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LEGAL NATURE OF THE DECISION STABILIZING EARLY EMERGENCY GUARDIANSHIP

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Abstract: This scientific article addresses the existing controversy in doctrine and jurisprudence regarding the legal nature of the decision that stabilizes urgent protection. The research aimed to investigate the legal nature of this decision, its effects over time and its implications for the progress of the process. This article aims to understand the essence of this institute and its deficiencies through a bibliographical review and theoretical foundation. In this sense, the different types of guardianships existing in the Brazilian civil procedural system will be analyzed, focusing on early provisional guardianship granted in advance. Possible alternatives will also be explored to define the legal nature of the decision that stabilizes this protection. It is expected that the research will contribute to a better understanding of the legal nature of the decision that stabilizes the urgent protection, identifying its effects over time and its implications for the process. Based on the results obtained, solutions can be proposed to develop a more accurate understanding of this decision.

Keywords: 1. Emergency Guardianship. 2. Legal Nature. 3. Stability. 4. Civil Procedural Law. 5. Decision.

INTRODUCTION

The institution of provisional protection is an extremely important procedural measure used to guarantee the effectiveness of the process, especially in cases where the delay in obtaining a definitive decision may cause irreparable damage to those involved. In this sense, the granting of urgent provisional protection aims to ensure the protection of the rights and interests of the parties immediately, avoiding damage that could be irreversible or difficult to repair.

An indisputable fact is that, in Brazilian law, provisional protection is divided into two distinct modalities: evidentiary protection and urgent protection, both of which can be granted in advance or in a precautionary manner. Furthermore, it is important to highlight that the institution of urgent provisional protection can be requested either antecedently, that is, before the filing of the main action, or requested incidentally, during the course of the main proceeding.

With the advent of the new Civil Procedure Code in 2015, urgent protection emerges as an essential tool capable of ensuring the speed, effectiveness and reasonable duration of Brazilian civil proceedings. In this sense, the stabilization of anticipatory protection on an antecedent basis, the object of this article, set out in Title II, Chapter II of the Code of Civil Procedure, is an effective means to guarantee the anticipation of the merit of the demand, as well as legal security of those who seek support from the Judiciary through definitive judicial protection.

Urgent protection, when instituted as a form of immediate legal protection, reveals itself as an important advance in the procedural system, aiming to avoid the perpetuation of damages and promoting the effectiveness of judicial provision. Its implementation seeks to avoid the slowness of the process, so present in the Brazilian judicial scenario, allowing a quick judicial response to situations that require urgency in granting guardianship.

Thus, urgent provisional protection, whether anticipated or precautionary, has an essential function in the search for justice, providing a balance between guaranteeing the rights of the parties involved and the need for procedural speed.

The stabilization of anticipatory protection on an antecedent basis, in turn, is an effective mechanism to promote legal certainty, providing stability to the effects of the preliminary decision issued.

It is essential to understand the legal nature of urgent protection, its granting

requirements, its temporal effects and the means of stabilization, in order to guarantee a correct application of the institute and ensure the effectiveness of the Brazilian civil process.

However, despite its practical importance, the legal nature of the decision that stabilizes the provisional protection of antecedent anticipated urgency has been the subject of intense debates and controversies in doctrine and jurisprudence. Such controversies arise due to the provisional and anticipatory nature of this measure, which seeks to avoid the perpetuation of damages and guarantee the effectiveness of the process, but which, at the same time, can have a decision-making nature and create rights and obligations between the parties involved.

The present research aims to deepen the analysis of the legal nature of the decision that stabilizes the urgent protection, investigating its effects over time and its implications for the conduct of the process.

Therefore, several questions arose regarding its legal nature, as well as its similarity or not with the authority of res judicata. These questions involve not only theoretical aspects, but also practical and procedural issues relevant to the adequate understanding of this institute.

The legal nature of the decision that stabilizes early protection on an antecedent basis sparks debates about its effectiveness, scope and binding nature. There are doctrinal divergences regarding whether it is equated with material res judicata or whether it has its own legal nature, with specific effects limited to the period prior to the filing of the main action. This controversy is directly reflected in the extent of the effects of the stabilized decision, as well as in its legal consequences for the parties involved in the process.

Furthermore, procedural issues also arise in this context. Questions arise about the requirements for the stabilization of early protection, as well as the consequences arising from its possible revocation or subsequent modification. An in-depth analysis of these issues is necessary for a complete and accurate understanding of the institute under study.

