



RATIONALIZATION OF THE *ASTREINTE* TO OBTAIN SPECIFIC TUTELAGE UNDER THE PERSPECTIVE OF THE FUNDAMENTAL RIGHT TO SATISFACTION AND THE ATYPICAL EXECUTION

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Abstract: The present work is inserted on a new model of procedural flexibility that seeks to attribute to the jurisdictional functions allowed to guarantee the effectiveness of the satisfactory activity. Considering the coercive fine as an instrument to achieve the fundamental right to the effectiveness of adequate judicial tutelage, an analysis intended to alert legal operators about the need to rationalize its applicability in the specific case, with a view to executive atypicality and a search for specific tutelage. To do so, use a collection of qualified clinical trials or which it was possible to conclude, through extra theoretical concepts and lines, that, as many show some aspects that deserve to be better case by case.

Keywords: Effectiveness; Coercive fine; Specific tutelage; Atypicality.

1. INTRODUCTION

The study regarding execution has always depicted concerns regarding obligations that depend on the conduct of the person responsible. For a long time, the civil process of liberal origin was concerned, in great fairness, with the freedoms and the limits that the State could reach in the legal sphere of individuals. Consequently, the installments depending on action used to be consummated in losses and damages, demanding cash reparation.

However, with the new range of rights developed, emphasizing the social and democratic character within the conjuncture of wars and improvement of the constitutions, one could understand that the adequate judicial protection also consisted of an objective to be protected by the process since the instrument should be capable of transforming reality to materialize the substantial right. In this sense, the specific tutelage arises from of the valuation of the applicant, placing him/her as the holder of a true fundamental right to the effectiveness of adequate tutelage.

Although progress has been made historically, the new Brazilian Code of Civil Procedure (CPC/15) was successful, considering execution as atypical, making the application of available techniques even more flexible, allowing for jurisdictional creativity, and decisively leveraging the effectiveness of satisfactory activity as one of the primary purposes of due process.

Furthermore, the coercive fine, also known as *astreinte* (daily fine), is an ancient executive technique developed to coerce an individual to comply with a specific order and overcome his/her deliberate recalcitrance. However, in a flexible procedural systematization, in

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the value of atypical enforcement and enhancement of the fundamental right to the effectiveness of adequate judicial protection, the *astreinte* must also be revised so that its concrete rationalization occurs.

In this regard, the contours of the specific tutelage in CPC/15 will be initially addressed, followed by the reaffirmation of the fine as an instrument of the fundamental right to the effectiveness of satisfactory tutelage. Finally, we will examine how the *astreinte* should be rationalized under the auspices of an atypical execution, requiring the investigation of the aspects involved and that must be shaped before each situation to reach the best possible success. Therefore, the execution can reach its purpose, which is to satisfy the person without unjustly attacking the legal order.

2. OUTLINES OF THE SPECIFIC TUTELAGE IN THE CPC/15

It is well known that the legal order established in the social context has the elementary purpose of prescribing commissive or omissive conduct by individuals and collectivities to preserve society as a whole and promote aspects that would not be reached freely. In this sense, in extremely simple terms, the process will be responsible for the instrumentalization capable of implementing, recognizing, or constituting the legal situations provided by substantive law.

In the categorization of the obligations corresponding to the debtor before the normative systematization, those that depend on the obligor's posture cause "greater inconvenience to the creditor, when faced with default" (VENOSA, 2017, p. 81, our translation). This is easily feasible because if compliance depends, often necessarily, on the achievement of an individual conduct since the relationship is aimed at providing action, only two options remain: either the creditor is satisfied with something that satisfies him/her equivalently or the process must have sufficient techniques to enable the specific execution. The problems rise considerably with the second alternative.

In summary, the provision of specific tutelage aims to offer the mandatory performance ignored by the debtor and contained in the executive order, concretely satisfying the debtor and what would be obtained if the obligor complied voluntarily. Consequently, "it is distinguished from the notion of generic or substitutive execution, which has the purpose of obtaining a cash amount equivalent to the obligation due, which would be satisfactorily replaced" (RODRIGUES, 2006, p. 115, our translation). The perspective of procedural protection must conform to the needs of material law, so that instrumental techniques meet the constitutional mission of effectively protecting rights (MARINONI, 2019, p. 101).

