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The improper enforcement of alimony payments and the creditor's civil liability for violating objective good faith.

The improper enforcement of alimony payments and the creditor's civil liability for breach of objective good faith.

The improper execution of maintenance and the civil responsibility of the party requesting it for violating good objective faith.

ROMUALDO DE SOUZA, Victor1
GARCIA BOTELHO, Daniela2

SUMMARY

The improper enforcement of alimony payments has become a current and very present issue in the fields of Civil Law and Civil Procedure. With the improvement of legal relations, new limits to the exercise of rights have been understood, and from this, it has been understood that the effectiveness of alimony collection cannot legitimize abusive conduct. Thus, this study aims to investigate how the civil liability of the plaintiff, in light of the principle of objective good faith, contributes to the protection of the defendant and to the curbing of abuse of rights in alimony enforcement proceedings in Brazil. To this end, a literature review was conducted using sources such as books, magazines, electronic journals, other academic publications, and legal documents, in order to compose the theoretical framework employed in its development.

The hypothesis is that the principle of objective good faith is important to guarantee procedural loyalty and to repel the use of the judicial machinery, especially civil imprisonment, for purposes of harassment or unjust enrichment. In short, it was concluded that the civil liability of the abusive creditor consolidates ethics as a legal principle and procedural foundation, so that its recognition represents progress that balances the effectiveness of legal protection with the protection of human dignity.

Keywords: Child Support Enforcement; Civil Liability; Objective Good Faith; Abuse of Rights; Improper Enforcement; Civil Imprisonment.

ABSTRACT

The improper enforcement of alimony payments has become a pressing issue in Civil and Procedural Law. With the improvement of legal relations, new limits on the exercise of rights have been recognized, and, from this, it has been recognized that the effectiveness of alimony collection cannot legitimize abusive conduct. Thus, this study aims to investigate how the plaintiff's civil liability, in light of the principle of objective good faith, contributes to the protection of the defendant and to curbing the abuse of rights in alimony enforcement proceedings in Brazil. To this end, a literature review was conducted using sources such as books, magazines, electronic journals, other academic publications, and legal documents to complete the theoretical framework employed in its development. The hypothesis is that the principle of objective good faith is important for ensuring procedural loyalty and for deterring the use of the judicial machinery, especially civil imprisonment, for purposes of harassment or unjust enrichment. In summary, it was concluded that holding the abusive creditor civilly liable consolidates ethics as a legal principle and procedural foundation, so that its recognition represents progress that balances the effectiveness of legal protection with the protection of human dignity.

1 Undergraduate student of Law at Afya Itaperuna. Email: Victorromualdo22@gmail.com; ORCID: https://orcid.org/0009-0003-5444-7561

2. Supervising Professor: Academic Title, Course, Afya. Email: email@email.com

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1 INTRODUCTION

The obligation to provide alimony constitutes one of the pillars of Family Law, supported by...
based on the principles of human dignity and family solidarity, as foreseen.
in Article 1, item III, of the Federal Constitution. This duty, enshrined in Articles 1,694 and
According to the following articles of the Civil Code, it transcends mere monetary compensation. For the legal scholar Maria
Berenice Dias, the foundation of the obligation to provide alimony rests "on the principle of solidarity."
familiar, which causes people who are part of the same family unit to owe each other
"Mutual assistance." This is a legal duty aimed at ensuring the subsistence of...
feeding them, guaranteeing them the "minimum subsistence level" in vulnerable situations, such as
childhood, old age, or inability to work. Given its essential and urgent nature, the
The legal system grants alimony creditors highly effective procedural tools.
coerciveness, with a view to the effectiveness of the service.
According to Didier Jr. and Cunha (2021), objective procedural good faith represents an evolution.
important in the concept of process, as well as in the executive relationships recognized in
Brazilian legal system. With the growing emphasis on ethics as a fundamental element.
Regarding enforcement, the law has come to recognize the need for well-founded limits.
not only in strict legality, but also in loyal coexistence, responsibility, and cooperation.
and in the duty to inform. This change, in the words of Tartuce (2021), reflects a
transformation
contemporary civil and procedural law, which goes beyond the mere collection of amounts, giving
Priority is given to integrity and protection against unjust harm. By enshrining the principles of
human dignity and solidarity, the 1988 Federal Constitution, as well as
The Code of Civil Procedure reinforces this perspective, giving legal relevance to good faith and to...
The theory of abuse of rights as a building block of civil liability.
The prohibition against abuse of rights, observed in several judicial decisions, is a concept that aims to...
to ensure that any coercive measure that affects the life, property, and freedom of a
when executed, especially in alimony obligations, the decision should be strictly aimed at
debt fulfillment, without excesses. Thus, it is understood that procedural fairness and integrity are paramount.
The principles of the executed party should prevail over dysfunctional, malicious, or disproportionate actions.
of the plaintiff's right.

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This transformation was largely driven by the promulgation of the Federal Constitution of 1988 and, more recently, by the 2015 Code of Civil Procedure, which consolidated the recognition of procedural good faith as a fundamental norm and ensured the liability for abusive conduct, regardless of the privileged nature of the debt. of food.

The aim of this study is to investigate how the recognition of responsibility civil damages to the plaintiff, arising from the improper enforcement of alimony payments and in light of the violation of good faith. It is objective, contributing to the comprehensive protection of the debtor and to the enforcement of guarantees. fundamental in the Brazilian legal system.

This research is justified, firstly, by the social function of the topic, considering that Brazil still faces cases in which vital coercive mechanisms are used improperly. abusive by the creditor, a situation that unduly compromises freedom, assets and The psychological integrity of the defendant. In these cases, the recognition of civil liability. The plaintiff's document is presented as a legal instrument to ensure the enforcement of rights. fundamental rights enshrined in the 1988 Federal Constitution, especially the dignity of the person. human rights, objective good faith, and the prohibition of unjust enrichment.