Therefore, an in-depth investigation was carried out, based on a bibliographical review and analysis of case law, in order to understand the theoretical and practical foundations that permeate this issue.

Furthermore, the different doctrinal positions and jurisprudential divergences on the topic were examined, seeking to identify the main currents of thought and the practical consequences of each of them, also emphasizing the procedural aspects related to urgent protection, such as the requirements for its granting, the temporal limits and the procedures for its stabilization or revocation.

To this end, the concept of provisional guardianship and its division into urgent and evidential guardianship, their types and the function of each of them, will be analyzed. Next, the innovations in the Code of Civil Procedure will be analyzed regarding the stabilization of the anticipatory protection requested on an antecedent basis, which has a great divergence regarding the understandings of the doctrine.

Based on this analysis, it is expected to contribute to improving the understanding and application of urgent protection within the scope of Brazilian civil proceedings, providing theoretical and practical support for a better understanding of the legal nature of this measure, its effects over time and its implications for the proper conduct of the process. The aim is, therefore, to critically analyze the theoretical and practical framework that surrounds this institute, providing a more complete and in-depth view of its scope, its limitations and its implications for the adequate development of the civil process.

The subject is extremely important, considering that all new developments in the legal world entail discussion and debate. Particularly in this situation, considering that the subject in question allows for different interpretations, there is a division of opinions between scholars, magistrates and civil procedure scholars.

A GENERAL APPARATUS ABOUT THE DIFFERENT KINDS OF EMERGENCY PROVISIONAL GUARDIANSHIPS IN THE LIGHT OF THE NEW CODE OF CIVIL PROCEDURE

It appears that there are different types of provisional guardianships in the Brazilian civil procedural system, especially after the innovation and modernity brought with the New Code of Civil Procedure of 2015, which aim to ensure the effectiveness of the process and the protection of the rights of the parties involved. These guardianships are instruments used by the Judiciary to guarantee the realization of substantive law within the scope of the process.

Urgent provisional guardianship is a broad category that covers, as species, precautionary guardianships and anticipatory guardianships, regulated by articles 294 to 311 of the New Brazilian Code of Civil Procedure, in force since 2016.

Its purpose is to ensure the effectiveness of the procedure in circumstances that require a prompt response from the judicial system, whether to prevent imminent harm or to anticipate the realization of the alleged right. This measure is granted when there are elements that demonstrate the probability of the right in question, as well as the risk of damage or compromising the useful result of the process.

Thus, the purpose of provisional protection is to more fairly balance the burdens arising from the delay in progressing the process, promoting greater equity in procedural law. Considering that imposing liability on the plaintiff for damages caused by procedural delay would violate constitutional principles and contradict the fundamental principles relating to the object of the action. As highlighted by Fredie Didier Jr, Paula Sarno Braga and Rafael Alexandria Oliveira:

> The main purpose of provisional guardianship is to mitigate the evils of time and guarantee the effectiveness of jurisdiction (the effects of guardianship). It serves, then, to redistribute, in honor of the principle of equality, the burden of time in the process, as per the famous image of Luiz Guilherme Marinoni. If it is inevitable that the process takes time, the burden of time must be shared between the parties, and not just the plaintiff bearing it (DIDIER JUNIOR; BRAGA; OLIVEIRA, 2016, p.644)

Both types of urgent protection, whether anticipatory or precautionary, are subject to the principles of contradictory and broad defense, ensuring that the defendant has the opportunity to express himself and present arguments in his defense. Furthermore, it is important to highlight that urgent protection decisions are subject to review and can be modified throughout the process, as new elements and arguments are presented by the parties.

Therefore, the institution of urgent provisional protection is characterized by its speed, as it seeks to grant a provisional decision quickly, even before the merits of the claim are judged, since, in certain cases, waiting for the outcome of the process could render the judicial decision itself ineffective, making it necessary to grant an urgent measure to guarantee the effectiveness of the judicial provision.

Therefore, we now look at the species that make up the genus of urgent provisional protection.