However, the perspective of executive specificity was not well regarded historically. As the individual became stronger as a center of legal regulation, from the modernization of states and the weakening of monarchies, the liberal and protective position prevented him/her from being personally compelled to perform the service promised or ensured to the creditor. This was

the dominant principle of the Napoleonic Code, which provided that mandatory compliance should fall only on assets, preventing personal executive suffering (THEODORO JÚNIOR, 2002, p. 01).

It is worth mentioning that the Brazilian legal guideline is strongly influenced by the classic Western philosophy of John Locke and Thomas Hobbes. As for the first, its systematized consideration based on three rights inherent to man - property, freedom and life - basically bases the constitutional options of the State. For example, apart from art. 5, item XLVII, subitem a, of the Federal Constitution (CF/88), life cannot be achieved deliberately, and is restricted to property and freedom. Thus, the individual can only be affected beyond criminal penalties in the case of food debt. Therefore, property remains for the civil perspective, indicating that only the patrimony can generally be affected for the mandatory compliance. In this case, it is the jurisdictional imperative that will compel people, in a broad sense, to duly fulfill their legal duties. It is here that Hobbes' influence stands out, considering that men, in their nature, live in a state of savagery, where only Leviathan could end chaos.

However, the procedural system could not be at the mercy of the default of specific obligations. On the contrary, it should always seek diversified answers to correspond as much as possible to what is left ensured by material law, faithfully providing the situation that would ensue if there were no deliberate noncompliance. This understanding is due, in great measure, to the defense of Giuseppe Chiovenda, in the beginning of the 20th century, for an execution process that offers the instruments necessary to protect all rights, ensuring to citizens the usefulness of decisions. Therefore, it is the acclaimed effectiveness of the process. It is at this point that the specific tutelage is highlighted since it must maintain remedies and measures to ensure the practical result (GRINOVER, 2011, p. 01).

In this sense, the process is valued according to the utility it offers to the material law, being directly proportional to the degree of solution to the problems (FONSECA E SILVA, 2019, p. 80). Thus, the nature of the executive measures must be based on the purpose of the execution (MEDINA, 2017, p. 288).

Based on the Chiovendian maxim, the process must give the exact good that it would be entitled to whoever is right. Fredie Didier Júnior (2004, p. 15) has long indicated that civil enforcement must have techniques to provide the jurisdiction coinciding material law and the result obtained in the process, revealing the primacy of specific tutelage. The author also noted that the procedural reforms at the end of the last century and those initiated in the 2000s were already giving weight to this enforcement principle.

The delay in the bold procedural changes is due to the historical-cultural character of the civil procedure in societies since “virtually nonexistent as an autonomous technique or science, it was presented as a mere appendix of material law” (THEODORO JÚNIOR, 2002, p. 02, our translation). It added nothing in terms of techniques or creative measures available to strengthen

the effectiveness of substantial precepts.

In effect, the recalcitrance of the responsible individual to fulfill his due obligations has long been seen as an insurmountable limit. This is because the intangibility of the human will was a dogma truly conquered and of extremely relevant value to be preserved, reason why the tutelage regarding benefits of doing or not doing found no support in the enforcement system (GRINOVER, 2011, p. 02).

However, the character of executive effectiveness brought by Chiovenda indicates that the procedural system must offer a situation similar to that which would occur under normal and timely compliance with the obligation, because, if the given situation of material right is valued by society and put legally, there must be an enforcement system strong enough to protect this reality (NETTO, 2000, p. 03 and 05). This implies the plasticity of the provisions that contribute to ensuring satisfaction (MARINONI, 2019, p 145).

It was with the impressive legislative reform promoted by Law nº 8,952/94 that profound changes were made to the Brazilian Code of Civil Procedure of 1973 in art. 461. Until then, the dogma of intangibility was almost absolutely respected and supported the decisions made. After this sensitive change, the transformation of the legal mindset allowed the assertion that the debtor's resistance can no longer constitute an obstacle to satisfaction, and that if the “absence of coercion implies a loss of tone in the effectiveness of the executive activity, however small this loss may be, there is no reason to stop applying it” (OLIVEIRA NETO, 2019, p. 235, our translation), which only reinforces the appreciation of the effectiveness of specific obligations.