From a theoretical and academic point of view, the work contributes to a deeper understanding of discussions in the field of procedural and family law, strengthening procedural loyalty. as an instrument of justice, since the effectiveness of alimony enforcement has been consolidated. in legal doctrine and jurisprudence, but civil penalties for its abusive use are still lacking. legislative uniformity and broad theoretical systematization. Research, in this sense, can to expand the formulations on the centrality of good faith as a limiting legal element, shifting the focus from strictly satisfying debts to valuing procedural ethics and... Respect for the duty not to harm others.

Regarding the current state of knowledge, it is observed that Brazilian legal doctrine and courts... They have been recognizing abuse of rights as an unlawful act subject to redress. However, they persist. debates regarding its practical implications in the food sector, such as the definition of damages. presumed moral rights (in re ipsa) in the face of the undue threat of civil imprisonment and the clear distinction between The mere distinction between bad-faith litigation and autonomous civil liability makes the topic of great importance. Relevance to the evolution of academic research and forensic practice.

In practical and social terms, the research presents the possibility of suggesting modifications and Interpretative and jurisprudential improvements, in order to provide greater security. legal protection for those involved, as well as strengthening procedural mechanisms and guarantees against

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reckless or malicious executions, consolidating a necessary debate on the subject, which
It fosters the evolution and balance of contemporary contractual and family relationships.

To achieve the overall objective, the following specific objectives are established: to examine the
The legal nature of the alimony obligation and the contours of objective good faith in Procedural Law.
Civil; identify the specific conduct of the plaintiff that constitutes abuse of rights and the
Improper enforcement of alimony payments (e.g., collecting a debt that has already been paid, refusing to acknowledge payment);
Distinguish between liability for bad-faith litigation (Article 80, CPC) and civil liability.
for an unlawful act (articles 186, 187 and 927, CC); verify the jurisprudential treatment given to the subject,
focusing on the requirements for conviction (need for intent or negligence) and the configuration
Regarding moral damages (whether inherent or not) in cases of wrongful imprisonment; indicate the parameters for
full compensation for the damage suffered by the defendant.

This study will be conducted through a literature and document review, in which will be
Various sources were consulted, such as books on civil and procedural law doctrine, legal journals,
electronic journals, academic articles, case law and legal documents, in order to
to compose the theoretical framework for the assertions presented in its development regarding
Improper enforcement of alimony payments and abuse of rights.
Databases such as Scielo, BDTD, Google Scholar, Capes and others will be searched.
case law repositories (notably that of the Superior Court of Justice - STJ), among others.
others, searching for materials published in the last 10 years, except when it comes to
legal documents or summaries.
Sources that do not address the proposed topic or that fall outside the time frame will be excluded.
established in this research or that, for some reason, cannot be identified as
authorship.

2. The Obligation to Provide Alimony, Its Coercive Means, and Good Faith PROCEDURAL OBJECTIVE

Understanding civil liability for wrongful performance requires, first and foremost, an analysis.
from the fundamental premises governing the provision of alimony, from its existential nature,
of the severe enforcement instruments made available to the creditor for the satisfaction of his
credit and, finally, the limiting role of objective procedural good faith in the face of potential excesses.
Committed in the collection process. The obligation to provide alimony constitutes one of the most important pillars.
The relevance of Family Law, grounded in supreme constitutional guarantees, such as

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The principle of human dignity and that of family solidarity, as provided for in
Article 1, item III, of the Federal Constitution of 1988.

The duty to provide alimony, positively regulated by articles 1694 et seq. of the Civil Code,
It transcends the mere transfer of assets or the fulfillment of a monetary debt.
ordinary. This is an obligation of an eminently existential nature, whose scope is
to ensure the subsistence of those who cannot provide for it through their own efforts, guaranteeing to
providing for their "minimum subsistence level" and a dignified life in vulnerable situations, such
such as childhood, old age, or inability to work. As the jurist Maria rightly teaches.
Berenice Dias, the fundamental basis of the obligation to provide alimony rests "on the principle of
Family solidarity, which causes people who are part of the same family unit to...
"They owe mutual assistance." In this way, alimony is characterized as constituting a right.
indispensable to life itself, which justifies the existence of rigorous mechanisms to compel
the recalcitrant debtor.

Given the vital and urgent nature of alimony payments, the legal system grants the creditor the right to alimony.
procedural instruments endowed with high coerciveness, intended to confer maximum
effectiveness possible for the provision of judicial services. In this scenario, the Code of Civil Procedure, in
Article 528 establishes a differentiated and dual enforcement procedure, granting the plaintiff a
"power-duty" to choose between two ways to satisfy its credit: the patrimonial alternative,
embodied in the procedure of expropriation of assets and seizure, and the corresponding personal route.
to the civil arrest procedure.

Civil imprisonment constitutes the most drastic coercive measure permitted by the legal system.
with express authorization in article 5, item LXVII, of the Federal Constitution, which prohibits imprisonment.
for debt, with the exception of voluntary and inexcusable non-payment of alimony.
Article 528 of the CPC expressly states that the alimony debt that authorizes the decree
The prison sentence only refers to the three installments immediately preceding the filing of the lawsuit.
enforcement, as well as those that become due during the course of the proceedings.

This procedural ruling formalized an understanding already established in Precedent 309 of the Superior Court
of Justice (STJ). It is essential to highlight the effective purpose of the deprivation of
freedom in the family context. The jurisprudence of the Superior Court of Justice is settled and
reiterated in asserting that civil imprisonment is not punitive or a form of criminal punishment, but
has a strictly coercive purpose (STJ, HC 392.521/SP, 2017). The restriction of liberty does not
Its objective is not to punish the debtor for defaulting, but rather to coerce them, with the strongest possible force.
If possible, fulfill your obligation in order to guarantee the creditor's survival.