PROVISIONAL EMERGENCY GUARDIANSHIP

A priori, the figure of provisional precautionary protection, set out in Article 301 of the Code of Civil Procedure, whose main purpose is to prevent imminent damage or damage that is difficult to repair that could compromise the effectiveness of the main process, seeking to guarantee safety of the parties while the main process is in progress, and may be requested before, during or even after the main process and, in addition, may involve effective measures such as seizure of assets, search and seizure, among others, which aim to protect the interests of the parties involved in the process, preventing any losses that compromise the effectiveness of the final decision.

Precautionary protection is the means of preserving another right, the protected right, the object of satisfactory protection. Precautionary protection is, necessarily, a protection that refers to another right, distinct from the right to precaution itself (DIDIER JUNIOR; BRAGA; OLIVEIRA, 2016).

It is important to highlight that provisional precautionary relief does not aim to resolve the merits of the claim, that is, it does not seek to decide on the substantive right under discussion, as its sole purpose is to guarantee the stability and effectiveness of the main process, protecting the parties from damages. irreversible until the final decision is made. However, it is worth noting that provisional precautionary relief does not have a definitive nature, being only a provisional measure, subject to subsequent review and modification by the judge, as the process progresses.

In short, precautionary protection plays a fundamental role in the Brazilian civil process, ensuring the protection of the rights of the parties involved and the effectiveness of the process. Through it, it is possible to prevent irreparable damage or damage that is difficult to repair, ensuring that the final decision is effective.

EARLY EMERGENCY PROVISIONAL PROTECTION

On the other hand, it is worth highlighting that early urgent relief, regulated by Article 300 of the New Code of Civil Procedure, allows the judge, during the course of the process, to anticipate the effects of definitive relief, granting the applicant a portion, or the totality of the rights sought before the end of the process, when there are elements that demonstrate the probability of the applicant's right and the danger of irreparable damage or damage that is difficult to repair.

It is appropriate to note that, for the granting of advance protection, it is necessary for the applicant to present evidence that he has a right to be protected, that is, the probability of the alleged right. Furthermore, it is necessary to demonstrate the existence of a danger of irreparable damage or damage that will be difficult to repair if advance relief is not granted immediately.

It is worth noting that anticipatory protection can be requested on an antecedent or incidental basis. In the case of antecedent anticipatory relief, provided for in Article 303 of the Code of Civil Procedure, due to the urgency of the request, the applicant seeks the granting of relief even before proposing the main action. In incidental interim relief, the request for relief is formulated during the course of the process, after the filing of the main action, or together with the initial petition.

According to Eduardo Arruda Alvim, in relation to previous anticipatory protection, it is possible for the plaintiff, faced with an urgent situation, to initially seek only the granting of satisfactory protection (ALVIM, 2017).

Therefore, it is understood that early

protection, also known as satisfactory protection, aims to anticipate the judgment on the merits, that is, the central issue of the action, based on the probability of the right and the risk of delay in the process, as long as the effects of its concession can be reversed.

One of the striking characteristics of advance guardianship is its provisional nature. This means that the decision granting early protection can be reviewed or modified throughout the process, either ex officio by the judge or at the request of the opposing party. After all, the granting of early protection is based on an initial analysis of the elements presented, without delving into the merits of the case.

However, it is important to highlight that advance relief granted in advance may stabilize. According to Article 304 of the Code of Civil Procedure, if the applicant does not file the main action within 30 days, counting from the date on which the advance relief was granted, the advance relief becomes stable, that is, its provisional nature becomes definitive. In this case, the advance protection starts to produce the same effects as a final decision, and can be executed by the applicant.

Undoubtedly, early provisional relief is an important tool in the Brazilian civil process, allowing the anticipation of the practical effects of the final decision in situations of urgency or obvious probability of law. Although it is a provisional measure and subject to review, it can stabilize and become a definitive decision if the applicant does not promote the main action within the period established by legislation.

THE INSTITUTE OF PROVISIONAL GUARDIANSHIP OF EARLY EMERGENCY REQUIRED IN ADVANCE AND ITS STABILIZATION OVER TIME

After a brief introduction to provisional guardianships, we proceed to the analysis of the anticipated guardianship requested on an antecedent basis and its stabilization. This issue has raised important repercussions for legal practitioners, given the significant changes promoted by the 2015 Civil Procedure Code.

The provisional urgent relief requested in advance is an institute materialized in Article 303 of the New Brazilian Code of Civil Procedure, which establishes a specific and judicious procedure for granting an early decision even before the main action is filed. This institute has its own characteristics and effects that deserve a more detailed analysis.

