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Provisional relief and its unconditional nature: Constitutional and procedural limits in the judicial anticipation of rights.

Provisional relief and its unconditionalities: Constitutional and procedural limits in the judicial anticipation of rights

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SUMMARY

Provisional relief is one of the most important instruments in current civil procedure, especially in the pursuit of effective judicial services. The anticipation of the effects of a judicial decision, before the final judgment on the merits, is a mechanism that helps prevent harm resulting from the slowness of the process. However, the granting of this form of relief must respect the constitutional and procedural limits defined in the Brazilian legal system. The objective of this article is to examine the foundations of provisional relief in Brazilian civil procedural law, highlighting the constitutional limits that condition the judicial anticipation of rights. The methodology used consists of a qualitative bibliographic research, which includes the analysis of current legislation, specialized doctrine, and relevant jurisprudence. The results indicate that provisional relief plays an essential role in access to justice and ensures the effectiveness of the jurisdiction.

However, its application requires caution and adequate justification to avoid violating the constitutional principles of adversarial proceedings, full defense, and due process. It is concluded that the mechanism should be used in a balanced way, reconciling the need for procedural speed with the preservation of fundamental procedural guarantees.
Keywords: provisional injunction; civil procedure; judicial anticipation; constitutional guarantees.

ABSTRACT

Provisional relief is one of the most important instruments of current civil procedure, particularly in the quest for effective judicial provision. The anticipation of the effects of a judicial decision before the final judgment on the merits is a mechanism that helps prevent damage resulting from the slowness of the process. However, the granting of this form of relief must respect the constitutional and procedural limits established in the Brazilian legal system. The objective of this article is to examine the foundations of provisional relief in Brazilian civil procedural law, highlighting the constitutional limits that condition the anticipatory judicial granting of rights. The methodology used involves qualitative bibliographic research, including the analysis of current legislation, specialized doctrine, and relevant jurisprudence. The results indicate that provisional relief plays an essential role in achieving access to justice and ensuring the effectiveness of jurisdiction. However, its application requires caution and adequate reasoning to avoid violating the constitutional principles of contradiction, ample defense, and due process. It is concluded that the institute should be used in a balanced manner, uniting the need for procedural speed with the preservation of fundamental guarantees of the process.

Keywords: *Provisional relief; civil procedure; judicial anticipation; constitutional guarantees.*

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1. INTRODUCTION

This study seeks to address the constitutional and procedural limitations that prevent...
The effective legal protection of the right. The central idea is to look at the limitations that the law itself
The Constitution and procedural laws impose opposing views. Often, a right seems obvious, but an immediate
decision isn't obtained because the system demands caution. It is precisely this limitation.
that separates the desire for swift justice from the need to follow due process.

It is noted that one of the challenges of the modern legal system is the effectiveness of judicial processes.
The natural deterioration of legal processes can compromise the practical usefulness of decisions.
judicial processes, often rendering the protection of rights ineffective when these rights require a solution.
Quick and immediate resolution.

There is also liability for procedural damage and the repression of bad faith that
These constitute essential mechanisms for controlling the misuse of provisional remedies. The Code
The Code of Civil Procedure, within its system, regulates forms of liability for those who, in a willful manner,
to obtain or request measures that cause harm to third parties, without observing the duties
procedural.

The Code of Civil Procedure (2015) governs liability for procedural damages and for
bad faith in the improper obtaining of provisional relief (art. 302), while the Civil Code provides for
Civil liability for abuse of rights (Article 187). These provisions are preventive in nature.
and reparative, ensuring that the use of this procedural instrument is carried out in a manner
appropriate, with sanctions for abusive or malicious conduct. It should be noted that the legal system allows for...
parties use the processes as instruments of coercion, particularly within the context of measures
precautionary measures, that is, urgent or anticipated decisions issued before the conclusion of the proceedings.

Mitidiero (2023) further states that provisional guardianship constitutes one of the instruments
central procedural elements for the effective administration of justice in contemporary Brazilian law. Regulated,
In the current legal system, according to articles 294 to 311 of the CPC (Code of Civil Procedure), provisional relief encompasses...
various types of measures, notably urgent (precautionary and anticipatory) and evidence-based measures,
each with its own assumptions and purposes.

