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An approach between the institutional capacity of the Courts of Audit and the regimen of precedents and summulas from the Civil Procedure Code

Uma aproximação entre a capacidade institucional dos Tribunais de Contas e o regime de precedentes e súmulas do Código de Processo Civil

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Abstract: The institutional capacity of the courts of audit as makers and applicants of precedents and summulas (restatement of case law) is investigated to answer the following: is it possible a mutually beneficial approach to the decision standards regimen from the Civil Procedure Code-CPC, as well as a productive dialogue with the Law of Introduction to the Brazilian Legal Statutes (Lei de Introdução às normas do Direito Brasileiro-LINDB)?. The objective of the work is to analyze, from the abstract and concrete institutional capacities of the audit courts, the aptitude for the formation and application of decision-making standards. To do so, Ronald Dworkin's interpretive theory was chosen, especially because it is believed that precedents are intertwined in a discursive plot, when every single interpreter commits to analyzing past decisions, in a reflexive way, to decide in the present and, at the same time, anticipating the directions for the future of the decision, which is made in the here and now. The hypothesis is that the audit courts have the potential ability to form and apply precedents and summulas, arising from the exercise of their constitutional powers, but that it is also necessary to develop a concrete capacity to form and apply controlling decision patterns. In this way, it

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allows for a better understanding of the relationship between the decisions of the audit courts and the judicial ones. It is a theoretical work, of legal analysis of the subject, using the deductive method, starting from a general analysis to reach the institutional capacity of audit courts for the formation and application of decision-making standards.

Keywords: Institutional capacities – Civil Procedure Code – Decision standards – Courts of Audit.

Resumo: Investiga-se a capacidade institucional das cortes de contas, como formadoras e aplicadoras de precedentes e súmulas, para responder: é possível uma aproximação profícua com o regime de padrões decisórios do Código de Processo Civil-CPC, assim como um diálogo produtivo com a Lei de Introdução às Normas de Direito Brasileiro-LINDB? O objetivo do trabalho é analisar, a partir das capacidades institucionais abstrata e concreta dos tribunais de contas, a aptidão para formação e aplicação de padrões decisórios. Para tanto, elegeu-se a teoria interpretativista de Ronald Dworkin, especialmente porque acredita-se que os precedentes se entrelaçam em uma trama discursiva, na qual cada intérprete se coloca no compromisso de analisar as decisões passadas, de forma reflexiva, para decidir no presente e, ao mesmo tempo, antecipando também os sentidos para o futuro da decisão, que se faz no aqui e agora. A hipótese é de que os tribunais de contas têm aptidão potencial para formar e aplicar precedentes e súmulas, decorrente do exercício de suas competências constitucionais. Observou-se, que o desenvolvimento da capacidade institucional concreta, para formar e aplicar padrões decisórios controladores, permite uma melhor compreensão da relação entre as decisões dos tribunais de contas e as judiciais. Trata-se de trabalho teórico, de análise jurídica do tema, valendo-se do método dedutivo, partindo-se de uma análise geral para se chegar à capacidade institucional dos tribunais de contas para formação e aplicação de padrões decisórios.

Palavras-chave: Capacidades institucionais – Código de Processo Civil – Standards decisórios – Cortes de Contas.

1 INTRODUCTION

When specialized external control of public accounts is thought of, it must be immediately considered the role reserved to the Constituent to the courts of audit. The investigated theme is the aptitude of these courts as makers and applicants of precedents and summulas, a topic that has earned a wide emphasis in civil and

constitutional purview, though with little mention to those review bodies. It is important to note that the research is based on Ronald Dworkin's interpretive theory, allowing a sophisticated approach in the construction and interpretation of judicial rulings. The goal is to examine the courts of audit from their institutional capacity, both abstract and concrete, to answer the following: is it possible a mutually beneficial approach to the decision standards regimen from the Civil Procedure Code-CPC, as well as a productive dialogue with the Law of Introduction to the Brazilian Legal Statutes-LINDB?

On matters of development, it is imperative to note that the expertise of these judicial review bodies might be investigated in the abstract, in order to build a starting supposition within reach. These bodies were designed to work as expert systems, to be known as "systems of technical accomplishment or professional expertise[1]" (Giddens, 1991, p. 38). To reflect upon the institutional capacity, as well as other topics, means to observe the "cognitive and decision-making aptitudes of each of the review bodies" (Cabral, 2021, p. 312). Such act embraces the analysis of the institution, taking into account that the institutional architecture is thought from the perspective of "functional specialization" and the distribution "of power and competencies among institutions to reach their specific goals" (Cabral, 2021, p. 317). Known that the exercise of the competencies of a body does not occur in an institutional vacuum, Dworkin's proposal of chain novel comes to take part in this scenario. This is due to decision standards being made and applied by courts of audit and the Judicial Power, in a manner that there will be moments in which the institutional history is shared among these bodies. The controlling precedents – this is the adopted naming system when made by the courts of audit – and judicial ones are entwined in the discursive weave of Law. Therefore, these will be the points to be developed in the first section of this writing.

[1] Souza notes that two expert systems, facing the same issue, may offer different answers, so establishing the conflict (SOUZA, 2018, p. 78-81).