Article 303 of the New Code of Civil Procedure provides that "in situations in which the phenomenon of urgency is contemporaneous with the filing of the action, the initial petition may be limited to the request for early protection and the indication of the request for final protection, with the exposure of the dispute, the right sought to be realized and the danger of damage or risk to the useful result of the process".

Regarding the urgent provisional protection previously requested, in its articles 303 to 305, the Civil Procedure Code brought a new direction to provisional protection. In this sense, the teaching of Cássio Scarpinella Bueno (2017, pg. 268-269):

> What does art. 303 does is create a true procedure to be observed by those who make a request for early provisional protection previously based on urgency. A procedure so specialized that it could even be allocated, in CPC/2015, among the special procedures in Title III of Book I of the Special Part. So sophisticated (at least from a theoretical point of view) that it can be understood as a case of "differentiated judicial protection", an expression that, despite being pompous, leads to the procedural distinction sometimes chosen by the legislator to obtain judicial protection. specificities of substantive law.

The protection requested on an antecedent

basis occurs when the author limits himself only to his request, failing to aim for definitive judicial protection, with the filing of the action being contemporary (WAMBIER; TALAMINI, 2018, p.888).

It is worth noting that the main purpose of preliminary provisional protection is to ensure the effectiveness of judicial protection, allowing the applicant to obtain a quick and early decision on the alleged right, even before formally initiating the process. For this protection to be granted, two fundamental requirements must be met: the probability of the right and the danger of damage or the risk to the useful outcome of the process.

The probability of the right refers to the existence of sufficient evidence that demonstrates that the right alleged by the applicant is plausible and probable. In other words, the applicant must present elements of conviction that demonstrate the verisimilitude of the allegations that support his request. It is important to highlight that, in this previous phase, the analysis of the probability of the law is more superficial, as there is still no complete investigation of the process.

On the other hand, the danger of damage or the risk to the useful outcome of the process concerns the urgency of the decision, that is, the need for a quick judicial response to avoid irreparable damage or damage that is difficult to repair. The applicant must demonstrate concretely and objectively that there is an imminent danger of harm if the interim relief is not granted in advance. This demonstration must be substantiated and supported by evidence or consistent arguments.

Once these requirements have been met, the judge may grant preliminary provisional relief. At this point, it is important to highlight that the decision granting this protection is provisional in nature, that is, it is not definitive. It aims to guarantee the effectiveness of judicial protection and ensure that the applicant's rights are preserved until the conclusion of the main process.

With regard to the effects over time, the previous provisional interim relief is valid until the moment in which the main action is actually filed by the applicant. After the filing, the antecedent protection merges with the protection granted in the main process, becoming effective as definitive protection during the course of that process.

It is important to highlight that, like other provisional guardianships, the previous provisional guardianship can be revoked, modified or even maintained throughout the main process. If the circumstances presented by the applicant change or if the opposing party demonstrates the non-existence of the requirements that supported the granting of early relief, the judge may review his decision and make the necessary adjustments.

Therefore, over time, the effects of the previous provisional relief are conditioned on its stabilization or its incorporation into the main process, and may be revised or maintained according to the circumstances presented and the parties' contradictions.

CONCEPT AND EFFECTS OF THE STABILIZATION OF THE PROVISIONAL PROTECTION OF EARLY URGENCY REQUESTED ON AN ANTECEDENT CHARACTER

When antecedent anticipatory relief is granted (as established in article 303, §1, I), the author must make an addition to the initial petition, providing additional justification, presenting new documents and reaffirming the request for final relief, within a within 15 (fifteen) days, or a longer period if determined by the judge. If the judge rejects early protection, an amendment to the initial petition will be required within 5 (five) days, under penalty of rejection and termination of the case without resolving the merits

(THAMAY, 2019).

After granting the preliminary anticipatory relief, the defendant will be summoned to become aware and, thus, begin the period for filing the interlocutory appeal (GONÇALVES, 2020). With the summons of the defendant, only the deadline for appeal begins to run, and there is no deadline to present the defense, since the request has not yet been completed by the author, who, as mentioned, will have a period of 15 days or more to do so. it.

Therefore, when anticipatory protection is granted under the terms of art. 303 of the Code of Civil Procedure, it becomes stable if no appeal is filed against the corresponding decision. In this case, the process will be terminated.