According to Mitidiero's (2023) line of reasoning, provisional guardianship emerges as a
A crucial instrument to ensure that the time required by the legal process does not become an obstacle to...
realization of justice. It is, therefore, a mechanism that allows the Judiciary to
to anticipate or assert the effects of the final decision before the text is judged, provided that
certain legal conditions must be duly observed.

According to Marinoni (2018), while precautionary measures seek to ensure usefulness and effectiveness

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Regarding future judicial decisions, preliminary injunctions aim to advance, totally or partially, the...
The effects of the alleged right are demonstrated when its probability and the danger of harm or risk to the party are shown.
useful result of the process; however, the provisional remedy based on evidence dispenses, in certain cases, with robust proof regarding the
right based on documentary or case law evidence.

To understand Marinoni's (2018) thesis, one must start from the assumption that the process
The judicial process is, essentially, a long journey. However, in many situations, the delays...
The inherent nature of this path can lead the litigant to lose the very object they were ultimately seeking.
It should be noted that it is precisely within this context that provisional remedies are situated, legal mechanisms that operate...
as suitable shortcuts to the satisfaction of the right or as a useful consequence of the process.

The legal framework for provisional relief is set out in the Brazilian Code of Civil Procedure of 2015, specifically in Article 294.
There is a risk of harm when a party's right has a high degree of probability; in this case
In this modality, the granting of preventive or proactive measures is permitted.

Therefore, it is worth highlighting that the judicial anticipation of rights raises legal questions.
significant, especially regarding the constitutional limits of this action. The legal domain of
The contracting party may be significantly affected by the granting of provisional measures before the
Final analysis of the document, which is why the constitutional principles governing the procedure apply.
They must be strictly observed.

In the dogmatic-procedural field, Teixeira (2019) states that there are principles and assumptions
which operate as true unconditionalities in the exercise of judgment regarding requests for protective measures.
provisional: sufficient grounds (to allow for judicial review and eventual re-examination),
observance of the right to a fair hearing, even if deferred when necessary, and respect for the reversibility of
measure, proportionality and reasonableness in the choice and extent of protection, the behavior of
good faith on the part of the parties and the prohibition of abuse of rights.

It is argued that it is effective to determine the limits of the general power of guardianship and the anticipation of its...
effects on modern civil procedural law. As an exhaustive basis, reversibility and good faith,
The provision of protection is presented not only as a prerogative of speed, but also
as a legal act of high social and ethical responsibility.

The Brazilian procedural system is based on the mandates of the Constitution.
Federal Constitution of 1988, which establishes, in article 5, items LIV and LV: due process of law, the right to a fair hearing.
and the right to a full defense as pillars of the jurisdiction. These fundamental guarantees act as safeguards,
ensuring that any judicial ruling that restricts rights is preceded by due process.
adequate. However, the need to ensure the effectiveness of the judicial process poses a challenge.
to balance the speed of urgent measures with the legal certainty of these precepts.
constitutional.

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This study focuses on examining the constitutional and procedural limitations that affect the protection of rights, in order to identify issues that may compromise full protection. Legal protection. The focus of the study is to analyze the institution of provisional remedies and its limits in... public legal system, in order to map the normative processes that guide its practical application.

Therefore, this study aims to understand the dogmatic structure of provisional relief, through A detailed analysis of the relevant constitutional principles. In light of the practical challenges. inherent to the legal protection of rights, it seeks to demonstrate how the magistrate should respond to The urgency of the measure in adverse procedural situations, ensuring that the efficiency of the search results also in preserving the fundamental guarantees of the Constitution.

2. MATERIALS AND METHODS

This research is characterized as a qualitative study, based on... A literature review and documentary analysis of legislation and legal doctrine. Thus, the A qualitative approach was chosen because it allows for an in-depth analysis of the fundamentals. Theoretical and normative aspects of the provisional remedy institute in Brazilian civil procedural law.

Works by renowned authors in the field of civil procedural law were analyzed, including Luiz Guilherme Marinoni and Maria Helena Diniz, whose studies of civil law address the Fundamentals and limitations of provisional relief in the Brazilian legal system.

In addition to doctrinal analysis, relevant legal norms were examined, especially the Code of Civil Procedure of 2015, articles 294 to 311, regarding the requirements for granting injunctive relief. provisional. 300; the limits of application, art. 298 and art. 300, § 3; and the control of abuse, art. 302 and art. 80 and 81, with due regard to the principles and guarantees set forth in the Federal Constitution of 1988, in art. 5th, inc. XXXV, LIV and LV.