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Consequently, given that it is an extreme measure, legal doctrine emphasizes its exceptional nature.
As Rolf Madaleno teaches, the enforcement process for alimony can never be distorted.
to become a mere "instrument of revenge" against the executed person. Precisely because
Given the magnitude of the powers conferred upon the alimony creditor, the need arises for such powers to be considered.
The mechanisms should not be operated in an absolutist manner, since the power granted to the plaintiff
It is not unrestricted and is subject to fundamental ethical limitations. The use of enforcement mechanisms
It must be strictly guided by the principle of objective good faith, established as a guiding principle of all.
The legal system is expressly adopted as a general clause in civil procedure.
Article 5 of the Code of Civil Procedure clearly establishes that all parties to...
The process must necessarily "behave in accordance with good faith". For the
According to procedural law experts Fredie Didier Jr. and Leonardo Carneiro da Cunha, the primacy of good faith imposes...
ancillary, collateral, or conduct duties that jointly bind the parties in the dispute. It requires-
if the creditor feeds a behavior strictly guided by loyalty, by the duty of
information and mutual cooperation at all stages of implementation. Consequently,
It is unacceptable for the plaintiff to exercise their legal rights in a dishonest manner.
Omission of crucial information or with a primarily harmful intent.
When the creditor, intentionally or negligently, conceals partial payments made from the court.
out of court, files a request for imprisonment based on a debt that has already been fully paid, or
It demands values that are known to be nonexistent, violently undermining the purpose of the guardianship. The breach
These duties of conduct transform the legitimate right to collect payment into an abusive use of the machine.
state judicial system. This infraction not only compromises the social function of the right of access to
justice, but it also delves into the realm of abuse of rights and reparative liabilities.
given the undue harm it causes to the defendant.

2.1 The existential nature of food, the existential minimum, and the principle of family solidarity

The obligation to provide alimony, as stipulated in articles 1694 et seq. of the 2002 Civil Code, should not be...
understood merely as a common financial obligation or as a simple transfer of
resources. It is, in fact, a responsibility of an essentially existential nature.
aimed at guaranteeing the survival and dignity of those who cannot provide for their livelihood.
on their own initiative. The central objective of this obligation is to ensure the dependent has a minimum
necessary for a dignified life, especially during vulnerable times, such as childhood,

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In old age, in situations of illness, or when unable to perform work activities.

This existential nature of alimony dictates that legal protection should not be limited to a mere calculation.

abstract concepts of credit and debit, but consider the urgency of the human need to be protected.

which is why the legal system allows for faster and more effective enforcement mechanisms for the

satisfaction of alimony payments.

The concept of a minimum subsistence level is central to understanding the scope of food, because it

It designates the set of goods, services, and material guarantees indispensable for the individual.

do not be reduced to a state of destitution or degradation. Within the scope of the obligation to provide support,

The minimum subsistence level translates to the minimum level of resources that must be guaranteed to...

providing food to meet basic needs such as food, housing, health, education,

clothing and, in a broader sense, minimum conditions for social interaction. Ensuring this...

The level is closely linked to the "principle of the dignity of the human person," enshrined in law.

in Article 1, item III, of the Federal Constitution, which guides the interpretation and application of

all the rules of the legal system, including those governing family law and the

alimony obligations.

The ethical and legal foundation that legitimizes the enforceability of the alimony obligation is the "principle"

"of family solidarity." This principle imposes on family members the duty to

mutual assistance, recognizing that responsibility for the well-being of its members is

shared. The Federal Constitution reinforces this role by establishing, in article 226, that "the

"The family is the foundation of society" and deserves special protection from the State. Solidarity

Family ties, therefore, are not limited to blood ties: they also encompass bonds of

Affinity and socio-affectivity, following the evolution of the concept of family in society.

contemporary and legally legitimizing obligations arising from affective and moral relationships

coexistence.

Historically, Civil Law has been organized from a patrimonialist and individualistic perspective.

heavily influenced by Roman Law and the liberal ideals of the 18th and 19th centuries.

In this classic paradigm, the obligation to provide alimony was often treated as a mere relationship.

of credit and debit, linked to the structure of the patriarchal family and the protection of assets, in which

the duty of support figured almost exclusively as a counterpart to the submission of

Members were subject to the authority of the pater familias. Legal relations prioritized the protection of property.

Materials were prioritized over the existential needs of human beings, which limited effectiveness.

of the protection of minimum living conditions.

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With social evolution and the consolidation of the Democratic Rule of Law, a process took place...
profound dogmatic transformation, the so-called depatrimonialization and repersonalization of
Civil Law, which shifted the focus of the legal system from the protection of material goods to
the protection of the human person. The institution of alimony has followed this change, ceasing to
to be understood as a simple monetary transfer to assume the status of a right.
fundamental to life and subsistence

The major milestone in this transition was the promulgation of the 1988 Federal Constitution, which
reconfigured the foundations of Family Law by elevating the dignity of the human person to
foundation of the Republic. From the new constitutional order, the protection of the human being.
It became the epicenter of the legal system, radiating its effects over all relationships.
private. Regarding the pillars that support the obligation to provide alimony, the Magna Carta establishes in
its articles 1, III and 3, I:

> Article 1. The Federative Republic of Brazil, formed by the indissoluble union of the States, the Municipalities and the Federal District, constitutes a Democratic State of Law and has as its foundations: (...) III - the dignity of the human person;
> Article 3. The fundamental objectives of the Federative Republic of Brazil are: I - to build a free, just and solidary society; (...) (Brazil, 1988).