The Civil Code of 2002 sought to indicate the possibility of the creditor demanding the obligation to do or not do from the debtor through a third party, but it is still very timid, given the provisions of art. 247, 248, and 250, which categorically provide for the termination of the obligation, resolving losses and damages.

The new Code of Civil Procedure was overwhelming in art. 499, in which it stipulates that the obligations to do, not to do, or to deliver a thing shall only be converted into losses and damages if the author so requests or if specific tutelage or obtaining tutelage by the equivalent practical result is impossible. This position is especially important to finalize the argument about specific protection in procedural legislation and the previously established dogmas.

This rule has the clear purpose of establishing a hierarchy in offering satisfactory tutelage, setting the specificity at a level higher than the mere reimbursement, so that the specific obligation cannot be transformed purely and simply into payment in cash. This legislative imposition stems from the very nature of rights and the fundamental right to an effective judicial protection (MARINONI, 2020, p. 04).

The option adopted by the CPC/15 is also clear in art. 536, which establishes that the judge may determine the necessary measures for the satisfaction of the applicant to carry out specific tutelage, as an example and reinforcing what was already established in the CPC/73.

The new code only reflected what was already a doctrinal and legislative trend, reinforcing and strengthening the primacy of specific tutelage. It is clear that the protection of specific obligations merely converted into a pecuniary obligation does not adapt to numerous situations, with an emphasis on those of a non-patrimonial nature, as it is often linked to fundamental or community rights that were simply not foreseen or ensured in the past (GRINOVER, 2011, p. 02).

For this reason, the legislation began focusing on goals that would go well beyond the composition of lawsuits, judicial provision, and typified procedures for the execution of payment. In other words, the judicial perspective is linked to the just concern with enforceability in the pursuit of results that correspond to the best and fairest resolution. Thus, this new path required the development of techniques that would allow convenient options for the specific case presented, providing the material right conferred the most complete protection (THEODORO JÚNIOR, 2002, p. 02), especially considering that the new situations of substantial right regarding the State's duty to protect do not allow an inadequate procedural technique to be accepted (MARINONI, 2019, p. 112).

3. REAFFIRMATION OF THE COERCIVE FINE AS NA INSTRUMENT OF FUNDAMENTAL LAW TO THE EFFECTIVENESS OF THE SATISFACTORY TUTELAGE

As presented above, the specific tutelage found secular limits that prevented it, but which gradually gave way to the new range of rights and the need to offer effectiveness to the jurisdiction.

In this line of thought, one does not lose sight of the fact that the specific realization of material law finds limits in the process. It reveals its own characteristic since the procedural public order maintains the ensuring and limiting essence of the will of those involved, even though there is a modern trend - adequate, necessary, and legitimate - to its flexibility. On the other hand, the social dimension of the process finds shelter in the trust deposited by the court for resolving the imbroglios. More than that, citizens expects his/her right to be recognized. In other words, that it transforms reality to place the “formal declaration of right in a dynamic and concrete activity in the factual world” (GAIO JÚNIOR, 2019, p. 03, our translation).

For no other reason, art. 4 of the CPC/15 provides that “the parties have the right to obtain, within a reasonable time, the full solution of the merits, including the satisfactory activity.” In other words, the legislator was surgical in reinforcing, even if unnecessary, satisfactory activity as a right to be protected among the fundamental rules of civil procedure, because “given that there is a judicial decision, there must be a right of the person obtaining the effective judgment” (NOGUEIRA, 2011, p. 07 and 08, our translation).