Thus, the methodological procedure consisted of data verification, critical reading, and... in the interpretation of the selected sources, with the aim of identifying the main arguments. Doctrinal and jurisprudential arguments regarding the constitutional limits of provisional relief.

3. RESULT

The analysis carried out in this study made it possible to identify provisional guardianship as a tool. crucial for the effectiveness of jurisdiction in modern civil procedure. It has been confirmed that its function The main goal is to ensure that the inherent delay in the process does not compromise its usefulness and effectiveness. final decision.

The results show that the Brazilian procedural system, in structuring the modes of urgency...

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and evidence, it offers different mechanisms for protecting rights, both in the face of harm and when the right in question presents a high degree of documentary or jurisprudential probability. And, In structuring this framework, it offers different mechanisms for protecting rights, whether in the face of an urgent situation, such as when facing an exam.

It was observed that the practical use of these institutions requires caution and a legal basis. sufficient to avoid violating fundamental constitutional principles, such as the right to The study found that, although the In summary proceedings, the right to a fair hearing is often granted in cases of expedited judicial decisions. It falls apart, but it changes, which requires the magistrate to have a rigorous duty to provide reasons for their decision. to avoid arbitrary decisions.

The study's findings indicate that the application of provisional guardianship has become increasingly common. increasingly frequent in the Brazilian judicial system, especially given the growing demand for quick and effective judicial decisions.

However, the aforementioned decisions also demonstrate the legal certainty of the system. Brazilian legal protection is ensured by mechanisms of procedural accountability. And the legal system establishes... that the inadequate provision of protection, particularly in cases of abuse of rights or of Ownership of property implies the obligation to repair the damage caused to the other party.

It can be concluded that the effectiveness of provisional relief depends on the ethical balance of the judgment, which It combines the need for procedural speed with the strict preservation of fundamental guarantees. of the parties.

4. DISCUSSION

4.1. Legal Effectiveness

The granting of provisional measures must, therefore, be subject to dialogue with constitutional principles. fundamental principles, especially due process of law (article 5, LIV, CF/88), the right to a fair hearing, and the right to a full defense. defense (article 5, LV, CF/88) and the requirement for reasoned judicial decisions (article 93, IX, CF/88). These principles impose limits and minimum requirements: even though the right to a fair hearing can be deferred. In some cases — due to urgency — the decision to grant or deny provisional relief It requires adequate, clear, and proportionate justification.

The CPC/2015, observing the CF/88, will include, in its provisions, the procedures for to be adopted regarding protective measures. Thus, articles 294 to 311 of the CPC address provisional protective measures, which are divided into urgent relief (art. 300) and relief based on evidence (art. 311).

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Given that emergency injunctions aim to protect the outcome of the process against risks — danger of harm or risk to the useful result—, further subdivided into anticipated—satisfactory— or precautionary — conservative. The aforementioned protective measures can be requested both in an antecedent manner (before the main claim) as well as incidentally (during the course of the proceedings).

However, provisional injunctions based on evidence do not depend on urgency, being grounded in the high degree of urgency. The likelihood of the right—clear evidence—can be granted summarily—without hearing the... On the other hand — in exclusive cases of abuse of defense, a matter consolidated in judgment of repetitive or binding precedent, or else in documentary evidence of a deposit contract.

It should also be noted that Article 298 of the CPC establishes that the judge must also provide reasons, In a clear and precise manner, state your decision when granting, denying, modifying, or revoking the provisional injunction. The aforementioned rule establishes the basis for precautionary or anticipatory decisions. The aforementioned The device complies with article 93, item IX, of the Brazilian Federal Constitution of 1988.

The current CPC (Code of Civil Procedure) addresses liability for procedural damages and bad-fair litigation. faith, in its articles 79 to 81, while article 302 advocates the objective liability of the party that obtains an emergency injunction that was subsequently revoked or declared ineffective. Therefore, the party must remedy the situation. damages caused to the opposing party, regardless of fault or bad faith.

In the area of evidence protection, there is a relevant argument about the limit of contradiction, because Article 311 of the CPC allows, in certain circumstances (items II and III), the granting of preliminary injunctions. This unprecedented anticipation, which alters one party without first hearing the other, finds its constitutional justification in the pursuit of a reasonable duration of the process and in the protection of a right which already presents a high degree of documentary or jurisprudential probability.