The influence of these constitutional principles on private law found expression in
Civil Code of 2002. Article 1,694 states that "relatives, spouses or partners" may
to ask each other for the food they need to live in a way that is compatible with their
social condition, encompassing not only food in the strict sense, but also costs
with "housing, clothing, health, education and leisure". This positive affirmation demonstrates that the right
Food security is the normative embodiment of the minimum subsistence level within the family, requiring
an interpretation that reconciles the needs of the person being fed with the capacity of the
a provider of alimony, always guided by constitutional principles.

The driving force behind justifying and legitimizing the enforceability of this obligation is, therefore, the "principle of
"family solidarity." The contemporary family, characterized by an orientation
Eudaimonistic, focused on the pursuit of happiness and fulfillment for its members, is based on bonds.
of affection, care, and mutual responsibility. Thus, family solidarity ceases to be merely
Moral advice that can be converted into a binding legal duty. As the jurist observes.
Maria Berenice Dias (2021):

> "The basis of the obligation to provide alimony rests on the principle of family solidarity, which means that people who are part of the same family unit owe each other mutual assistance." - Maria Berenice Dias (2021).

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Thus, highlighting the normative root of the duty to provide alimony and its social function of protection of the most vulnerable.

2.2 The exceptional nature of civil imprisonment (STJ Precedent 309) as an instrument strictly coercive

Given the vital and urgent nature of alimony payments, the legal system grants the creditor the right to alimony. procedural instruments endowed with high coerciveness, intended to confer maximum effectiveness possible for the provision of judicial services. In this scenario, the Code of Civil Procedure, in Article 528 establishes a differentiated and dual enforcement procedure, granting the plaintiff a "power-duty" to choose between two ways to satisfy its credit: the patrimonial alternative, embodied in the procedure of expropriation of assets and seizure, and the corresponding personal route. to the civil arrest procedure.

Civil imprisonment constitutes the most drastic coercive measure permitted by the legal system. with express authorization in article 5, item LXVII, of the Federal Constitution, which prohibits imprisonment. for debt, with the exception of voluntary and inexcusable non-payment of alimony.

Article 528 of the CPC expressly states that the alimony debt that authorizes the decree The prison sentence only refers to the three installments immediately preceding the filing of the lawsuit. execution, as well as those that become due during the course of the proceedings. This procedural command It confirmed the understanding that was already established in Precedent 309 of the Superior Court. of Justice (STJ), which establishes:

> "The alimony debt that authorizes the civil arrest of the alimony payer is that which includes the three installments prior to the filing of the enforcement action and those that become due during the course of the proceedings." - Summary 309 (STJ).

Regarding the primary purpose of the obligation to provide alimony and the use of state coercion to guarantee it, the Superior Court of Justice (STJ), in the judgment of HC 392.521/SP (2017), under the rapporteurship Minister Nancy Andrighi's decision solidified the understanding that the extreme measure of imprisonment... Civil law aims at preserving the life and quality of life of the person receiving alimony, and not at punishing the perpetrator. debtor:

> *Civil imprisonment for alimony debt is not linked to a possible punishment for non-payment, nor to the method of redeeming the alimony debt, but its main, or even sole, purpose is to coerce the debtor to pay what is owed to the alimony recipient, thus preserving the latter's survival or, in less drastic terms, the quality of life of the alimony recipient. (STJ, HC 392.521/SP, Rel. Min. Nancy Andrighi, Third Panel, decided on 06/27/2017).*

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The restriction of liberty is not intended to punish the debtor for default, but rather to coerce him, under the strongest possible pressure, into fulfilling his obligation, in order to guarantee the creditor's survival.

Consequently, given that it is an extreme measure, legal doctrine emphasizes its exceptional nature. Rolf Madaleno (2021) emphasizes that the food enforcement process can never be distorted to become a mere "instrument of revenge" against the executed person. Precisely. Given the magnitude of the powers conferred upon the alimony creditor, the need arises that such The mechanisms should not be exercised in an absolutist manner, since the power granted to the plaintiff It is not unrestricted and is subject to fundamental ethical limitations. The use of mechanisms of The execution must be strictly guided by the principle of objective good faith, established as a principle. A guiding principle of the entire legal system and expressly adopted as a general clause in civil procedure.

2.3 Objective good faith and the ancillary duties of loyalty and cooperation as guiding principles of execution process

Objective procedural good faith represents an important evolution in the concept of due process, as well as in executive relationships recognized in the legal system. Fredie Didier Jr. and Leonardo Carneiro da Cunha (2021), teach:

> The principle of objective procedural good faith dictates that all parties involved in the process must act in good faith. It is a legal norm that imposes duties of conduct, such as loyalty, cooperation, and disclosure, aiming to guarantee ethics and probity in the procedural relationship.

This principle is enshrined in Article 5 of the Code of Civil Procedure, which states:

> *Article 5 of the Code of Civil Procedure states that anyone who participates in the proceedings in any way must act in good faith.*

With the increasing emphasis on ethics as a fundamental element of legal proceedings, the law has begun to... to recognize the need for limits grounded not only in strict legality, but also in loyal coexistence, responsibility, cooperation and the duty to inform. This change reflects a contemporary civil and procedural dogmatic transformation, which It goes beyond simply collecting fees, prioritizing integrity and protection against... Unfair injury. In the words of Flávio Tartuce (2021):

> Objective good faith, as a general clause, performs functions of interpretation, integration, and control of the exercise of rights. In procedural matters, it acts as an ethical limit.

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> to the exercise of the parties' rights, preventing the process from being used as an instrument of oppression or unjust enrichment.

By enshrining the principles of human dignity and solidarity, the Constitution
The Federal Constitution of 1988, as well as the Code of Civil Procedure, reinforces this perspective, conferring legal relevance to good faith and the theory of abuse of rights, as building blocks of
Civil liability. The principle of objective good faith imposes on the parties to the procedural relationship, including the plaintiff and the defendant, the observance of conduct guided by honesty,
Loyalty and integrity.