Moreover, the relation between courts of audit with the decision standards regimen of the CPC is deepened and the dialogue with this procedural rule and the LINDB is encouraged. The CPC created a decision standards regimen composed of precedents, those of which need to be observed by judges. The LINDB on the other hand, intending to promote legal security, has established that regulations, precedents, and answers to consultations will have a binding effect on the bodies which are destined to. The theoretical and normative contributions that might be fully incorporated to the courts of audit are brought in the second section, as well as being specially identified as precedents and answers to consultations, are connected to the idea of decision standards from the Civil Procedure Code, allowing to clarify the aptitude of the courts of audit to make and apply the aforementioned patterns.

At last, the theme of institutional capacity is revisited, now in its concrete dimension, in other words, after the essential categories that are used in dealing with precedents are developed. It is also intended to identify elements that allow the measurement of the concrete institutional capacity of the courts of audit to make and apply decision standards and that might be useful when considering the possibility of judicial deference.

The presented research and argumentation are adequate to sustain the hypothesis in conclusion. The text's final considerations revisit the core idea since this is not empirical or dialectical research, but a theoretical work of juridical analysis of the said subject. Dworkin's interpretive theory was employed as a starting point to use the deductive research method.

2 THE SPECIALIZED COURT OF AUDIT: THE ABSTRACT INSTITUTIONAL CAPACITY AND THE LAW'S WEAVE

Sunstein and Vermeule alerted that the decisive normative theories had neglected the study of institutional capacities and the

systematical effect of the decisions, being Dworkin[2] one of their targets (2003, p. 904). Gomide explains that the state capacities are attributes that could be identified on varied dimensions: "coercive, fiscal, administrative, relational, legal and political". In the coercive dimension, it is examined the capacity of "maintaining the public order and defense of the State". The fiscal capacity "emphasizes the faculty of the State in extracting society's resources", in other words, its taxing activity. The "relational dimension" aims to verify the "capacities of the State's bureaucracies in mobilizing political resources, being held accountable for such, and internalize needed data for the effectiveness of their actions". The legal dimension is studied when the "capacities of the State in defining and guaranteeing the 'rules of the game' which are going to standardize the interactions of the agents" are thought on. At last, according to the author, the political capacity "concerns respect to the power of agenda or faculty of the elected governments in making their priorities worth" (2016, p. 23). Every state act uses public expenses and its auditing, and because of this, the courts of audit and their auditing and controlled dimensions are inserted in this discussion, sometimes as a decision-driving force of other institutions and, at the same time, imbued within the need of developing their own capacities.

In this manner, the idea is to somehow approach Dworkin's interpretivism theory to institutional questions aiming at the making and applying of decision standards. To do this, it is initially identified

[2] This article is based on Dworkin's decisive normative theory and detached from the strict design of the institutional capacity argument developed by Sunstein and Vermeule. As a matter of fact, regarding Sunstein, Lopes' research (2020) has shown the difficulty in diagnosing it, seeing that the author seemed more worried with the resolution of practical questions rather than maintaining a uniform theory throughout his academic career. This research also aims to dialogue with other authors who face the theme and use the institutional analysis argument in a proposing manner, especially in regard to the aptitude of the courts of audit in making and applying decision standards.

the abstract institutional capacity[3] of the courts of audit and noted that its exercise is manifested entwined to the decisions of other bodies.

The Constituent's command to auditing and control, as well as the delimitation of the competencies, are a strong sign of the abstract institutional capacity of the courts of audit, due to what is stated in articles 70 and 71. The first article[4] widely shows the dimension of the auditing that will be carried out through external review, determining that account factors, finances, budget, and property should be considered. As for the approach, the evidence is what will be given *(i)* in an operational manner, in which matters related to effectiveness, efficacy, efficiency, and economicity are prioritized[5]; and *(ii)* in assessing the good standing to which its focus are the matters related to legality, legitimacy, and economicity, even when related to subsidies and waivers of revenues. It should not be overlooked that the text from article 70 grants the Legislative Power, through external review, the assignment of this auditing and control beyond the internal control system of each Power. It occurs that in article 71 the courts of audit expressively take place through an array of competencies connected to the said dimensions.

Therefore, these review bodies, according to the constitutional text, have the task of *(i)* elaborating preliminary technical report

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[3] Souza, while researching about judicial review of administrative rulings, examined the decisive aptitude of the Public Administration in an abstract perspective, found under juridical framework, but without forgetting its concrete dimension, in other words, the circumstances in which the decision is made (2018, p. 99-102). For this paper, the abstract institutional capacity is the one presumed from the legislation itself. The concrete institutional capacity, on the other hand, imposes some action from the review body, related to the assessable circumstances in which the decision is made, point that will be dealt in this paper's third section.

[4] "Art. 70. Control of accounts, finances, budget, operations and property of the union and of the agencies of the direct and indirect administration, as to lawfulness, legitimacy, economic efficiency, application of subsidies and waiver of revenues, shall be exercised by the national congress, by means of external control and of the internal control system of each power.".

[5] In operational audit, however, it is possible to evaluate the economy in regard to moment and opportunity of public expenses and not only under its formal aspect.

(ii) auditing; *(iii)* assessing admission acts and concession of welfare benefits; *(iv)* inspections and audits; *(v)* national account auditing of supranational companies; *(vi)* monitoring voluntary transfers from the Union to federal entities; *(vii)* render the information requested by the national congress, by either of its Houses or by any of the respective committees concerning accounting, financial, budgetary, operational and property control and the results of audits and inspections made; *(viii)* in case of illegal expenses or irregular accounts, apply to the responsible parties the sanctions provided by law; *(ix)* determine a period of time for the agency or entity to take the necessary steps for the strict compliance with the law, if an illegality is established; *(x)* suspend acts and contracts within constitutional legitimacy; (xi) report inconsistencies to competent powers[6].