Silva (2024) emphasizes that provisional guardianship has an essential instrumental function to guarantee the immediate effectiveness in addressing the injury, mitigating the harmful effects of procedural delays, provided that provided that the fundamental assumptions of probability of right and risk of irreparable harm are observed.

It is observed that the author defends a pragmatic and protective view of the process. And the guardianship A provisional measure is not merely a procedural device, but an indispensable tool for justice. do not achieve your goal with delay.

Diniz (2012) reinforces that the constitutional principles of civil procedure are the core that It guides the application of procedural rules, guaranteeing due process, the right to a fair hearing, and... broad defense, explicitly provided for in Article 5, items LIV and LV, of the 1988 Brazilian Constitution.

It is therefore important to highlight the inseparability of these principles for fair functioning and equality in the judicial process. And that the rules of procedure do not exist in a technical vacuum, but They must always be interpreted and applied in light of the 1988 Constitution.

Furthermore, Araújo (2007), in turn, emphasizes that due process of law consists of a

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a set of guarantees that ensures the parties can fully exercise their rights in the process.
preventing arbitrary actions and ensuring the legitimacy of judicial decisions. This set includes,
In addition to the right to a fair hearing and full defense, principles such as impartiality and the request for decisions are also important.
judicial.

It is observed that due process of law constitutes the structure for containing the power of
magistrate. By asserting that he prevents arbitrariness, it is suggested that the judge is not free to
to decide as one sees fit, but rather in accordance with the law and the rights of the parties. A
The legitimacy of the decision does not stem solely from the judge's signature, but also from strict adherence to...
all procedural phases.

Furthermore, Rodney (2019), in his dissertation, elaborates on the normative character of these
principles, highlighting their role in shaping the Brazilian procedural system, establishing a
an indissoluble link between substantive law and procedural law, guaranteeing security and legitimacy.
to jurisdiction.

One can perceive the preservation of a much more connected and ethical conception of Law. Instead
Instead of viewing the process merely as a cold instruction manual, he humanizes it by linking it...
fully aligned with real life. Therefore, the magistrate must fulfill a rigorous duty of justification.
by mitigating the defendant's immediate involvement, ensuring that the pursuit of speed does not lead to hasty decisions.
arbitrary, unrelated to the specific case, and disregarding fundamental guarantees of due process.
legal process.

The analysis demonstrates that provisional relief constitutes a fundamental instrument.
for the effectiveness of jurisdiction in contemporary civil procedure. Its fundamental role being...
It consists of ensuring that procedural delays do not compromise the usefulness of the final decision.

The discussion also addresses the two main types of provisional relief: the relief of
Urgency and the protection of evidence. Urgent protection can be either precautionary or anticipatory in nature.
being granted when there is a probability of the right and a danger of harm or risk to the outcome.
useful part of the process.

In contrast, provisional relief based on evidence can be granted independently, based on demonstration.
of danger of harm, provided that the right claimed by the party is sufficiently evident, based on
documentary evidence or evidence based on established case law.

However, it is also observed that the indiscriminate granting of these measures can generate
risks to legal certainty, especially when the decision produces irreversible effects or when
The judge has not provided adequate justification.

The granting of provisional measures must, therefore, be subject to dialogue with constitutional principles.
fundamental principles, especially due process of law (article 5, LIV, CF/88), the right to a fair hearing, and the right to a full defense.

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defense (article 5, LV, CF/88) and the requirement for justification of judicial decisions (article 93, IX, CF/88). These principles impose limits and minimum requirements: even though the right to a fair hearing can be deferred. In some cases (due to urgency), the decision to grant or deny provisional relief lacks... with adequate, clear and proportionate justification.

4.2. Legal Certainty

4.2.1. Constitutional Foundations

Bueno (2017), in his legal encyclopedia, emphasizes that provisional protection implies cognition. summary, which allows for its revocation, guaranteeing deferred adversarial proceedings and the reversibility of a measure that preserves legal certainty and balance between the parties.

It is argued, therefore, that provisional guardianship represents a mechanism for ethical balance. in the process, demonstrating that providing assistance is a safe path, as it allows for Necessary speed without compromising the rights of those who are being protected.