From this arise the so-called ancillary or collateral duties of conduct, which complement the
The main duties of the parties. Among these duties, procedural loyalty and... stand out.
Cooperation. Article 6 of the Code of Civil Procedure establishes the duty of cooperation by stating...
what:

> *Article 6. All parties involved in the proceedings must cooperate with each other in order to obtain, within a reasonable time, a fair and effective decision on the merits.*

Procedural loyalty requires that the parties act with probity and transparency, avoiding
behaviors aimed at deceiving the court or the opposing party, or that constitute
undue procrastination. In the context of child support enforcement, loyalty implies that...
The plaintiff should not seek to recover a debt that has already been paid or use the process for other purposes.
other than its intended purpose, such as personal revenge.

Article 77, item II, of the CPC details the duties of the parties and their
Prosecutors, establishing:

> Article 77. In addition to those provided for in this Code, the duties of the parties, their attorneys, and all those who in any way participate in the proceedings include: (...) II - not to make a claim or present a defense when they are aware that it is unfounded; (...).

Cooperation, in turn, requires the parties to collaborate for the smooth running of the process.
facilitating the search for truth and the achievement of justice. This means that the plaintiff, by
For example, you must inform the court and the debtor about any payments made, even
that are partial, preventing the continuation of an improper execution. The violation of these duties
The inclusion of attachments may constitute an abuse of rights, as outlined in article 187 of the Civil Code.
establishing that:

> Article 187. It is also an unlawful act for the holder of a right to manifestly exceed, in exercising it, the limits imposed by its economic or social purpose, by good faith, or by good morals.

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3. Abuse of Rights and the Configuration of Improper Execution FOOD

3.1 Characterization of Abuse of Rights in Child Support Enforcement

The concept of abuse of rights represents one of the most significant milestones in the transition from Classical Civil Law, with its strictly individualistic bias, versus contemporary Civil Law. guided by sociality and ethics. Expressly enshrined in article 187 of According to the 2002 Civil Code, abuse of rights occurs when the holder of a prerogative... In exercising this legal right, it manifestly exceeds the limits imposed by its economic purpose or social, through good faith or good morals Unlike traditional civil liability, which is structured predominantly on the The notion of intent or negligence, as provided for in article 186 of the Civil Code, is the theory of abuse of rights. It generally adopts an objective criterion. As taught by Cristiano Chaves de Farias and Nelson Rosenvald (2021):

> Abuse of rights is an autonomous category of unlawful act, which does not require the subjective element of fault or intent. Its configuration stems from the violation of the axiological limits of the law, that is, when its exercise clashes with good faith, good morals, or the social and economic purpose for which the right was conceived.

This means that illegality does not necessarily reside in the deliberate intention to harm. other people (animus nocendi), but in dysfunctional conduct that diverts the right from its purpose. primordial. By breaking with the dictates of objective good faith, the exercise of the right loses its Without legal protection, it becomes illegitimate and transforms into an illegal act.

The transposition of this theory to Civil Procedural Law gains special relevance in enforcement proceedings. It is clear that the enforcement process is designed to act in the interest of... the plaintiff, seeking satisfaction of their claim, as stipulated in article 797 of the Code of Civil Procedure:

> Article 797. Except in the case of the debtor's insolvency, in which universal competition takes place, the execution is carried out in the interest of the creditor, who acquires, through the attachment, the right of preference over the attached assets.

However, this primacy does not operate as an unrestricted "safe conduct." The prohibition against abuse of The law acts as a deterrent mechanism to ensure that any and all coercive measures that affects the life, property, and freedom of a person whose estate is being enforced should be adopted with the strict aim of... to fulfilling the debt, without excesses.

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As proposed by the principle of least onerousness, provided for in article 805 of the Code of Civil Procedure and its sole paragraph, where they state:

> Article 797 and Article 805 - When the plaintiff can enforce the judgment by several means, the judge shall order that it be done in the manner least burdensome to the defendant.
> Sole paragraph - To the defendant who alleges that the enforcement measure is more burdensome, It is incumbent upon them to indicate other more effective and less costly means, under penalty of maintaining the executive actions already determined.

In the sensitive area of child support enforcement, where coercion reaches its maximum level. With the admissibility of civil imprisonment, the rigor in controlling abuses must be redoubled. As outlined above, the creditor has the legitimate right to activate the machine. judicial means to safeguard their basic needs. However, the effectiveness of the collection... Food security cannot legitimize abusive conduct. According to Maria Berenice Dias (2021):

> *The privileged nature of alimony claims and the severity of enforcement measures do not authorize the creditor to act unfairly or to use the process as a weapon of revenge. Abuse of rights in alimony enforcement must be promptly curbed by the magistrate, otherwise the process will become an instrument of injustice.*

Thus, procedural fairness and the integrity of the party being sued must always prevail over... Dysfunctional, malicious, or disproportionate exercise of the right to legal action by the plaintiff. When The enforcement proceedings are being handled recklessly, using the threat of imprisonment not to the extent of the legal process. not to receive what is rightfully owed, but as an instrument of revenge, retaliation for Whether through family conflicts or a means of moral and financial harassment, the plaintiff subverts the order. This constitutes an unconstitutional practice and an undeniable abuse of power, violating the dignity of the human person. as provided for in Article 1, item III, of the Federal Constitution.