The criteria to choose the members of the courts of audit are also shown in the constitutional text, requiring them to *(i)* be over 35 years old and less than 65; *(ii)* moral integrity and spotless reputation; *(iii)* notable knowledge of the law, accounting, economics, and finances or of public administration; *(iv)* have more than ten years of exercise of an office or of actual professional activity which requires the know-

[6] There are also designations granted by the infra-constitutional legislation to the courts of audit. There is no goal in delve deeper into them, but only to identify laws that allow visualizing their wide array of attributions pointing to an abstract trust built upon these review bodies. These competencies highlighted by the infra-constitutional legislation to the courts of audit: (i) The Fiscal Responsibility Law (Lei de Responsabilidade Fiscal – LRF), about fiscal management; (ii) in Law 10.028/2000, which attributes the competence to judge administrative infringements against laws on public finances; (iii) in the specific sphere against corruption, the procedure of auditing of these courts is discussed concerning the leniency agreements, being relevant to point that in the state of Pernambuco such legitimacy was granted to the regional court of audit in the terms of State Law 16.309/2018; (iv) in the oversight of public biddings and contracts per Laws 8.666/1993 and 14.133/2021; (v) in the state of Rio Grande do Sul, the State Law 15.266/2019 has granted the regional court of audit the capacity of issuing certificates in the absence of precedents of irregularities regarding the acting institution of public tenderings, and granting access and exam to all acts and documents about the applicants, without damaging the analysis over the submission of accounts that might indicate the origin and application of the resources destined to the recruitment of civil servants.

ledge mentioned in the preceding item. Such criteria demanded by the Constituent express concern regarding the capacity of the public agents who will be incorporated into these bodies and their powers.

The array of constitutional competencies of the courts of audit, so as the background attributes of their members, are signs of the elevated abstract institutional capacity trusted upon these review bodies. However, this expertise does not occur in an "institutional vacuum" (Arguelhes; Leal, 2011, p. 26[7]), as shown in the complex weaving of interpreting the Law. When the courts of audit manifest, they are supposed to dialogue with other decisions – administrative and judicial – as well as their previous statements. There is also the expectation, in a democratic paradigm, of an ongoing dialogue with the society and that in their decisions, the tradition and critique of tradition are taken into account, from the perspective of legit argumentation. It should be noted the potential capacity of these review bodies on making decision standards comes from their constitutional capacities, for when they decide such, they could create precedents that might be used in future decisions.

The courts of audit sometimes face the same questions that will be discussed in the judicial sphere, weighing several times on extremely specific themes, such as pavement supervision, actuarial calculation of a welfare regimen, or the accounting system of a public body. They are expert systems – courts of audit and Judicial Power – that despite having different institutional designs, can decide over the same matter. The judicial and controlling decisions could sign

[7] The expression "institutional vacuum" is used by authors to indicate judicial decisions, taking into account the abilities and limitations of the Judiciary, and knowing that other institutions will be affected by the decisions. They explain that the argument of Sunstein and Vermeule (about institutional capacities) means to rebuff ideal normative theories when facing concrete situations that make evident the discrepancy between the ideal and real scenarios (2011, p. 26). In this work, as it has been stated, Dworkin's interpretive theory is the starting point but without disregarding the institutional matters. Worthy research that demonstrated this concern in incorporating some institutional matters into Dworkin's normative theory can be found in Lopes (2020).

theoretical discrepancies and it is important to note that there is not a ground zero with which they can begin with[8].

Dworkin contributes on this matter because working with precedents means putting itself as a partner of a "complex enterprise", that imposes the need of looking back at the past, deciding the current case, and anticipate meanings – each judge must comprehend that "it is their work to continue this story in the future by what they do now" (Dworkin, 2019, p. 238). This author understands that law is "an interpretive concept" (Dworkin, 1999, p. 60), rejecting conventions or pragmatism, so the true juridical proposals, better related with the "principles of justice, equity and due process of law" should offer "the best interpretation on the community's juridical practice" (Dworkin, 1999, p. 272). As Dworkin states "the interpretation of a social practice" such as Law, relates to the artistic as "both aim to interpret something created by those people as a distinct entity from them", designated as "creative interpretation" (Dworkin, 1999, p. 61). The latter "is primarily concerned with purpose instead of cause" because of its constructive nature (Dworkin, 1999, p. 63). However, Dworkin does not accept that "an interpreter could turn a practice or a piece of art into anything that they wished it would be", as per his understanding "the story or way of a practice or object is coercive over the available interpretations" (Dworkin, 1999, p. 64). Understanding that "a social practice creates and presumes a crucial distinction between interpreting acts and thoughts of the agents one by one, and in that manner, interpret the practice itself, being it to interpret what they collectively do" (Dworkin, 1999, p. 77). Thus it is possible to conclude that Dworkin proposes the social practice to be interpreted as a collective enterprise. The original intentionality of the practice is not sought – as for many times, it is even impossible to identify it – let

[8] It would be a despise towards the previous interpretive act (STRECK, 2019, p. 55).

alone by mere personal interpretation. This would be Dworkin's main point: the intentionality of the practice.

The same author contributes with the well-known chain novel metaphor, a novel written by several authors, each responsible for a chapter, with the task of maintaining cohesion according to what was previously written. The authors have "twice the responsibility to interpret and create", since they will have to "read everything that has been done before establishing, in an interpretive way, what is the written novel about" (Dworkin, 2019, p. 235-236). The judge deciding upon the juridical matters as a chain novelist – both as author and critic – because they decide the trial and contribute to tradition, so the next one will resume the story. This venture demands rightful and adequate gauging, seeing as the story received by the author "should flow with the text", beyond value, because it will be needed "to judge which of the possible readings fits better to the story's development" (Dworkin, 1999, p. 277-278).