Luiz Guilherme Marinoni (2020, p. 14) masterfully elucidates that the right to

compensation in the specific form is contained in the right to effective and adequate jurisdictional protection, provided for in art. 5, item XXXV of the CF/88. The author dissects that the right to satisfactory effectiveness is a fundamental right rooted in the dignity of the human person, which is the foundation of the Democratic Rule of Law. Consequently, disregard for specific protection would entirely disregard not only the material right ensured on each case, but also a fundamental right erected by the constituent. The professor from Paraná continues pointing out that it is useless to indicate a right as fundamental and not extract the necessary and corresponding meaning. In this logic, the fundamental right has immediate applicability, with public bodies linked to its content, which, in the subject under discussion, imposes on the magistrate the interpretation and application necessary to search for the appropriate procedural technique to effect the execution.

The very prohibition to self-protection leads to the idea of mandatory effective judicial protection as a fundamental right. This is because the correctness of the law is not enough if there are still practical acts pending its factual implementation. Therefore, access to justice must certify the inexorable framework for realizing what is due (CUNHA; SCALABRIN, 2017, p. 02).

From this perspective, due process encompasses the offer of all that and what is possible to those who hold a right, considering the correlation between the fundamental right to adequate judicial protection and the skilled and sufficient techniques to give satisfactory response to substantive law (ATAÍDE JÚNIOR, 2008, p. 25).

The development of executive techniques aimed at ensuring specific protection does not merely offend the classic limiting rights of the executed. On the contrary, these are only made more flexible in the face of the specific case. In other words, the imposition of imperative devices to achieve the result that should have been achieved by voluntarily complying with the obligation does not stain the dignity of the human person who must comply with the order (RODRIGUES, 2006, p. 86).

The normative construction that executive effectiveness consists of a fundamental rule is not exempt from reservations. This is because this measurement is commonly made without precise definitions of content, and can conform the entire normative structure through the unwanted judicial protagonism (DURO, 2018, p. 100). However, it urges that the increase in judicial power does not necessarily imply authoritarian practices. If well increased, it can serve the purposes of the democracy of the legal system (RAMOS, 2019, p. 35).

In the meantime, concerns regarding the functionality of the available executive techniques do not authorize the exclusion of the possibility of using such mechanisms, ascertaining the duty to observe the limits of application (OLIVEIRA NETO, 2019, p. 246). In other words, there must be a real adjustment between the subjects of law in the constituted relationship, which does not mean unjustified, illegal, or illegitimate aggressions to the legal sphere of the affected.

The new valuative procedural model regarding effectiveness has improved procedural techniques capable of achieving the specific obligation. The most classic is, without a doubt, the coercive fine, the *astriente*, conceived “to induce the debtor to spontaneously fulfill the obligations incumbent on him, especially those of an infungible nature” (GRINOVER, 2011, p. 03, our translation). In summary, the fine is not intended to replace the obligation or be punitive, but only to pressure the executed to a certain satisfaction (MEDINA, 2017, p. 594 and 595).

The word *astreinte* comes from French law, which denotes a financial penalty to be served. The word comes from the Latin *stringere*, usually formed with the prefix *ad*, which means “to tighten” (GEBRIM, 1996, p. 69), indicating the content of narrowing, pressing, or squeezing a conduct. Thus, , by the etymological analysis of the term, "the *astreinte* is a pecuniary order pronounced by the judge and destined to overcome the resistance of a recalcitrant debtor" (CHABAS, 2011, p. 01, our translation)².

Guilherme Rizzo Amaral (2015, p. 1404, our translation), a Brazilian reference in the study, argues that, despite other provisions of CPC/15, art. 537:

(...)addresses the discipline of fine, whether periodic or fixed, also known as *astreinte*, given its origin in French law. This is a technique of coercive and accessory protection, aimed at pressuring the defendant to comply with a judicial order, the pressure being exerted through a threat to his assets, embodied in a fine, fixed or periodic, to be incurred in case of non-compliance.

Therefore, the fine represents a pecuniary measure aimed at compelling someone to comply with a specific command, to constrain the individual to the effective fulfillment of the order. In such logic, the application of the *astreinte* is a corollary of the inevitability and inexhaustibility of jurisdiction.

If the effectiveness of satisfactory judicial protection consists of a fundamental right, at the same time that the judge-state must have sufficient means to do so, nothing more congruent than the jurisdictional function targets its imperativity through coercive measure, simultaneously with the duty to maintain the minimum of practical and effective result to which the material law disposed. Thus, the fine is an instrument to reinforce the inevitability and jurisdictional unavailability.

