable judgment of the sentence, is already something that, in itself, destabilizes the idea of res judicata, however, it was widely accepted and necessary so as not to perpetuate excessively unfair situations, which would break with the trust placed in legal institutions. It so happens that article 525, paragraph 15, of the CPC, took care to significantly increase this period for filing the action for reversal.

That said, several crucial characteristics were found for the continuation of the research, namely: constitutional sovereignty and the principle of nullity can be made more flexible and this is a trend of modern law, just as the constitutional doctrine itself provides for this possibility in cases in which the institute of res judicata and the principle of legal certainty would be excessively violated, it is appropriate here to delimit whether article 525, paragraph 15, CPC is constitutional and took care to weigh these ideas correctly.

After these considerations, this research must delve into what res judicata consists of, its impacts, and importance for the legal system, taking care to make brief considerations on the subject for legal certainty and maintenance of the Rule of Law. This is because the constitutional text itself, in its article 5, XXXVI, took care to provide: "the law shall not prejudice the acquired right, the perfect legal act and res judicata".

[15] BULOS, Uadi Lammêgo. *Constitutional Law Course.* 9. ed. São Paulo: Saraiva, 2019, p. 368.

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Despite the other institutes provided for by the article, such as the acquired right and perfect legal act, the main point to be questioned here is that of res judicata, since it is the one directly mentioned in article 525, paragraph 15, CPC.

The basis for the existence of res judicata is justified to "avoid the perpetuation of conflicts and legal uncertainty, being inherent to the Democratic Rule of Law".[16] This is also the understanding of Nelson Nery[17], who states that "the political risk of having an unjust or unconstitutional sentence in the concrete case seems to be less serious than the political risk of establishing general insecurity with the relativization (*rectus*: disregard) of res judicata [...]".

With this, it is clear that its reason for existing permeates the individual sphere, being necessary for the stability of decisions and collective well-being, in addition to removing situations of instability and collective legal insecurity. But what, then, is res judicata?

Barbosa Moreira[18] understands the concept of res judicata extracted from the Law of Introduction to the Civil Code as: "It identifies, therefore, res judicata with the sentence endowed with a special characteristic, which is that it does not allow for challenge using an appeal".

The writer, despite recognizing the practicality of this concept, sees in it the concentration of a problem, since this delimitation only indicates at what moment res judicata comes into existence, but does not make any consideration of the essence of this phenomenon and its effects.

In the difficult mission of conceptualizing res judicata, Barbosa Moreira treated it as "an institute with an essentially *practical* function, which exists to ensure stability to the judicial protection provided by the State".[19] Understanding that the "res judicata" is the passage of the sentence from the condition of mutable to that of immutable, and this immutability is opportune to prevent subsequent attempts to alter its content, as noted:

[16] PINHO, Huberto Dalla Bernadina de. *Contemporary Civil Procedural Law:* Cognizance Process, Injunction, Execution and Special Procedures. 5. ed. São Paulo: Saraiva Educação, 2018, p. 303.
[17] NERY, Nelson Jr. *General Theory of Appeals*. 7. ed. São Paulo: Editora Revista dos Tribunais, 2014, p. 481.
[18] MOREIRA, José Carlos Barbosa. *Res Judicata Still and Always.* Essential Doctrines of Civil Procedure | vol. 6 | p. 679 - 692 | Oct / 2011 DTR\2012\1704. Journal of the Online Courts. Thomson Reuters, 2011, p. 01.
[19] MOREIRA, José Carlos Barbosa. *Res Judicata Still and Always.* Essential Doctrines of Civil Procedure | vol. 6 | p. 679 - 692 | Oct / 2011 DTR\2012\1704. Journal of the Online Courts. Thomson Reuters, 2011, p. 02.

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> Entering into such a situation [res judicata], the sentence acquires an authority that – this – is translated into resistance to subsequent attempts to modify its content. The expression "auctoritas rei indicate" and not "res indicate", therefore, is the one that corresponds to the concept of immutability." [20]element.

The author[21] goes further, in his demagogy for the formation of this concept, he resorts to the teachings of Liebman, in which "res judicata would consist in the *immutabilità del comando nascent da una sentenza*", that is, in a special quality that assumes it, from a given moment (res judicata), the content and effects.

However, he understands that despite all the brilliance of the works produced by Liebman, he was not able to foresee something that only legal experience would be capable of, which is: "if anything, in all this, escapes the seal of immutability, it is precisely the effects of the sentence." [22]element.