According to Dinamarco (2015), provisional guardianship is a procedural institute that views the Effectiveness and speed are fundamental premises, as regulated in the CPC, articles 294 to 311. which regulate urgent (precautionary and anticipatory) and evidentiary injunctions. The doctrine highlights that provisional relief ensures the effectiveness of the constitutionalized process.

However, there is the idea that the provision of temporary assistance is the instrument that It avoids the injustice of delayed decisions, transforming theory into practice whenever urgency or The evidence of the right must be as strong as the claim. Thus, for the presentation For a judicial decision to be legitimately effective, it must be accurate and timely, both prompt and appropriate.

Provisional relief, therefore, is a procedural instrument that combines expeditiousness in guaranteeing legal certainty, allowing for the provisional protection of rights and conditional, as provided for in the CPC/2015. Its basis lies in several principles. Constitutional principles that guide the actions of the Judiciary. Among these principles, access stands out. to justice, which guarantees all citizens the possibility of obtaining adequate judicial protection and effective.

Another relevant principle is that of the reasonable duration of proceedings, which imposes a duty on the State. to ensure the resolution of legal claims within a reasonable time. In short, the application of the injunction. The provisional approach must be compatible with other equally relevant principles, such as

The right to a fair hearing and full defense, as provided for in Article 5, item LV of the Brazilian Federal Constitution of 1988.

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4.2.2. Summary Cognition vs. Exhaustive Cognition

According to Diniz (2016), summary cognition is a process of preliminary and superficial analysis, which It provides a basis for provisional decisions, allowing for speed and urgency, while exhaustive cognition is the a thorough and thorough examination of the merits, typical of a final judgment, which encompasses broad considerations. production of evidence.

So, summary cognition is like that first emergency response, in which the The magistrate conducts a quick and superficial analysis to issue a provisional decision — the famous preliminary injunction—because the case cannot wait. Exhaustive cognition, on the other hand, is the opposite: when the judge investigates... He calmly analyzes each piece of evidence, listens to witnesses, and delves into the details to arrive at a verdict. end.

Oliveira (2023), in his dissertation, further differentiates the degrees of cognition, pointing out that the Exhaustive cognition aims to guarantee legal certainty and avoid judicial errors, given the complete examination. of the case after the evidentiary phase, in contrast to the reversible and provisional nature of cognition. Summary. In our legal system, both of these instruments are necessary: a quick and unbiased decision. for emergencies and another mild and intense decision, so that final justice is, in fact, effective.

Torreão (2020) argues that this duality between summary and exhaustive cognition is fundamental to balancing the principles of speed and legal certainty, allowing for decisions quick and provisional measures, without sacrificing the right to due process and a full defense in the final decision.

It is clear that there is a huge distinction between quick decisions and thorough decisions. The former They are adopted summarily, based on the essentials and to solve something urgently. As for... Thorough decisions are those that carefully consider everything, listening to all the evidence and the... contexts.

In short, the great importance of this duality lies in the balance. The process can be Quick when urgent, but always extremely judicious when the time comes to make the final decision. It is the process between the immediate and the definitive that sustains security. It is legal and prevents the State from making avoidable mistakes.

4.2.3. Contradictory and full defense

According to Diniz (2012), the right to a fair hearing and the right to a full defense are constitutional guarantees. essential elements that ensure the parties' right to participate effectively in the process, intervening and influencing judicial decisions. They are expressly protected in Article 5, paragraphs LIV and LV, of the CF/88.

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In dialogue with Diniz's thinking (2012), it is noted that it is sufficient for the parties to be aware.
of the steps involved in the process; they have the real ability to influence the outcome, with the
guaranteeing information through means, evidence, resources, and lawyers, so that disclosure can occur.
effective.

Bastos (1995) emphasizes that the adversarial process means bilateral communication between the parties and
The judge, as well as the right to a full defense, with access to all means of proof, are essential to avoid
to prevent arbitrary decisions and ensure a fair process, especially during the discovery phase.

Regarding the adversarial process, it is understood that this focuses on the communicative nature and
instruction of the process. And the procedure is not exclusively a monologue by the magistrate, but
Yes, a successive colloquium in which knowledge will flow freely between all parties.
process.

Moreira (2021) analyzes how the absence of these principles leads to the nullity of acts.
procedural matters, highlighting their centrality to the legality and legitimacy of the jurisdiction. Their
The research also highlights the need to adapt procedures to constitutional guarantees.
even in faster processes.