The metaphor may be of great use[9] when the relation between control and judicial decisions is thought on. On the other hand, the array of extremely specialized consequences from the courts of audit cannot be overlooked[10], leading to a tangent discussion that is better explored in the field of decision theory to institutional aspects. Who is better prepared to decide over these questions? The theory of decision is not abandoned in this research, but an approach to the questions related to the institutional capacity of the decisive bodies is aimed at.

[9] Sustein himself, recognizes the metaphor's worth (2016, p. 176-177).

[10] In analyzing the accounts of a term of office, for example, from previous audits, the courts of account have a wider sight on the Public Administration, which allows them to connect several facts and problems in the said term. In analyzing, for the matters of record, welfare benefits, it examines the legislation of a certain federative body, in repetitive manner (because all the acts are overseen), allowing better specialization. As rule of thumb, the judiciary courts face singular cases that do not grant them this sight. Holmes and Sunstein, observing the North-American context, claimed that the judges cannot oversee the complexity of the allocation of resources, pointing that the magistrates work with "insufficient and partial" information (HOLMES; SUNSTEIN, 2019, p. 75).

Before examining the aptitude of the courts of audit on making and applying decision standards, the next section will discuss an approach with the Civil Procedure Code, as well as the LINDB. This beforehand analysis is needed, for there are unique elements and categories related to decision standards that arise in this dialectic, and they allow the absorption of theoretical and normative inputs needed to examine the concrete institutional capacity desired when decision standards and their enforceability to courts of audit is evident.

3 THE RELATION OF THE COURTS OF AUDIT WITH THE DECISION STANDARDS REGIMEN OF THE CPC AND A DIALOGUE WITH LINDB

A central topic in Brazilian Law discussions is the usage of precedents, originating a deep academic production[11], especially after the current CPC's enactment. However, under more scrutiny, it is possible to note that it is not solely about precedents since under the legislative conception there are statements – under another array of precedents known in Brazil as summulas – made by courts in a particular way that it was adopted the terminology of decision standards[12]. And so, decision standards became the general classification when referring to precedents and summulas[13]. Truthfully, even the description and prescription themselves of precedents (and summulas)

[11] The Brazilian dispute over the role of precedents involves the critique regarding the (in)existence of a system of precedents (STRECK, 2019), the role of the superior courts (MITIDIERO, 2017), the existence of mandatory precedents (MARIONI, 2019), the making of decision standards (CÂMARA, 2018) and the argumentative drawback about precedents (VIANA; DIERLE, 2018), only to point out some conflicting arguments.

[12] The expression "decision standards" is also used by Câmara and is justified because the legislator himself used it, per article 966, paragraph 5, of the Procedural Code, aiming to designate both precedents and issuing of summulas (CÂMARA, 2018).

[13] The summula actually identifies the jurisprudence standard, but the issuing by itself is not a self-applicable standard. This means that it will always be needed to review the cases that originated the summula.

is intensely discussed, and the starting point of this research – with its goal being to accommodate to a democratic paradigm – is that certain patterns cannot be based on authority only, without concerns regarding its content, neither is thought about dismissing comprehension and interpretation of the judge[14].

This paper does not aim to delve into all categories used when dealing with decision standards, but the comprehension and explanation about the idea of precedent are important, as Câmara stated "like a court ruling, issued on closing a case and it is used as argumentative principium on the building of posterior case"[15], whereas summulas represent "an extract of jurisprudence" from a certain Court (Câmara, 2018, p. 220-221)[16]. Summulas, whether binding or not, should be applied when facing a situation under scrutiny with the concrete cases that originated them instead of being treated as laws, that is to say, full of generalization and abstraction (Siminoni; Guimarães, 2019) [17]. Regardless of the complex questions that should be faced when using these standards systems, it is known that the role of the courts of audit should not be ignored.

The entire system of precedents and summulas devised on the CPC will be applied to several questions of the literature to which they belong, nevertheless when under judicialization by the courts of audit. On the other hand, several sensitive matters are not taken to the Judiciary and are solved by the Public Administration itself, or, more relevantly, by the courts of audit in its control and supervision.

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[14] There are no incorrect answers in this case, solely by authority despite the contents, or divergence between interpretation and application, in Streck's line of work (2019). On the other hand, we understand that it is possible to work with precedents in Brasil from a harmonic dogmatic build-up to the Constitution as argumentative principium, as Câmara suggests (2018).

[15] In other words, it is just a "starting point".

[16] Therefore, the summula itself cannot be mistaken with precedent or jurisprudence.

[17] The summulas have different origin and function from the laws, and cannot be mistaken by those as well. (LOPES FILHO, 2020, p. 146).

The existence of what we call in this paper as controlling summulas and precedents, understanding that these are originated by the courts of audit. With the purpose of better identification of them, a brief dialectic between some points of the Civil Procedure Code and the LINDB is needed.