In this context, it is observed that the stabilization of antecedent anticipatory protection aims to separate the provisional protection mechanism from the final decision obtained through exhaustive cognition. Thus, by granting provisional protection and stabilization occurs, the need for the final decision typical of exhaustive cognition is dispensed with, in order to avoid wasting time and resources, ending the process without the complete final decision typical of exhaustive cognition. The author does not need to continue the process "just to confirm the protection granted" (LAMY, 2018).

However, there is an action that can be proposed by either party with the aim of reversing the stabilization of early protection within the two-year statute of limitations. This action must be filed through an initial petition, in which the main process may be requested to be unarchived, the jurisdiction of which lies with the original court that granted the satisfactory protection. Furthermore, it is important to remember that the effects of stabilized guardianship only cease with a definitive decision to that effect; the simple proposition of the action is not enough to cancel the effects of the stabilized guardianship (DIDIER JUNIOR; BRAGA; OLIVEIRA, 2016).

Therefore, antecedent anticipatory protection, at least in the first two years, does not acquire a definitive character and does not have the authority of material res judicata. It only acquires stability, which means that the judge can no longer revoke or interrupt its effectiveness freely. To achieve this, it is necessary for the parties to act in accordance with art. 304, § 2, of the Code of Civil Procedure, within a period of two years (GONÇALVES, 2020).

INVESTIGATION INTO THE DIVERGENCES ABOUT THE LEGAL NATURE OF THE DECISION THAT STABILIZES THE JURISDICTIONAL PROVISION GRANTED UNDER AN EARLY EMERGENCY GUARDIANSHIP BACKGROUND

If there is no appeal filed against the decision granting advance relief, as established in article 304 of the Code of Civil Procedure (BRASIL, 2015), the stability of the measure is consolidated. This way, if the defendant chooses not to appeal, the early protection decision will be fully effective and the process will be closed. It is worth noting that the emergency measure granted will remain in force indefinitely (WAMBIER; TALAMINI, 2018).

The new terms established in the Code have a significant impact, since the defendant's inaction can result in several consequences for the process. It is important to consider that your manifestation in relation to early protection is subject to a statute of limitations of two years. In most cases, the request for anticipatory relief is made to the court a quo, and the corresponding appeal mentioned in art. 304 of the Code of Civil Procedure

is the filing of an interlocutory appeal, an appropriate appeal against the interlocutory decision granting provisional protection.

However, when it is an action whose original jurisdiction lies with the ad Quem court, the antecedent request must be made to the rapporteur, and the decision will be challenged through an internal appeal, to be judged by the respective collegial body (ALVIM, 2017).

According to this understanding, it can be stated that simply making a request challenging the stabilization of guardianship is not enough to avoid it, as the Code explicitly refers to appeals. The interlocutory appeal is the appropriate resource to avoid the stabilization of the guardianship, as provided for in article 1,015 of the Code of Civil Procedure, as the terminology used by the Code was not used casually (WAMBIER; TALAMINI, 2018).

However, considering the legal system as a whole, restricting the impediment to the stabilization of early relief only to the appeal of an instrument would result in an excessive increase in the demands of the Courts. Some scholars believe that it is possible to use other means of challenge to obstruct this stabilization, generating less turmoil and greater simplicity for the procedural progress (BEDUSCHI; HENCKEMAIER, 2016).

This is the case, for example, of Fredie Didier Junior, who argues that, even though article 304 of the Code of Civil Procedure only mentions the filing of an appeal to rule out the stabilization of early protection, it is necessary for the defendant to remain inactive. Therefore, if the defendant uses another means of objection, as long as it is within the deadline, this manifestation must be considered to avoid the stabilization of the guardianship. After all, when the defense is presented, this instrument challenges both the advance protection and the definitive protection itself, and it is up to the judge to analyze the process and decide whether or not to maintain the decision that granted the advance protection, and cannot impede the defendant's right to a benefit. merit jurisdiction (DIDIER JUNIOR; BRAGA; OLIVEIRA, 2016).

In the same sense, Luiz Guilherme Marinoni, Sérgio Cruz Arenhart and Daniel Mitidiero defend the need to challenge the decision, which can be carried out through a defense or at a hearing, with the requirement to file an appeal being excessive to avoid the stabilization of the guardianship. For these authors, this solution provides procedural savings, as it avoids appeals and values the constant expression of will in contesting or attending the hearing (MARINONI; ARENHART; MITIDIERO, 2018).