With this difference between the legal world and the factual world, res judicata has been divided into two aspects, formal and material res judicata, of which it is necessary to debate the differences for the better development of this work.

Formal res judicata is the immutability of the judicial decision within the process in which it was rendered, being the way for the material effects to unfold. On the other hand, the material res judicata is the immutability inside and outside the process, having, therefore, endo and extra procedural effectiveness[23].

Despite the various examples of changes in the factual world, as well as the various problems related to the effects of res judicata, the focus of the research problem is only on the expansion of the hypotheses for the suitability of action for reversal, as well as its deadline.

That said, there is no urgent need to analyze the subjective and objective limits linked to the effects of res judicata, but the true *material* alteration of res judicata, and its flexibility in favor of constitutional sovereignty.

[20] MOREIRA, José Carlos Barbosa. *Res Judicata Still and Always.* Essential Doctrines of Civil Procedure | vol. 6 | p. 679 - 692 | Oct / 2011 DTR\2012\1704. Journal of the Online Courts. Thomson Reuters, 2011, p. 06.
[21] MOREIRA, José Carlos Barbosa. *Res Judicata Still and Always.* Essential Doctrines of Civil Procedure | vol. 6 | p. 679 - 692 | Oct / 2011 DTR\2012\1704. Journal of the Online Courts. Thomson Reuters, 2011, p. 02.
[22] MOREIRA, José Carlos Barbosa. *Res Judicata Still and Always.* Essential Doctrines of Civil Procedure | vol. 6 | p. 679 - 692 | Oct / 2011 DTR\2012\1704. Journal of the Online Courts. Thomson Reuters, 2011, p. 03.
[23] PINHO, Huberto Dalla Bernadina de. *Contemporary Civil Procedural Law:* Cognizance Process, Injunction, Execution and Special Procedures. 5. ed. São Paulo: Saraiva Educação, 2018, p. 303.

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Once the doctrinal questions on the two main issues that permeate the research – constitutional sovereignty and res judicata – are closed, we move on to the critical analysis caused by article 525, §15, CPC and its (un)constitutionality.

THE POSSIBILITY OF UNCONSTITUTIONALITY OF THE HYPOTHESIS PROVIDED FOR IN PARAGRAPH 15 OF ARTICLE 525 OF THE CPC

At the outset, Marioni[24] elucidates the breadth of the scope of paragraph 15, of article 525, CPC, since:

> [...] It is not only the decision declaring the unconstitutionality of a rule that may hinder enforcement but also decisions rendered based on the techniques of "conforming interpretation" and "partial declaration of unconstitutionality without text reduction". In addition, both decisions in concentrated control and decisions signed in the context of diffuse control can be invoked.

That said, any decision rendered by the STF, whether in diffuse or concentrated control, as well as regardless of text reduction, is sufficient to reopen the term of the action for reversal, provided that the enforceable decision has not become res judicata, that is, the receipt of the amounts by the creditor or a different situation that extinguished the obligation.

To make the research more dogmatic, it will analyze the way the Supreme Court has been judging the issue and the possible change in understanding that is perceived in the court.

This is because there are several remarkable moments throughout the position of the Supreme Court. The first occurred with precedent 343, in which it was described: "There is no room for an action for reversal of judgment for the offense to a literal provision of law when the rescinding decision has been based on a legal text of controversial interpretation in the courts".

It so happens that, although it is an understanding affirmed using a precedent, since the Code of Civil Procedure of 1973 the court had been converging in the opposite direction. In a decision handed down in 2008, the strengthening of the idea of constitutional sovereignty was already perceived, in which, through RE 328.812 ED, understandings such as:

[24] MARINONI, Luiz Guilherme.; ARENHART, Sérgio Cruz; MITIDIERO, Daniel Francisco. *Civil procedure course*: protection of rights through common procedure. 6. ed. São Paulo: Thomson Reuters Brasil, 2020, p. 884.

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> 4. Action for Reversal. Constitutional matter. Inapplicability of Precedent 343/STF. 5. The maintenance of decisions of the ordinary courts that diverge from the interpretation adopted by the STF is an affront to the normative force of the Constitution and the principle of maximum effectiveness of constitutional rule. 6. An action for reversal of judgment may be filed for violation of the literal constitutional provision, even if the rescinding decision was based on a controversial interpretation, that is, before the guidance established by the Federal Supreme Court (RE 328.812 ED, rel. min Gilmar Mendes, P, j. 6-3-2008, DJE 78 of 2-5-2008.)