The article 927 establishes an array of decision standards, some of those seen as having binding effects by part of the doctrine[18] and others merely as persuasive[19]: *(i)* the decisions from the Supreme Federal Court-STF in concentrated control of constitutionality; *(ii)* the statements of binding summulas; *(iii)* bench decision rendered in a case of *assunção de competência* (legal device relative to appeals admitted when hearing an appeal, mandatory review or original jurisdiction proceedings on an important point of law with great social impact, but without repetition in multiple lawsuits, and whereby the appeal is remitted by the rapporteur to be tried by the full bench of the appellate court in order to prevent or settle divergences in case law.) or the resolution of multiple claims on the same point of law and in rulings of repetitive extraordinary appeal and in a special appeal; *(iv)* binding summulas of the Federal Supreme Court on constitutional matters and of the Superior Court of Justice on infra-constitutional matters and *(v)* the guidelines of the full bench or of the special body to which they are bound.

It has been established, furthermore, in terms of article 926 that the courts "must standardize their case law and keep it stable, intact

[18] Without harming the theme, the purpose is to visualize the relation between controlling and judicial precedents, without delving too deep into the specific discussion of the existence of legal binding effect in the CPC. A critical study regarding the binding effects to these decision standards can be found in: (STRECK; ABBOUD, 2013) and (STRECK, 2019).

[19] In the North-American tradition, for example, Fine visualizes and explains that persuasive and binding effect precedents. The first, per the author's words, as the name says, has a binding effect on the judges in future cases. The persuasive precedents, even though not being mandatory, must have their persuasive effects considered. (FINE, 2019, p. 68-69).

and consistent". These duties of integrity and consistency have clear inspiration on Ronald Dworkin's work, as stated by this:

> Law as integrity asks judges to assume, so far as this is possible, that the law is structured by a coherent set of principles about justice and fairness and procedural due process, and it asks them to enforce these the fresh cases that come before them, so that each person's situation is fair and just according to the same standards. That style of adjudication respects the ambition integrity assumes, the ambition to be a community of principle. (Dworkin, 1999, p. 291).

Streck explains that "integrity is a demand for judges to build their arguments integrated to the Law under a perspective of substance adjust", and the coherence "would be a modus operandi, the manner to reach it" (Streck, 2020, p. 44).

Another thing to consider is the rules that base the decisions stated on the CPC, especially in article 489, 1st paragraph, subparagraph V and VI, in which the reasons are not considered to have been given in any judicial ruling, be it an interlocutory decision, a judgment or a decision of the bench, if it: *(i)* limits itself to referring to precedents without identifying the determining grounds nor demonstrating that the case at hand fits that reasoning e *(ii)* fails to observe precedent, case law or a precedent raised by the party, without showing the existence of a distinction between said precedent the matter adjudged or that said understanding had been overturned.

To put this in better words, the first situation means that it is not enough referring to the decision standard, as it must be shown discursively by the one who judges – from the argumentation already built – that the case adjusts to what has been indicated as decision support, which occurs from the duties of coherence and integrity themselves. The practice of referring to synopses of bench decisions is not enough for a legit basis, the rule allows, regardless, to evidence the importance of the ratio decidendi in the use of precedents. According to Mitidiero, ratio decidendi is "the outcome of a generalization

of the reasons evoked by the court that deemed the case *devidamente apreendido* (in the sense that the aforementioned reasons will be taken into consideration by the court when judging a new case) by the judge or the court that should judge the new case" (2018, p. 110). Although it should be noted the warning made by Streck and Abboud in stating that ratio decidendi "configures the juridical statement wherein the starting point to decide the concrete case begins", acting in a way, however, that it does not portray, "a single judicial rule that might be considered by itself" and it cannot be isolated, but "analyzed in correspondence with factual-juridical matters solved by it" (2013, p. 43). The CPC system, in Câmara's words, works in a manner that "the main argument of a decision standard is the one that has been adopted either explicitly or subtly by the majority of the vows that make bench decisions", and this could cause issues when trying to identify the basis for such (Câmara, 2018, p. 274)[20].

Another rule of the aforementioned basis brings out categories from the common law tradition, with them being distinguishing and overruling. The distinguishing among cases is essential, as for Câmara "it is not a way of avoiding to apply the decision standard, on the contrary, is a way of honoring it", making the dialogue with the precedent or summula needed to they "only be applied to the cases that they better fit in" (Câmara, 2018, p. 290-293). Overruling should be considered as the "superseding of a previous decision" (Peixoto, 2019, p. 210), and susceptible to being applied on precedents and summulas (the latter parting from procedure review).

This legal regimen of decision standards from the CPC goes per some points raised by the LINDB[21]. Article 30 of the LINDB

[20] Concerning this point, we look for Peixoto's work, meaning that an eventual plenary decision, by the provenance of appeal, may occur from no determinant to be considered by the majority of the collegiate body (PEIXOTO, 2019, p. 151).

[21] Enforcing that the Law 13.655/2018, that altered the LINDB, on what is relevant here, is posterior to the regimen of decision standards from the CPC.

indicates a link to the laws being analyzed, as it aims for legal security when enforcing rules through procedures of binding effects to the targeted bodies[22]. It is worth mentioning that the LINDB text does not guarantee legal security by itself. Stating the above-mentioned acts have a binding effect means nothing more than a predictability attempt. The legal security, acting as a condition to the Rule of Law, demands the response to be correct, thus it should be presumed the concern regarding the making of those acts. Would anyone be willing to state that these rules, summulas, or responses that disrespect the Constitution and laws, could bring legal security solely by the fact that LINDB stated that there is a binding effect?