Admitting and recognizing the coercibility inherent in the nature of the *astreinte* is decisive for its future application. In the words of Rafael Caselli Pereira (2018, p. 35 and 36, our translation), “the legal nature of the *astreinte* consists of its coercive, intimidating, accessory, and patrimonial character”. The author also points out that the fine is "inextricably linked to the debtor's default, aiming to act in the psychological sense that the obligor spontaneously complies with the precept, constituting a coercive and inhibitory measure".

² In the original: “*l’astreinte est une condamnation pécuniaire prononcée par le juge et destinée à vaincre la résistance d’un débiteur récalcitrant*”

For this reason, at the time of setting the fine, the purpose does not revolve around any compensation for the loss due to default, or any other compensatory form for not obtaining specific tutelage. The objective is only to overcome the debtor's stance of resistance, constraining him psychologically to the conduct (MARZAGÃO, 2013, p. 114).

Categorized as a coercive measure, the *astreinte* does not serve for the fulfillment of a purpose. It is a genuine instrument that forces the recipient to act as he would have acted spontaneously, bearing the consequences of his eventual inertia and recalcitrance (OLIVEIRA NETO, 2019, p. 237).

Bruno Garcia Redondo (2013, p. 02) presents the intrinsic notion of coercion and the respective absence of an indemnity character of the *astreinte* to consummate its legal nature. Initially, the setting of the fine does not depend on the value of the principal obligation as a parameter. Second, it is possible to cumulate the *astreinte* with compensation for losses and damages. Furthermore, the fine is based on the arrears of the obligation, not the full default. Finally, the *astreinte* can still be established before any damage or violated right has occurred, thus not having any relationship with any indemnity.

The characteristics presented above are extracted from the legislation, see art. 500 of CPC/15, for example, by providing that the indemnity for losses and damages will take place without prejudice to the periodic fine. Furthermore, art. 537 of the same diploma establishes that the fine must be sufficient and compatible with the obligation, without establishing any limitation in value. Thus, the absence of a reparatory character in the fine remains evident since its function is to overcome the debtor's obstinacy to a certain mandatory compliance, focusing on recalcitrance (PEREIRA, 2018, p. 82).

The conclusion of the reasoning raised is relatively simple since if the effectiveness of satisfactory judicial protection consists of a fundamental right and the coercive fine consists of an important executive technique, the proper application of the *astreinte* can materialize the very fundamental right of access to justice, and transform the reality of the substantial right already recognized. This adjustment is now considered, given the context of executive atypicality of the Brazilian procedural system.

4. RATIONALIZATION OF THE *ASTREINTE* IN THE CONTEXT OF THE EXECUTIVE ATYPICALITY

Approaching the legal nature of the *astreinte*, the conceptualization of the execution of the specific tutelage, and the fundamental right to the effectiveness of the respective adequate satisfactory jurisdictional tutelage, the coercive fine is the most relevant instrument to materialize the results, where the court is satisfied with the transformation of the substantial right into reality.

In this measure, in search of the effectiveness of the order emanating from a provision of action, arts. 536 and 538 of the CPC/15 expressly allow the use of the fine and the judge to enact

measures necessary to enforce the law, according to the specificities of each case (MARINONI, 2020, p. 11).

It is worth noting that there is currently a search for techniques and mechanisms that are increasingly capable of adapting the right to the factual reality of the jurisdictions, in the clear intention - just and noble - to end the injustice of not having satisfied a right already recognized, which causes distrust, discredit, and a sense of impunity (GAIO JÚNIOR, 2019, p. 08).

The contemporary process encompasses legal assets that were even unimaginable a few decades ago, born out of a new constitutional model and avant-garde social interests, for whose protection the process is crucial since it is a means both operative and instrumental for its materialization. In this line, appropriate executive techniques insure values are substantially effective and that reveal themselves as an expressive reference of the trend of the legal system, with an emphasis on specific obligations such as the rights to be ensured by Public Civil Action Law and the Consumer Protection Code (NETTO, 2000, p. 08).