The thesis in question was partially questioned, drawing attention to a point in the judgment of AR 2.370 AgR. At that time, the appellant questioned the possibility of filing an action for reversal of a decision based on the majority jurisprudential current existing at the time of the final and unappealable decision, which was later changed by the understanding of the Supreme Court.

In this case, the court understood that the divergence would not be enough to rule out the application of the rescission, as well presented by Marioni[25].

> It is argued that the existence of divergent interpretations, in the face of a constitutional rule, is not an obstacle to the action for reversal. Or rather, it is understood that the pronouncement of the Federal Supreme Court is capable of reconstituting final and unappealable decisions that are contrary to it, regardless of whether, regarding the interpretation of the constitutional question, there was controversy in the courts".

With the above, it is observed that there is a complex jurisprudence, insofar as it maintains in force precedent no. 343, but sets it aside in cases where the decision violated a constitutional issue, even if the decision was based on vacillating jurisprudence at the time.

Given this scenario, Marioni[26]severely criticizes the constitutionality of article 525, paragraph 15, CPC, when he describes:

> Nor should it be said, at that time, that the allegation of a decision of unconstitutionality would constitute a constitutionally legitimate exception to the inviolability of res judicata, arguing that the rescission of res judicata based on a law subsequently declared unconstitutional would be an affirmation of constitutionality over unconstitutionality. It is always important to warn that the guarantee of res judicata does not protect the effects of an unconstitutional law, but it does protect

[25] MARINONI, Luiz Guilherme.; ARENHART, Sérgio Cruz; MITIDIERO, Daniel Francisco. *Civil procedure course*: protection of rights through common procedure. 6. ed. São Paulo: Thomson Reuters Brasil, 2020, p. LIFE 850.
[26] MARINONI, Luiz Guilherme.; ARENHART, Sérgio Cruz; MITIDIERO, Daniel Francisco. *Civil procedure course*: protection of rights through common procedure. 6. ed. São Paulo: Thomson Reuters Brasil, 2020, p. LIFE 862.

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> the effects of a constitutional judgment that applied to a law later declared unconstitutional by the Federal Supreme Court.

This is the understanding to which the writer Barbosa de Moreira seems to[27] fit, given the exposition made in:

> A great exponent of the doctrine contrary to the relativization of res judicata is José Carlos Barbosa Moreira. Regarding the issue of unconstitutional res judicata, the jurist argues that res judicata formed before the declaration of unconstitutionality by the STF, whether in concentrated or diffuse control, is not affected by it, given the autonomy between the abstract norm declared unconstitutional and the concrete norm contained in the sentence".

That said, considering the existence of divergence between the doctrine and the latest position of the Federal Supreme Court, the study on the (un)constitutionality of article 525, paragraph 15, CPC is current and pertinent.

FINAL CONSIDERATIONS

The discussion undertaken in this scientific article addresses a crucial issue in the field of procedural law, examining the impacts arising from the proposition of the action for reversal as stipulated by paragraph 15 of article 525 of the Brazilian Code of Civil Procedure.

Throughout the study, procedural aspects were evaluated, especially the principle of res judicata, whose flexibility occurs due to constitutional issues, considering the formation of conviction by the (un)constitutionality of a certain matter. In this context, it was considered whether the flexibility of legal certainty would not compromise the essential concept of justice and confidence in the institution of the Judiciary.

Based on a critical approach, the (un)constitutionality of article 525, paragraph 15, of the Code of Civil Procedure was analyzed, seeking to reconcile constitutional sovereignty with the institute of res judicata. The clash between these two pillars of the legal system led to reflections on the prevalence of one to the detriment of the other, as well as on the possible losses resulting from the application of the provision in question.

Through the analysis of the jurisprudence of the Federal Supreme Court and the contributions of scholars on the subject, the impacts of the use of the action for reversal of judgment as provided for by the legal provision discussed were examined, with special

[27] PINHO, Huberto Dalla Bernadina de. *Contemporary Civil Procedural Law:* Cognizance Process, Injunction, Execution and Special Procedures. 5. ed. São Paulo: Saraiva Educação, 2018, p. 307.