The key point here is that the State is much stronger than the individual. Therefore, the
The process emerges as a safeguard. Without principles, the State could merely deliberate on the matter.
that he might aspire to, whenever he so desired, in an arbitrary manner. It can be inferred that the process is only safeguarded
when this auspicious passage follows, for it is this that prevents the judge from acting according to his own convenience.
or by impulses.

Thus, it is evident that Article 5, items LIV and LV, of the 1988 Brazilian Constitution serve as the basis for...
procedural balance. The integration of these authors' perspectives reveals that the manifestation
The energetic nature of the facts depends explicitly on the dichotomy between communication and instrument. Thus,
It is ensured that the result of active and participatory thinking constitutes a point for reflection.
in the process, maintaining the legal certainty and impartiality established by a state of justice.
democratic.

4.3 Legal Responsibility

Brazilian law provides accountability mechanisms for cases in which
The granting of the injunction may cause harm to the opposing party, especially when there is an abuse of rights.
or procedural bad faith. The aforementioned constructions play an important role in preventing
abuses and in preserving legal certainty.

According to Santos (2022), objective procedural liability based on bad faith is a mechanism

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fundamental for punishing unfair conduct in the process, characterized by when the litigant violates expressly the hypotheses foreseen in article 80 of the CPC, without the need to prove intent. characteristic in some cases.

This reflects a respectable paradigm shift, that is, the transition from one vision... genuinely subjective, in which it was necessary to prove bad faith intent, for a broader spectrum functional and objective of the process. Considering that bad faith litigation constitutes a serious violation. to the principles of procedural ethics and objective good faith, establishing austere conduct by the magistrate. to prohibit such procedures.

According to Bovino (2011), in his dissertation on abuse of the right to demand, the Procedural responsibility functions as an instrument for protecting the integrity of the process. preventing the parties from using legal action for shielding or delaying purposes. The theory of Abuse of procedural rights, combined with the concepts of ethics and procedural loyalty, creates a system evaluations that encourage abusive behaviors and guarantee trust in the judicial system.

This creates a space where loyalty and ethics are not merely proposed. beautiful, but rules of procedural survival. The party that begins to abuse its right to Making a decision that breaks the logic of the game should be punished.

Leroy (2022), in his study of systematizing the clauses characterizing litigation in bad faith, it demonstrates that the oversight of the higher courts has consolidated the understanding of that notification for bad faith litigation is not only appropriate, but also necessary to deter unfair procedural conduct, including altering facts, dilatory appeals, and the filing of objections. A claim that contradicts the express text of the law.

This suggests that if you find yourself unfavorable to what you are willing to do, Clearly, according to the law, or trying to mislead the judge about what really happened, you lack... to experience the damage. It is said that the right to defense remains, but is extinguished where it begins. infidelity or procedural bad faith.

Thus, strict liability for bad faith represents an instrument. essential for maintaining the integrity and reliability of the process, punishing parties who act in disagreement with the principles of loyalty, good faith and cooperation that should guide everyone's actions. the participants in the judicial process.

It can be concluded that good faith and cooperation have become rules for survival. Who Those who try to use the justice system for nefarious purposes or to buy time, resorting to means contrary to the legal order, now run a real risk of suffering harm. It is the law attempting to guarantee that... In court, ethics should not be just a word, but the foundation of everything.

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4.3.1. Reversibility Assessment

According to Diniz (2012), the reversibility of provisional relief is a principle that ensures the possibility of modifying or revoking anticipatory decisions, preventing them from taking effect. irreparable damage or the occurrence of difficulties during the process.

It is therefore clear that this decision needs to be overturned. If later on the judge realizes... that the situation wasn't quite like that, he has to be able to backtrack. This principle of Reversibility exists precisely to prevent a hasty decision from causing an extermination that does not It can be repaired immediately.

On the other hand, Coelho (2018) discusses the principle of legal certainty as the right to stability of legal relations, reinforcing social confidence in the judicial system, but considers This principle cannot prevent effective provisional remedies when there is imminent risk.

It is considered that the fundamental factor is seeking stability and cannot be an obstacle. No. It's no use having a super stable system if, at the moment you're about to suffer a loss, you can't... On the other hand, the magistrate says he can't do anything because he lacks the power to await the outcome of the... In this process, the judge will certainly commit a great injustice.

Ferrari (2007) already studied the balance between reversibility and legal certainty, highlighting that the stability of relations must be preserved, but without hindering the adoption of protective measures. permitted for the immediate protection of rights, which require clear criteria.