From this perspective, faced with the theory of fundamental rights, it is no longer possible to think of the closed typical executive forms, a classic model of the liberal civil process that long prevailed, of which intention was to limit the legal state to ensure the citizen's freedom (MARINONI, 2020, p. 14).

Executive atypicality found support in the Brazilian legal system some years ago and was consolidated with the new Code to overcome the barriers imposed by the legislator and allow jurisdictional creativity to satisfy the creditor. The reasoning imposes the conclusion that if the material right is not being realized, at the same time that the fundamental right to the effectiveness of satisfactory protection is violated, it is the duty of the State to prevent such affronts from perpetuating. Thus, the attribution of creative power to the judiciary to establish atypical executive measures that are most appropriate to the specific case only removes the clear legislative purpose of making enforcement effective.

This design is extracted from any system that intends to meet the requirements presented by material law, adapting the protection of the new rights or these in new axiological approaches. In other words, the procedural model must provide for capable mechanisms to effect the satisfaction of the services in the least time and with the minimum activity necessary (OLIVEIRA NETO, 2019, p. 223).

Such concern is not recent, but has gained exponential strength with the new procedural legislation, see art. 4; 6; 139, item IV; 297, 536; and 771, all of the CPC/15, so that “the development of execution over recent years in Brazil shows a trend, confirmed in the current Code, in the sense of generalizing atypicality” (MINAMI, 2019, p. 09).

A higher credibility in the normative system and the need for new effectiveness outlines creates greater linguistic freedom that makes it possible to complement the legal text. The general clauses perform important functions that are linked to what is discussed here, as they allow the

judge to create rules, ensure the flexibility of the system to respond to new facts and new demands, and contributes to the integration of the ordering (BORGES, 2019, p. 85).

Eduardo Talamini (2018, p. 03) points out that the law confers ample jurisdictional rottenness for the pursuit of specific tutelage or, at least, of the corresponding result, showing that the wide concession of these powers aims to obtain the very performance of the obliged to comply with what is his duty and was determined, either by the executive title or by some different court order.

The *astreinte* consists of a typical executive technique and, therefore, has an express provision in CPC/15, according to art. 536, paragraph 1, art. 806, paragraph 1, and art. 814. However, there is nothing to prevent the general power of jurisdiction from being adapting it in each specific legal situation to obtain the best executive result, especially considering the context of atypicality and the valuation for the fundamental right to the effectiveness of satisfactory protection adequate to the specific obligations.

It is in specifically reinforcing the fulfillment of obligations that several coercive measures, in different modalities, were authorized to act on the will of the recalcitrant (GAIO JÚNIOR, 2019, p. 05), which is why the *astreinte*, even if typical, should be rationalized, albeit atypically, for the specific case.

There is no doubt about the intensity of enforcement of the coercive fine. The *astreinte* is certainly an executive measure applied constantly in Brazilian forensic practice, not least because its fixation does not depend on much concrete reasoning given the indications of the legislation itself. If the technique is typical and constantly works, establishing it requires less effort.

However, its fixation devoid of solid parameters must be fought, as the absence of tangible beacons can render the fine harmless and without the sense for which it exists. Therefore, its repetitive establishment without casuistic appreciation is not enough. Much more is necessary since its purpose is the effective satisfaction of tutelage. This is the primary goal of coercive means.

The most obvious point to be considered concerns the value to be established as an accessory. Logically, the amount possible to be reached by the fine will only be adequate if it can make the judicial effectiveness feasible, in parallel between the amounts sufficient to achieve coercion and so that the obligor has patrimonial conditions to bear the consequences. The fine will not be effective outside these situations (MARINONI, 2020, p. 15).

Enforcement is aimed at strict judicial protection, the goal sought by the imposition of a fine, which is why it has no end in itself, but consists only of a manifestation of the jurisdictional imperative (AMARAL, 2010, p 69 and 70). This relationship must be highlighted to have an accurate notion of what the fine should protect when it is established.