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attention to the tacit suppression of Precedent 343 of the STF and the theses of general repercussion related to the matter.

In the end, the study proposed an analysis of the jurisprudential position, to establish a critical evaluation of the effects of Article 525, paragraph 15, of the CPC. Through this examination, it was possible to form a judgment as to the (un)constitutionality of the provision, in the light of constitutional principles and consolidated jurisprudence.

It is important to emphasize that the scope of this work does not encompass exhausting all the nuances of the institute of the action for reversal of judgment and res judicata, given the multifaceted and complex nature of the subject. Therefore, the analysis is restricted to a specific hypothesis, that is, that of Article 525, paragraph 15, of the Code of Civil Procedure, without the intention of completely exhausting the subject.

A promising continuation of this study could explore two distinct areas. First, an in-depth analysis of the doctrinal approach would be valuable, examining the contributions of national and international legal doctrine on the subject. It would be important to map different theoretical perspectives and the arguments for and against the constitutionality of Article 525, paragraph 15, of the CPC.

In addition, an empirical investigation into the practical impact of Article 525, paragraph 15, of the CPC would also be relevant. This would involve examining concrete cases in which the action for reversal of judgment was filed based on this provision and analyzing the legal and social consequences of these decisions. Such an approach would provide a more complete understanding of the actual effects of this provision on the legal system and society as a whole.

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ISSN: 2358-2472

REFERENCES

1. ABBOUD. Georges. *Brazilian Constitutional Process*. São Paulo: Revista dos Tribunais, 2019.

2. BRAZIL. *Constitution (1988).* Constitution [of] the Federative Republic of Brazil. Brasília: Senado Federal, 1988.

3. BRAZIL. Law No. 13,105, March 16, 2015. *Code of Civil Procedure*. Official Gazette [of] the Federative Republic of Brazil, Brasília, July 26. 2000. Available at: https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2015/lei/l13105.htm. Accessed on: 24 Feb. 2024.

4. BRAZIL. Federal Supreme Court. *RE 328.812 ED.* Maria Auxiliadora Santos Cabral dos Anjos and National Institute of Social Security - INSS. Rapporteur: Justice Gilmar Mendes. Brasilia, 03 Mar. 2008. Available at: https://jurisprudencia.stf.jus.br/pages/search/sjur90389/false. Accessed on: 24 Feb. 2024.

5. BARROSO, Luís Roberto. *The control of constitutionality in Brazilian law:* systematic exposition of doctrine and critical analysis of jurisprudence. 7. ed. São Paulo: Saraiva, 2016.

6. BULOS, Uadi Lammêgo. *Constitutional Law Course*. 9. ed. São Paulo: Saraiva, 2019.

7. DINAMARCO, Cândido Rangel. *The instrumentality of the Process.* São Paulo: Malheiros Editores, 1999.

8. LENZA, Pedro. *Constitutional law.* 27. ed. São Paulo: SaraivaJur, 2023.

9. MARINONI, Luiz Guilherme.; ARENHART, Sérgio Cruz; MITIDIERO, Daniel Francisco. *Civil procedure course:* protection of rights through common procedure. 6. ed. São Paulo: Thomson Reuters Brasil, 2020.

10. MOREIRA, José Carlos Barbosa. *Res Judicata Still and Always*. Essential Doctrines of Civil Procedure | vol. 6 | p. 679 - 692 | Oct / 2011 DTR\2012\1704. Journal of the Online Courts. Thomson Reuters, 2011.

11. NERY, Nelson Jr. *General Theory of Appeals.* 7. ed. São Paulo: Editora Revista dos Tribunais, 2014.

12. PINHO, Huberto Dalla Bernadina de. *Contemporary Civil Procedural Law:* Cognizance Process, Injunction, Execution and Special Procedures. 5. ed. São Paulo: Saraiva Educação, 2018.

13. ROMEO, Graziella. *The Conceptualization of Constitutional Supremacy:* Global Discourse and Legal Tradition. 21. ed. German Law Journal, 2020, p. 904–923.

Revista ARACÊ
ISSN: 2358-2472

14. SARLET, Ingo Wolfgang; MARINONI, Luiz Guilherme; MITIDIERO, Daniel Francisco. *Course on constitutional law.* 6. ed. – São Paulo: Saraiva, 2017.

15. SILVA, José Afonso da. *Course on Positive Constitutional Law.* ed. 37. São Paulo: Malheiros Editores. 2014