In any case, there is a connection between article 30 of the LINDB and, for instance, article 927 of the CPC, especially in matters of summulas and answers to queries. There is an array of provisions in the procedural rule that must be noted by the judges. The list of provisions of the CPC precisely identifies certain decision standards. The LINDB was not accurate in its typology, especially because for each federative unit those provisions that would be fit "increase legal security" may have different names[23]. Nevertheless, it is related to summulas and answers to queries that the dialogue with the CPC is aimed at[24], and it is worth mentioning that in comparison, the

[22] "Art. 30. The public authorities must act to enforce juridical security in the application of norms, even through regulations, administrative summulas and answer to consultations. Sole Paragraph. The instruments in the caption of this article will have binding effect related to the body or entity which is destined until future review".

[23] In other words, when courts of audit is thought of, some states may have issued the response to the consultation, but it is possible to find other similar procedures with different names. In the Court of Audit of Rio Grande do Sul, there is the consultation and the "*Pedido de Orientação Técnica*" (Request for Technical Orientation), that aims to establish fiscal and administrative policies of that Court, per articles 111 e 112 of their Internal Regulation (RIO GRANDE DO SUL, 2015). It is also worth mentioning that the consultations that article 30 of LINDB refers to are not restricted to those answered by the courts of audit, as several bodies of the Public Administration can make this procedure.

[24] Despite the article 30 of LINDB also makes reference to regulations, it is about summulas and answers to consultations that this study will analyze.

LINDB used the word "binding", as for the article 927 of the CPC which used "observation". Mota and Nohara state that articles 24[25] and 30 of the LINDB should be read together, as the first states that the "new guideline cannot be retroactive when applied, in the risk of nullifying perfect juridical acts" (Motta; Nohara, 2019, p. 102).

Concerning summulas of controlling nature[26], as it occurs with the judicial ones, they cannot be mistaken with precedents, they are just statements. The precedents are the decisions that originated them, but not the summula itself[27]. This summarizes why article 926 of the CPC, 2nd paragraph, states that the issuing of summulas requires the courts of law to note "the circumstances of fact from the precedents which motivated their creation". When the subject of "applying" summulas is thought on, it is to review the cases that gave origin to them under penalty of the statement acquiring law aspects[28]. Concerning the answers to queries, it is possible to observe that they operate as precedents, at least to some sense adopted by the doctrine as argumentative principium. And generally, the courts of audit answer queries based on their organic laws and internal regulations.

There is the need to consider, as it has been said before, that the (abstract) potential capacity of the courts of audit in making and applying precedents1 comes from the above-mentioned constitutional

[25] "Art. 24. The review in the administrative, controlling, or judicial spheres, regarding the legitimacy of the act, contract, adjust, process, or administrative norm which its production is already completed shall consider the general orientations of the period, denying that situations fully constituted be declared invalid based in further change of general orientation. Sole paragraph. General orientations are considered as interpretations and specifications in public acts of a general character or judicial jurisprudence or majoritarian administration imbued with administrative practice and extensive public knowledge.".

[26] Name used when originated from the courts of audit.

[27] Generally when thinking about assertions of the courts, but nothing stops the existence of multiple issued summulas, by the Public Procuracy, or the courts of audit for example. The logic is the same, as the assertions will stem from administrative jurisprudence of controlling, respectively.

[28] In other words, summulas are not created nor applied in abstract fashion (PEIXOTO, 2019, p. 161).

competencies. When these bodies issue welfare or admission acts, judge accounts, or issue prior reports, they might create precedents that will be noted in further decisions. It is likely that in their internal regulation there is a prediction to issue summulas which are, simply put, a statement of their jurisprudence. It has not been noted any reason for the review bodies not to adopt the duties of integrity and coherence of the Civil Procedure Code. It is not unnoticed that the courts of audit were also accustomed to predict in their organic laws and internal regulations, the function of consultative nature long before the issuing of the LINDB, sharing the purpose of enhancing juridical security and predictability from their controlling scope. Besides making their precedents and summulas, the courts of audit apply decision standards under the logic of Dworkin's chain novel – and following this path, the reverse is also possible, in a way that nothing stops, in the judicial sphere to take into account the institutional history and summulas and controlling precedents. The relevance of a theory of subjacent decision and application, and the making of controlling summulas and precedents allowing the control of discretion, is identified under any circumstances, aiming to safeguard the integrity and coherence of Law. The same reflections that are made regarding judges who need to apply decision standards without ignoring the adequate basis are directed to the members of the courts of audit, bodies with the supposed aptitude to make and apply decision standards. It is precisely at this point that will be possible to deepen the relation of the courts of audit with precedents and summulas and the needed concrete institutional capacity that will be required.

4 CONCRETE INSTITUTIONAL CAPACITY OF THE COURTS OF AUDIT IN MAKING AND APPLYING PRECEDENTS AND SUMMULAS

The first part of this paper was dedicated to developing an analysis of the abstract institutional capacity of the courts of audit, as

well as the importance of noting that the exercise of the competencies of these review bodies happens in a shared institutional scope. It was further explored the fact of the CPC regulated elements which allow to visualize a regimen of decision standards made by precedents and summulas and thus making possible a dialogue with the LINDB, being able to conclude that the courts of audit are capable of making and applying these said decision standards. Throughout this last topic, the intention is to deepen this aptitude from the courts of audit using elements that allow to concretely ascertain this institutional capacity in a qualified manner.