When examining the changes relating to the stabilization of advance relief in conjunction with article 1,015 of the Code of Civil Procedure, it is noted that the legislator also sought to reduce the number of direct appeals against interlocutory decisions. Therefore, it would be unreasonable if the only way to avoid the stabilization of the guardianship was through the appeal of an instrument. It is essential to highlight that the stabilization of the previous anticipatory protection works, to a certain extent, as a penalty to the defendant, so that any challenge against the decision granting the protection must be taken into consideration.

However, it is important to highlight that Senate Project, number: 166/2010 proposed a different approach. As expected, upon granting preliminary anticipatory relief, the defendant would receive information in the order that the decision or injunction eventually granted will continue to produce effects regardless of the formulation of the main request by the plaintiff. However, during the Project's processing process in the Chamber of Deputies (PL, number: 8,046/2010), there was a significant change in

requiring the filing of an "appeal" as a way of restricting the defendant's actions, instead of a simple " challenge" as initially provided for in PLS 166/2010.

Therefore, considering that the legislator, in 2015, deliberately restricted the defendant's form of manifestation against stabilization, there is no doubt about the need to file an "appeal" (ALVIM, 2017).

Furthermore, the 3rd Panel of the STJ, considering the absence of an appeal and that the defendant had presented a defense, understood that there was no case for stabilization (Special resource: 1.760.966/SP, J. 4.12.18). The 1st Panel of the STJ, by majority, understood that stabilization had occurred, highlighting the dissenting vote: i) that the expression "resource" provided for in art. 304 does not support expansion; ii) that the original wording only spoke of "impeachment", with the replacement of the term occurring during the legislative process, which disallows an interpretation of an expansive nature (Special resource: 1.797.365/RS, j. 22.10.19).

However, there is another controversial issue related to the stabilization of guardianship and concerns the formation of res judicata. The termination of the case due to the defendant's inaction does not result in the resolution of the merits, therefore, it does not produce res judicata. This situation persists even after the two-year statute of limitations for proposing a reversal action, since the res judicata focuses on the content of the decision, not on its effects, making the content indisputable with the res judicata (DIDIER JUNIOR; BRAGA; OLIVEIRA, 2016).

First of all, it is essential to explain the concept of res judicata in accordance with article 502 of the Code of Civil Procedure. Material res judicata concerns the authority that makes the decision on the merits immutable and indisputable, no longer subject to appeal. It is important to highlight that the formation of res judicata is based on the command of the decision that thoroughly analyzes the merits, which differs from the decision that grants provisional protection.

In this context, it is possible to highlight the criticism made by Sérgio Luiz Wetzel de Matto, mentioned by Guilherme Lessa Thofehrn, who states:

> The infraconstitutional legislator, by providing for a summary procedure capable of achieving res judicata, appears to disregard some essential concepts for the provision of judicial protection through a fair process, including the need for a thorough analysis as a requirement for the immutability of the decision (MATTO, 2016 apud THOFEHRN, 2016, p.9).

Thus, the conclusion is reached that by allowing res judicata to apply to provisional protection, it becomes immutable. However, the provisional protection did not undergo an in-depth analysis, which goes against several principles that aim to ensure the justice of the law in the most equitable way possible.

According to Ernani Fidelis dos Santos, stability cannot be confused with res judicata (art. 304, § 6). The res judicata refers to the definitiveness of the decision, making it immutable, while stability concerns its effects that are in force or being produced (SANTOS, 2017). According to the author, in a claim in which provisional possession of the thing was granted, this possession is an effect. In this case, stating that early protection is stable means that this effect will last until stability is lost. The action that may reverse the stability of early protection, causing res judicata, must be proposed within the two-year statute of limitations, in accordance with § 5 of art. 304. However, at this point, there is a clear inconsistency in the law, as res judicata is a constitutional precept. As long as the party's right is not prescribed, he or she will be free to bring the action and, if a sentence is obtained even after two years have passed, the decision

will prevail over stability (SANTOS, 2017, p.505-506).

In this context, it can be observed that the stability of the decision may be related to the effects resulting from the granting of antecedent advance relief. However, res judicata concerns the definitiveness of this decision. Given the situation mentioned above, it is possible that the defendant in the action in which provisional protection was granted, even after two years, may initiate a new action to discuss the merits of the claim, since the final decision of this process will prevail over the effects generated by the decision granting the previous anticipatory protection.