3.2 Practical elements of abusive conduct, debt collection after payment, and concealment. partial payments

The forensic reality of Family Courts reveals that improper enforcement frequently occurs. It materializes through acts of omission or commission by the plaintiff, who manipulates the The truth of the facts in order to obtain undue advantage or harm the defendant. One of the elements One of the most common practices is the collection of debt that has been fully or partially paid. It is not uncommon for a debtor of child support, seeking to provide for the child's livelihood, to make payments. direct payments, such as deposits into the mother's account, payment of school fees or plans. health agreed upon in kind. The creditor, acting with a clear breach of procedural loyalty, conceals

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These court settlements enforce the full amount of the alimony. Regarding this conduct, Yussef Said Cahali (2021) teaches:

> The collection of alimony payments already made, whether through bank deposits or other means. Direct payment of the child's expenses constitutes a serious violation of the duty of truthfulness. The creditor who omits such facts from the court is using the process to obtain unjust enrichment, subverting the purpose of the child support obligation.

By omitting partial payments, the plaintiff misleads the State/Judge, which culminates in... Issuing arrest warrants based on inflated and unrealistic calculations. This conduct exceeds... Clearly, the economic purpose of the law, which is to meet a need, violates good faith. constituting an objectively unlawful act. Civil law is strict regarding improper charges, establishing in article 940 of the Civil Code that:

> Article 940. Anyone who sues for a debt already paid, in whole or in part, without acknowledging the amounts received or demanding more than is due, shall be obliged to pay the debtor, in the first case, double the amount charged and, in the second, the equivalent of what is demanded, unless there is a statute of limitations.

Although the literal application of doubling the amount charged is mitigated in the food sector, in Despite the fact that food is non-refundable, the ethical basis of the rule remains sound. For purposes of civil liability. The deliberate concealment of payments gives rise to a duty to to compensate, as it subjects the defendant to illegal constraint and the illegitimate threat of restriction. of their freedom. Rolf Madaleno (2021) points out that:

> The child support enforcement process cannot be a battleground for information manipulation. The duty to report partial payments is a corollary of objective good faith, and its violation directly affects the dignity of the debtor, especially when civil imprisonment is used as a means of undue coercion.

This practice directly violates Article 77, paragraph I, of the CPC, which imposes on the parties the duty to "To present the facts in court according to the truth." The manipulation of procedural reality for purposes... Obtaining an improper arrest warrant therefore constitutes an abuse of rights and an unlawful act. giving rise to compensation for the moral and material damages caused to the defendant.

3.3 The distortion of the judicial system, the use of the enforcement process as instrument of revenge

Legal disputes involving Family Law are, by nature, permeated by intense... Emotional conflicts, resentments, and poorly resolved relationship breakups. Unfortunately, child support enforcement is sometimes co-opted as a weapon of personal retaliation.

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The distortion of the judicial system occurs when the purpose of the action ceases to be the pursuit of justice. through alimony payments, it becomes the deliberate desire to cause psychological harm. public embarrassment or financial ruin for the debtor.

In this context, the request for civil arrest is frequently used as a tool of revenge and humiliation, sometimes being carried out in the debtor's workplace to to maximize the damage to one's image. The legal scholar, Paulo Lôbo (2021), makes an exception for this conduct, reprimands and adds:

> Contemporary Family Law cannot ignore the psychological nature of conflicts. Using the enforcement process for personal revenge constitutes a misuse of power that violates the minimum ethical standards expected in family relationships. The judge must be vigilant in identifying when the creditor is seeking not alimony, but the punishment of the debtor.

This malicious instrumentalization of the Judiciary offends the dignity of justice, a principle. enshrined in article 772, item II, of the Code of Civil Procedure, which provides for sanctions for acts that undermine the dignity of the judiciary, emphasizing that justice cannot be a stage for personal persecutions. When the plaintiff mobilizes the state apparatus, funded by everyone... A society, with purely emulative aims, commits an abuse of rights of the highest order. seriousness, harming an innocent person and clogging the Judiciary with executions. improper, generating unnecessary costs for both the debtor and the State.

The concept of emulative acts, although originating from property law, is provided for in article Article 1.228, § 2, of the Civil Code applies perfectly to abusive execution, as it characterizes the Exercising a right with the sole purpose of harming another:

> Article 1228. The owner has the right to use, enjoy, and dispose of the thing, and the right to recover it from whoever unjustly possesses or detains it. § 2. Acts that do not bring any convenience or utility to the owner and are motivated by the intention to harm others are prohibited.

Based on the legislation, Conrado Paulino da Rosa (2021) presents an understanding that, when If bad faith is established, the defendant must be protected by the judiciary, which argues that:

> The enforcement of child support payments through imprisonment is an extreme form of psychological coercion. When used with retaliatory intent, it transforms into procedural violence. The legal system must provide strong responses to repress and repair the damage caused by this subversion of the judicial machinery.

The Judiciary must act with corrective rigor, rejecting ineffective personal measures or retaliatory measures, applying sanctions for bad-faith litigation, repairing the damages caused, and whenever If necessary, forward administrative or criminal investigations. In this way, the purpose is preserved.

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humanitarian protection of food security and the protection of the minimum subsistence level, without allowing the process may it become an instrument of abuse.

4. The Autonomous Civil Liability of the Plaintiff

4.1 The dogmatic separation between bad faith litigation (art. 80, CPC) and civil liability for unlawful act (articles 186 and 187, CC)

The liability of the creditor for abusive conduct in the enforcement of alimony is a topic of growing relevance in Brazilian Civil Procedure Law. It is fundamental, however, to establish a clear dogmatic separation between bad faith litigation, as provided for in article 80 of Code of Civil Procedure, and civil liability for unlawful acts, based on articles Articles 186 and 187 of the Civil Code.

Bad faith litigation is a procedural concept aimed at curbing unfair and unethical conduct. of the parties during the course of the proceedings. Article 80 of the CPC lists the circumstances in which it is considered bad faith litigant, such as asserting a claim or defense that is inconsistent with the express text of law or uncontroversial fact, altering the truth of the facts, using the process to achieve an objective. illegal, among others. The sanctions provided for in article 81 of the CPC are of a procedural nature and They consist of a fine and compensation to the opposing party for the damages suffered. As taught by Humberto Theodoro Júnior (2021):

> The duty of loyalty and good faith is of a public nature, and its violation entails procedural sanctions intended to preserve the dignity of the judiciary. The fine for bad-faith litigation has a punitive and educational character, focused on the internal aspects of the process.