Therefore, this reflection begins concerning the concrete institutional capacity of making and applying precedents and summulas. Regarding the precedents, they might result from the exercise on the constitutional competencies from the review bodies in analysis. By these means, the ratio decidendi of an analyzed decision, such as a retirement grant, might become the precedent to help in further cases. However, taking into account the dialogue with the LINDB, this research emphasis is responses to queries and summulas. Regarding the responses to queries, it is not a competence stated in the Constitution[29], but in the organic laws[30] and internal regulations[31] of the courts of audit and also has normative support from the LINDB itself. The consultation for the courts of audit, of objective nature and adopting a Habermas-discursive approach, is to "coordinate action plans of the jurisdictional actors and the review body itself", operating preventively, besides not referring to concrete cases because it indicates "one thesis to be followed in similar situations". It also "does not have definitivity, seen that the Judiciary Power might have to analyze

[29] Although inevitably connected with the constitutional competencies of the courts of audit..

[30] In this sense, the Law 8.443/1992 serves as base to the consultative competence of the Federal Court of Accounts - TCU.

[31] In the Internal Regulations of the Court of Audit of Rio Grande do Sul, for example (Resolução nº 1.028/2015).

the merits of the responses" (Trindade, 2017, p. 127). In another perspective – without excluding the previous one – the response to queries can be identified as controlling precedent, in other words, as argumentative principium.

The constitutional or legal provision of competence, as it has been stated before, shows the abstract institutional capacity of a body. Considering what rules are oriented by internal regulations for summulas and consultations[32], the concrete institutional capacities of the courts audit start to be assessed under this normative when dealing with decision standards. It is evident that a protocol is also imbued with abstraction, but the concrete nature being referred to in this case is the result of acknowledging that these rules are created by the bodies own functional staff, up to a certain point that this regulation poses as a meeting point between the abstract and concrete capacities. The more sophisticated and democratic the regulation of the consultations and summulas, the bigger the potentiality of working with qualified and legit standards[33].

Câmara, when writing about the decision standards of the CPC, distinguishes them in those of binding and persuasive effect. For the author, the binding effect on judicial standards would differ when made of (i) a model of the amplified adversary principle and (ii) a "qualified deliberation of the jurisdictional bodies" (Câmara, 2018, p. 181-182). The author's reflections are extremely important when because the LINDB expressively brings the binding effect to think on decision standards[34].

In what concerns the first aspect of precedents, Câmara points that "its formation necessarily needs to happen with adversary principle", in a

[32] As the case of Resolution 12/2008, of the Minas Gerais Court of Audit that guides the respective Internal Regulation.

[33] The summula actually identifies the jurisprudence standard, but its issuing alone is not considered a self-applicable standard.

[34] When mentioning standards, there is not a single intention of suggesting the mechanization of Law, but to identify, as the name states, a decision standard of the court, without intending an automatic application.

manner that the "constitutional civil procedure model" must be noted and contemplated in the Constitution. This adversary principle must abide the articles 7[35] and 10[36] of the CPC, meaning "*to guarantee the participation with influence and non-surprising event*", this line is also valid when issuing summulas (Câmara, 2018, p. 180). Note that when Câmara distinguishes standards with binding effect[37] from those with mere persuasive effect, he considers fundamental how "the adversary principle is developed", when making the binding ones (Câmara, 2018, p. 181). In the author's work, the fact of the law establishing binding effects means that the binding decision standards reach people that were not "part of the process in which the decision was made". From this point it is defended the necessity of "systemic compensation, consistent in opening room for a bigger participation of the society in these decision standards procedures", then being developed the possibilities of counting with amicus curiae role and the realization of public hearings (Câmara, 2018, p. 184-185). In a certain study about the consultative function of the courts of audit, a similar conclusion has been reached, which gains support with the expressed binding effect from the LINDB, understanding that the courts of account have to promote the procedural opening to other actors' participation in the making of responses offered to the jurisdictional agents (Trindade, 2017)[38]. Reflecting upon terms of the concrete institutional capacity,

[35] "The parties are assured equal treatment in terms of the exercise of procedural rights and resources, their protection, burdens, duties and the imposition of procedural sanctions, the judge being responsible for ensuring that the principle of *audi alteram partem* is effectively applied.".

[36] "A judge cannot decide, at any instance of jurisdiction, based on grounds regarding which the parties were not given the opportunity to manifest themselves, even when it is a matter that must be decided *ex officio*.".

[37] The author notes that in the Brazilian juridical ordainment the standards with biding effect depend on legal application, as it would be done with the CPC (CÂMARA, 2018, p. 182).

[38] Because the opening of the consultation procedure allows an approach with the public sphere and the gathering of information that is later converted into arguments. The

the internal regulation will be a strong sign when predicting mechanisms of procedural opening and benefiting its idea of the adversary principle aforementioned.

About the qualified deliberation, Câmara highlights the necessity of "an all arguments analysis" brought by the "procedural actors and with effective e com effective collegiality, allowing the identification of the determining basis of the decision standard" (Câmara, 2018, p. 267-268). As for the necessity in facing the arguments, there is the need to reinforce the plain applicability of what is stated in article 489, paragraph 1, section IV of the CPC concerning precedents and proceedings in making summulas of the courts of audit, in a manner that the decision that does not face all the arguments deduced in the process will not be based and capable of refuting it.