Considering that only the specific case will offer the conditions of analysis for the proper establishment of the measure, it is necessary to observe “the object of tutelage and the expected

coercive effectiveness of the measure, considering the principles of reasonableness and proportionality” (WAMBIER, 2012, p. 15 and 16, our translation), so that the parameter to be followed “is the sufficiency and compatibility of the obligation to be fulfilled by the party, so that the monetary fine can make effective its inhibitory intention” (PEREIRA, 2018, p. 110, our translation).

Therefore, the value estimate should consider the legally protected property. This often requires highly complex activity, as there are assets that have no feasible value, such as life or freedom. In spite of this, the patrimonial power of who should comply with the measure must be respected to ascertain the capacity for coercion, to disallow the illicit enrichment of the applicant, and, last but not least, to indicate whether the coercive fine is the best solution to the specific case. As pompous as it is, it does not mean that this measure should always be applied.

Another point worth mentioning is the periodicity of the fine. The judge is allowed to establish it according to the specific situations. Once again, jurisdictional creativity will be required, adapting the case presented with the fixation of the *astreinte*. An interesting example was presented by Olavo de Oliveira Neto (2019, p. 246), in which there would be an obligation for a factory to install anti-pollution filters within ten days, under penalty of a gradual stop of production activities for five minutes each day of delay.

Note that the example above does not involve the fine, but the creativity required through the freedom of the investor. Imagine the order for a certain establishment for the construction of accessible bathrooms, a wheelchair ramp, and a handrail. Due to the time difference required between each work, nothing prevents the *astreinte* to be applied daily for the construction of the handrail and weekly for the construction of the bathroom and ramps. Rationality must always be concrete, creative, and doable.

Another highly relevant aspect concerns to whom the coercive fine should be sent. The procedural legislation provides that it will be the choice of to the executed. There seems to be no obstacle to its redirection through the general power of jurisdictional effectiveness. It is the case already admitted, for example, of fixing the *astreinte* to the manager in the demands against the Public Power (CUNHA, 2018), or even regarding the administrators of legal entities under private law (ZARONI, 2007), demystifying the idea that executive acts cannot reach third parties and that this affects any subjective limits of *res judicata*.

It is also possible, through procedural flexibility and negotiated execution, that the provision of art. 537, paragraph 2 of CPC/15 be relativized, allocating the amount of the fine to someone other than the applicant. Such a measure could circumstantially reinforce the obligation for the order to comply.

Specifically regarding the negotiated execution, it is categorically understood that the enforceable availability allows for a case-by-case adaptation based on the interests of those involved, opening ample space for procedural negotiation regarding executive measures

(NOGUEIRA, 2018, p. 04). Therefore, the will of the interested parties is crucial for the efficiency of the executive acts, requiring its valorization, incentive, and creativity through a cooperative and available system.

Finally, Eduardo Talamini (2000, p. 02) already warned at the beginning of the century that the possibility of using a general mechanism worked as a norm for closing the system, ensuring that situations in need of protection were effectively protected, and not just those envisaged by the legislator.

In the case of a coercive fine, even though it is typical, it is clear that its suitability to the specific case deserves to be detailed to achieve success in its accessory purpose, which is to serve as a skillful instrument to make the satisfactory activity effective. This purpose is fully supported by a normative system backed by the strength of fundamental rights and enforceable atypicality.

5. CONCLUSION

The specific protection in the new Code of Civil Procedure continued with what was already provided for in the previous legislation, a legal achievement obtained only at the end of the last century. More than that, the valorization promoted by the CPC/15 on execution systematically reinforces the development of executive techniques sufficient to satisfaction.

Thus, the fundamental right to the effectiveness of satisfactory tutelage has gained considerable prominence, especially when considering the important transition from a rigid model to the atypical permissives of civil execution. Because of this flexibility, there are coercive fines.

Astreintes consist of a coercive technique of indirect execution to embarrass an individual with a pecuniary threat to comply with an expected conduct. However, even its legal provision implies the need for rationalization so that the measure obtains practical and positive results.

Therefore, the aspects of the fine must be assessed considering specific cases so that its application has a concrete meaning, such as the amount, periodicity, the destination of the fine or credit. This proceeding, the probability of success of the executive technique increases considerably, honoring the seriousness of the measure.

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