It is worth highlighting that the stability of the decision is not an effect, as this effect manifests itself outside the process, while the stability of the decision given is produced within the process.

When examining a decision granting anticipatory relief before the two-year period and with the defendant's omission, stability is established due to temporal preclusion, since the defendant missed the deadline to appeal or present a defense. On the other hand, when stability is consolidated after two years, in addition to the estoppel, a final judgment occurs, which represents the moment in which the decision becomes definitive and immutable in relation to provisional protection.

In view of this, it is believed that stabilization, after the two-year period, continues as a mechanism that allows the production of effects outside the procedural legal relationship, aiming to satisfy only the factual aspects of the plaintiff. This stabilization can no longer be contested, but it is important to emphasize that immutability strictly affects the object of the anticipated relief granted. This means that the material right between the parties, as it has not been judged, can be discussed and be the subject of a definitive decision on the merits (ALVIM, 2017).

In order to clarify the legal nature, classifications and typifications were presented to which the institute of stabilization of guardianships is part. In view of this, the importance of discussing the stabilization of guardianship becomes evident, given the possibility of different interpretations. The recent position of the Courts of Justice, although it has not pacified an understanding regarding the nature of the decision discussed here, consolidates a position that it is sensible and fair to clarify this legal nature, considering that the substantive law and the attorney's intention must prevail over the formalities and bureaucracy imposed by law.

CONCLUSION

Provisional guardianship is an institute aimed at anticipating the procedural result, conditioned on the presence of the necessary requirements for its granting. Its primary scope lies in mitigating losses resulting from procedural delays, aiming to provide greater effectiveness and efficiency to the procedure.

Provisional protection is divided into two fundamental categories: urgent protection and evidentiary protection. Urgent relief, in turn, is subdivided into anticipatory relief and precautionary relief, being granted whenever the assumptions of probability of the alleged right and danger of damage or risk to the useful outcome of the process are met.

Regarding advance relief, it must be noted that its objective is to anticipate the examination of the merits, that is, the central issue of the process, however, its origin demands the reversibility of the effects. In this sense, anticipatory protection can be requested in advance, that is, at the beginning of the process, through an initial petition, or incidentally, that is, during the course of the procedure.

As for precautionary protection, its purpose lies in guaranteeing the obtaining of the intended right, safeguarding the implementation of the substantive right, as its name suggests, with a precautionary scope.

In turn, the protection of evidence configures a procedural technique with assumptions different from those mentioned previously. For its grant, it is essential to demonstrate the abuse of the right of defense or the procrastinatory intention of the adverse party, in addition to proving the legal facts through documents and presenting theses, jurisprudence and summaries that apply to the demand, in order to eliminate any doubt about the evident right claimed.

Regarding the stabilization of the previous anticipatory protection, it appears that it implies the maintenance of the effects arising from the decision that granted it, as long as it has not been challenged by the defendant in the defense.

In this context, it is not necessary to file an appeal to avoid stabilization, in accordance with the predominant doctrinal consensus and jurisprudence of the Superior Court of Justice (STJ). This understanding by the STJ highlights the true essence and purpose of the stabilization of antecedent advance relief, which consists of maintaining the effects of a decision in which both parties are satisfied with the outcome.

However, in cases where the objection challenges the granting of this institute, the dissatisfaction of one of the parties is revealed, which may prevent the stabilization of the effects of the previous advance relief.

As for the legal nature of the stabilization of the previous anticipatory protection, it appears that such a decision does not constitute res judicata. However, the legal provision establishes that, after the two-year period has elapsed, the decision cannot be changed, making the effects of granting guardianship in the process immutable.

Therefore, as it does not produce res judicata, there is the possibility of filing a new claim, with an in-depth examination of the merits, in order to obtain a definitive decision that prevails over the effects of the decision that granted the previous advance relief.

In view of all the explanations outlined, it can be seen that without carefully analyzing each factual situation of stabilization of the protection granted, it remains impossible to determine its nature in general, since to do so, it is necessary to stick to the acts carried out within the records, the type of protection granted, the filing or not of the competent appeal, as well as whether the right claimed has been consummated, which leads to the understanding that there is not only a legal nature for the decision that stabilizes the urgent protection but rather, natures that will suit the specific case to be treated and analyzed.

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