Thus, the core of everything lies in clear criteria. It is necessary to protect the right immediately. Yes, but always with a focus on legal certainty. Procedural law lacks predictability so that... May current protections not become tomorrow's injustice.

Nery Ferrari (2007) argues that the core of any judicial process is balance. It is as if he were trying to balance the scales so that neither haste spoils justice, nor... Delay kills the right of whoever holds the real truth.

Furthermore, it's not possible to be so slow that justice arrives too late, nor so fast that... The point is to postpone legal certainty and the right to defense. The bottom line is that reversibility does not... It's a flaw, but a safety valve that allows the State to act with the speed that life demands. It requires, while keeping one's feet on the ground with keen discernment, that the final decision, after a A thorough study of everything, be truly fair and decisive.

4.4. Jurisprudential Understanding

Case law has established parameters for granting provisional injunctions. Court of Justice of Rondônia – TJ/RO, in the Special Civil Court procedure, no. 7066917-

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16.2025.8.22.0001, which deals with the granting of provisional urgent relief in an action for specific performance of an obligation. to do, combined with reparation for damages. Judge Haroldo de Araújo Abreu Neto (Judge of Law) The substitute judge determined that the electricity concessionaire should carry out the transfer of Ownership and service connection for the new tenant.

In this case, the court upheld the understanding that energy debts are obligations. personal. The judge used the measure to prevent Energisa from resorting to denial of service as A form of coercion to obtain payment of debts left by third parties.

In another court decision, in the same court, Case No. 7038576-77.2025.8.22.000 deals with of the granting of the request for preliminary injunction to order the defendant bank to cease immediately remove the deductions from your current account related to disputed personal loans. author.

In this process, provisional guardianship plays a fundamental role in preserving the livelihood. Unlike a purely financial dispute, the case involves a public servant. The public became the victim of a sophisticated fraud that resulted in direct deductions from their income.

It is noted that provisional relief in these proceedings goes beyond a simple anticipation of... sentence; it functions as an instrument of social justice, preventing the most powerful party from... Whether it's an energy company or a bank, take advantage of the slowness of the judicial system as strategic advantage over the vulnerable.

The Supreme Federal Court (STF), in ARE 931.989 AgR, with the Rapporteur being... Minister Luiz Fux, 1st Panel, in a ruling dated April 26, 2016, determined that preliminary injunctions from lower courts... Lower court rulings will not be reviewed (based on Precedent No. 735), except in cases involving affront. direct constitutional review or conflicts of jurisdiction, provided that the analysis does not require a re-examination of body of evidence.

A decision by the Superior Court of Justice (STJ) regarding Repetitive Theme 692 states that, If a provisional injunction is overturned or reversed, the plaintiff must return the... values received, such as benefits or aid, since the execution of the provisional injunction occurs by at your own risk. Furthermore, to avoid the need for new lawsuits, the thesis stipulates that... The determination of what is owed and the reimbursement of damages must occur within the original legal proceedings. within the same proceedings, as determined by article 520, II, of the CPC, dispensing with the need to file a new lawsuit. only for that purpose.

The established understanding of the Supreme Federal Court (STF) and the Superior Court of Justice (STJ) is that, as a general rule, it is not applicable. extraordinary appeal against decisions that grant or deny preliminary injunctions, anticipations. of protective measures or precautionary provisions. This restriction is based on Precedent No. 735 of the STF (Supreme Federal Court), which considers such interlocutory decisions to be acts of a provisional nature, subject to alteration during the course of the process.

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The process, therefore, lacks the definitive or final character required for an appeal.

FINAL CONSIDERATIONS

Provisional relief is an essential instrument to ensure the effectiveness of the provision. jurisdictional in Brazilian civil procedure. Its main function is to ensure immediate protection for rights that cannot wait for the end of the judicial process. However, judicial anticipation The application of rights must be done cautiously, respecting constitutional and procedural limits. established by the legal system.

The analysis carried out in this study demonstrates that the correct application of provisional relief It depends on the responsible action of the Judiciary, which must balance the need for speed. procedural aspects that preserve the fundamental rights of the parties involved in the process.

Therefore, it can be concluded that provisional relief should be used as an instrument of The administration of justice, but always in accordance with the constitutional principles that structure it. the democratic civil process.

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