Civil liability for unlawful acts, however, has a broader scope of application. It configures- if someone violates a right and causes harm to another, as provided for in article 186 of the Civil Code or when it exceeds the limits of good faith in the exercise of a right, as provided for in Article 187 of the Code. Civil. The consequence is the duty to indemnify (article 927 of the Civil Code). Daniel Amorim Assumpção Neves (2021) highlights the autonomy of these spheres:

> Unfair conduct in the process can generate two types of reaction from the legal system. Legal: one of a procedural nature, with fines and compensation set by the judge in the case, and another of a civil nature, with full compensation for material and moral damages in a separate action. One does not exclude the other, as both have distinct foundations and purposes.

The crucial distinction lies in the fact that bad-faith litigation is restricted to the procedural sphere. While civil liability transcends this sphere, generating a duty to repair the damage.

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Extrajudicial damage. In the context of child support enforcement, the civil liability of
The plaintiff is autonomous in relation to the bad faith litigation, as it aims to repair the damage effectively.
suffered by the debtor as a result of abusive conduct, such as damage to credit or
Restriction of liberty, and not merely punishment for disloyalty to the court. Therefore, the conduct
Abusive conduct by the plaintiff may constitute both bad faith litigation and an unlawful act that generates...
civil liability, without one excluding the other.

4.2 The case law treatment in the face of the threat of restriction of liberty and the configuration of moral damages in re ipsa

The case law treatment of the creditor's civil liability for wrongful execution of
Food has evolved, especially with regard to the threat to freedom and the configuration of
Moral damages are inherent in the act itself (in re ipsa). The higher courts, particularly the Superior Court of Justice, have...
positioned to protect the convicted person against abuse, recognizing the seriousness of imprisonment.
civil law and its devastating impacts on the non-patrimonial sphere of the debtor.
In cases of improper execution that culminate in the decree or imminent threat of imprisonment.
In civil law, case law has consolidated the theory of moral damages in re ipsa. This is addressed by
scholar, Sérgio Cavalieri Filho (2021):

> Moral damages, in re ipsa, derive from the offensive act itself, such that, once the offense is proven, the moral damage is ipso facto demonstrated by way of natural presumption. In the case of wrongful deprivation of liberty, the damage is inherent in the very violation of the fundamental right to freedom of movement and the dignity of the human person.

This means that the harm is presumed by the very occurrence of the event — the arrest or the threat.
improper —, There is no need to prove actual psychological distress. Mere deprivation
or threat of deprivation of liberty, in the context of wrongful execution, is already sufficient for
to characterize the duty to compensate, given its vexatious nature and the social stigma that it entails.
Carlos Roberto Gonçalves (2021) reinforces that "moral damage is inherent in the very act of committing a crime."
"Offense; it stems from the seriousness of the offense itself."

The Superior Court of Justice (STJ) has reiterated that civil imprisonment for alimony debt, although constitutionally permitted, is a form of imprisonment for non-payment of alimony.
Admitted, as provided for in article 5, LXVII, of the Federal Constitution, it must be used with extreme caution.
When this exceptional measure is applied improperly, whether for debt collection already incurred
Even if the payment is made due to abusive conduct by the plaintiff, redress is imperative.
The Court emphasizes that the human dignity of the person being executed must be preserved.
The conduct of the plaintiff, who, aware of the payment, maintains the request for imprisonment, blatantly violates the law.

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Objective good faith and the ancillary duties of loyalty. Reinforcing this understanding, the Superior

Court of Justice, in the recent judgment, Special Appeal No. 2206790 - SP (2024/0361944-9),

The report, authored by Minister Nancy Andrighi, highlighted the need for proof of procedural abuse.

Regarding the right to legal action for establishing the duty to compensate:

> CIVIL. CIVIL PROCEDURE. FAMILY LAW. SPECIAL APPEAL.
> Child support lawsuit in the enforcement phase.
> DEBT PAID BEFORE THE LAWSUIT WAS FILED. LITIGATION IN BAD FAITH.
> VERIFIED. COMPENSATION FOR ABUSE OF PROCEDURAL RIGHTS. NOT
> FOUND. I. Case under examination 1.
> This is a child support action, currently in the enforcement phase of the judgment, under the arrest procedure, from which the present special appeal was extracted and submitted to the judge's office on April 3, 2025. II. Issue under discussion April 30, 2024 and 2. The purpose of the appeal is to decide on the possibility of ordering the representative of the child support recipients to pay compensation, combined with a fine for bad-faith litigation, due to the filing of an action to enforce a judgment for child support payments that were already known to have been paid.
> III. Reasons for the decision 3. There is no denial of justice when the second-instance court examines, in a reasoned manner, the issue submitted for judicial review, to the extent necessary for the resolution of the controversy, even if contrary to the party's claim. Precedents. 4. The mere exercise of the constitutional right to action, even if unsuccessful, does not, in itself, constitute conduct contrary to procedural good faith. It is necessary that there be satisfactory proof of wrongdoing arising from the procedural abuse of the right to action, capable of giving the injured party the right to compensation for moral damages. 5. Bad faith cannot be presumed; it is necessary to prove the party's intent, that is, the intention to obstruct the regular course of the proceedings, pursuant to Article 80. 6. Pursuant to Article 79
> Only those who are parties to the proceedings may be ordered to compensate for damages caused to others. Although parents are responsible for civil damages related to minor children under their authority (Article 932, I, of the Civil Code), only the litigant who acts in abuse of their procedural right should be held liable for the damage caused; it is not feasible to direct the conviction to the party responsible for the proceedings. Electronic document VDA53851610 electronically signed in accordance with Article 1, § 2, item III, of Law 11.419/2006. Signatory: FÁTIMA NANCY ANDRIGHI. Signed on: 05/02/2026 01:15:47. Document Control Code: caa3e4de-ab4e-4558-a8e7-
>
> ae8722e433dc 7. In the appeal under judgment, the authors' behavior, in asserting a manifestly unfounded claim, is clearly contrary to procedural good faith, constituting bad-faith litigation. On the other hand, the condemnation of the legal representative of the alimony recipients to pay compensation for procedural damages to the alimony payer is not justified. Firstly, because the legal representative is not a party to the proceedings; secondly, because there was no express request in this regard from the alimony payer; and thirdly, because there is no evidence of any damage or loss suffered by him. IV. Ruling 8. Special appeal partially granted to uphold the alimony recipients' conviction to pay a fine for bad-faith litigation and to dismiss the conviction to pay compensation.

Minister Nancy Andrighi emphasized that the mere filing of a lawsuit, even if

The fact that this is unfounded does not, in itself, constitute bad faith litigation, and for that characterization to occur,

Proof of intent is indispensable, that is, the deliberate intention to obstruct the proceedings.

regularity of the process. She emphasized that procedural good faith is a principle that should guide the process.

all participants in the process, and that bad faith cannot be presumed, it must be

demonstrated clearly and unequivocally, Minister Nancy Andrighi:

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> The mere exercise of the constitutional right to legal action, even if unsuccessful, does not, in itself, constitute conduct contrary to procedural good faith. It is necessary that there be satisfactory proof of wrongdoing resulting from the procedural abuse of the right to legal action, capable of entitling the injured party to compensation for moral damages.

In this case, civil liability arises from abuse of rights, as provided for in Article 187.
of the Civil Code, and the violation of personality rights, protected by Article 5, item X,
of the Federal Constitution, which guarantees compensation for moral damages resulting from the violation of intimacy, private life, honor, and image of individuals. Therefore, improper execution
food, especially when based on the threat of imprisonment and debt.
Already paid, this undermines the pillars of the Democratic Rule of Law, demanding an explanation.
restorative and educational jurisdictional process.

CONCLUSION

This research sought to analyze the civil liability of the plaintiff in the enforcement proceedings.
The improper withholding of alimony from the perspective of the principle of objective good faith, confronting the legitimacy...
of the severe coercive means with the necessary protection of fundamental rights of
executed. The research problem that guided this study focused on the subversion of guardianship.
jurisdictional, a scenario in which the essential pursuit of the minimum subsistence level for the person receiving alimony is, therefore
Sometimes, it is distorted to legitimize abusive conduct. Throughout the investigation, it remained...
It has been demonstrated that the inflexible application of creditor prerogatives fails by ignoring loyalty.
procedural, demonstrating that the presumption of material vulnerability does not confer immunity.
conduit for the commission of procedural offenses and moral harassment.
The results showed that the legal system has undergone a process.
A profound repersonalization and constitutionalization of Civil Law, culminating in the adoption of
Objective good faith as a fundamental principle in the 2015 Code of Civil Procedure. This
The movement acknowledged that the instrumentalization of the judicial system for nefarious purposes,
such as concealing partial payments, collecting debts that are known to have been paid, or
The deliberate inflation of calculations manifestly exceeds the social purpose of the law and constitutes a flagrant violation.
an unlawful act, as provided for in article 187 of the Civil Code. As a result of this evolution, the
The judiciary has consolidated the understanding that patrimonial and personal coercion is only one.
credit satisfaction mechanism, vehemently rejecting its use for fraudulent purposes.
or punitive.

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Another relevant result of this work was the finding of the seriousness of procedural violence.
in family matters and the need for a strong state response to the distortion of
Civil imprisonment. The analysis demonstrated that the restriction of liberty does not have a penal character, being
Its improper application constitutes one of the most serious violations of the debtor's honor and image.
Conrado Paulino da Rosa reinforces the urgency of this repression by highlighting that the execution under the
The ritual of imprisonment, when used with the intent of retaliation, transforms into violence.
procedural, requiring the legal system to provide adequate responses to repress and remedy this
subversion.

In both substantive and procedural terms, the results pointed to the essential separation.
The dogmatic relationship between intra-procedural sanctions and full reparation. The research showed that...
mere conviction for bad-faith litigation, as provided for in article 80 of the Code of Civil Procedure,
It acts as a punishment in the interest of the dignity of the jurisdiction, but it is insufficient to heal the wounds.
civil liability of the defendant. However, the enforcement of autonomous civil liability presents itself.
as a practical challenge of sentencing for judges, who must determine compensations
fair compensation for moral damages suffered, including in cases of infringement on freedom of movement,
without, paradoxically, jeopardizing the livelihood of the person receiving alimony.

The inescapable conclusion of this study is that the effectiveness of child support protection cannot be...
achieved through a purported "anything goes" approach to litigation. Family litigation is
multidimensional and requires a subjective and humanized perspective on the specific case. According to
As demonstrated, the Superior Court of Justice has consolidated the understanding that civil imprisonment
Undue action generates moral damages in re ipsa, giving rise to the duty to compensate whenever proven.
The creditor's fraud or gross negligence. Therefore, the effectiveness of the execution, as an instrument of
Existential guarantee depends directly on the preservation of ethics. The dignity of the person.
Human rights and social justice require the State to prioritize solidarity and subsistence.
to the detriment of private vendettas, ensuring that the execution achieves its objective.
constitutional without abusively destroying the assets and freedom of the debtor. How
According to modern doctrine, loyalty is an indispensable prerequisite for a fair trial, and should...
The interpretation that silences belligerence and protects human dignity should prevail.
fullness.

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