In what covers the consultations, it is possible to reflect upon how the answers to the public are made and presented to them. In a paper about constitutional courts, Vale shows the deliberation models, primarily focusing on how the "institutional environments of the deliberative practices" can happen in the "*closed* or *secret* model of deliberating", or as it happens in Brasil, the "*open* or *public* model of deliberating", what is constitutionally stated – article 93, IX (2015, p. 98-109). Another aspect explored by the author and important to this research, is about the "institutional presentation of the deliberation results", as observed by the model *per curiam*, in which "regardless the fact of the decision being made unanimously or by the majority, it must be issued in the *whole* text format, having a single argumentative structure", resulting in the "court's opinion as a whole" (Vale, 2015, p. 109). Another presentation model is the *seriatim*, in which by rule the presentation "does not develop with the goal of making a text

answers, therefore, would have more legitimacy and generate batter conditions of acceptability, making the respective merit control easier. In the resolve, the participants must argue between themselves in conditions of liberty and equality, aiming a rationally motivated comprehension. (TRINDADE, 2017, p. 131-132)

with only one *ratio decidendi* that allows representing the institutional position of the Court", knowing that this works as "a successive proclamation of individual decisions from the court members" (Vale, 2015, p. 115). The scholar still points out that the *seriatim* model may be "an obstacle to the full development of a culture of precedents" (Vale, 2015, p. 298). Câmara is categorical in the defense of the *per curiam model* because it would allow the "precise identification of the bases that have been adopted by unanimity or majority of the judging body" (Câmara, 2018, p. 260)[39]. The answers which the courts of audit offer to consultations are in general approved by counselors and ministers in collegiate, allowing it to reveal considerations of the author because in case the answers are considered precedents, it is important that they are built and presented in order to help identify the determinant bases of the answers.

Another fundamental aspect in the examination of the concrete institutional capacity is verifying the fidelity of the court of audit to its precedents and summulas. Here is the importance of either distinction exam as the overruling mechanism. To distinguish one case from another is a way of enforcing the precedent, as it should not be applied in situations that do not bear similarity to each other. However, when not considering a precedent or summula even though they are applicable or either applying them without proper context, violates principles that align toward a good decision theory[40]. In the case of opting for overruling a precedent or jurisprudence (being the latter what originated the summula), to evidence and justify it is needed, since this overruling may be the effect of a decision from a superior court. Certain considerations about Dworkin on precedents

[39] The same author defends the maintainment the attribution of redaction of the bench decision to the rapporteur magistrate, when their thesis wins, or to the judge that inaugurated the divergence, when the latter prevails providing *accountability* (CÂMARA,2018, p. 265).

[40] Per article 489, V e VI, CPC.

are valid to be used on Brazilian grounds decisions. The gravitational force of the precedents does not match the enacting force of law, so the judges must "limit the gravitational force of decisions prior to the extension of principle arguments needed to justify the said decisions" (Dworkin, 2010, p. 176-177).

The expert system of the court of audit operates differently from the Judiciary Power in several situations. Accountability is necessary; a duty of those responsible for the government's property or money. The oversight processes demand the necessity of a qualified body in several fields of action, as juridical science, accounting science, economics, business administration, civil engineering, information technologies, and actuarial science for example. In the same report all these subjects can correlate, demanding interdisciplinary auditing teams and well-supported judges for the good practice of the competencies, and for this paper, to make and apply precedents and summulas that may have as basis the subjects above related and inspected. By rule, the courts of audit are institutionally designed from technical staff, with a special place for auditing that must be independent in its reporting task, and a judging staff, made by counselors or ministers who will make the final statement over the trial of accounts, analysis of the acts, previous reports, answers to consultations and will make the jurisprudence of the court, that might be synthesized in a summula.

It is however the elements that allow, without the intention of exhaustion of resources, to visualize the concrete institutional capacity of the courts of audit in making decision standards, with attention to their sophisticated internal regulation: *(i)* amplified adversary principle and *(ii)* qualified deliberation, upon exhaustive argument analysis regarding the answers of consultations, concern in presenting them in a manner to have an opinion from the court. In regard to the application of decision standards, it is demanded in the exam of this concrete institutional capacity: *(iv)* the fidelity with their precedents and summulas and *(v)* the use of the mechanisms of distinguishing and

overruling when needed. Might as well remind that both in making and applying decision standards, it is important that *(vi)* the courts of audit have an extremely qualified technical staff, so to handle the *expertise* abstractly expected by the judge.

The main question pointed towards the problem of the institutional capacities is about who better decides over certain matters. Eventually, rulings made by the courts of audit might be judicialized based on controlling precedents and summulas. In concern to this relation that may be possible to mention Dworkin's chain novel, it is also important to reflect on who had the better decision aptitude to handle the certain matter. Gonçalves advocates for a distinction between the principle of access to Justice and the principle of non-obviation (of jurisdiction). The latter, explains the author, has constitutional support and denies the possibility of the law excluding "a priori the claim of injury or threat to a right from the consideration of the Judicial Power", and about non-obviation – non-liquet – "it binds itself with the idea that the judge must examine this claim even though the juridical ordain may be vague or faulty", even when "the adversary facts are not proven", according to articles 140 and 373 from the CPC. The author continues "the veto of non-liquet may be removed when there is a colliding principle with stronger normative value", making it necessary that "the judge exercises intellectual humility and recognize that other interpreters could be more qualified to settle the dispute"[41]. In other words, the author shares the understanding of Sunstein e Vermeule, in the sense of recognizing that "considering the epistemic limitations of the judge", the responsibility for the decision goes to "the body with better expertise", making it fundamental per Gonçalves, that the "decisive capacity of the Judiciary cannot be analyzed in the institutional vacuum" (2020, p. 270). With the fruitful approach of

[41] In the same sense, see Cabral (2021, p. 312).

Dworkin's decision normative theory to some institutional matters, Lopes proposes that the "theoretical descent" of the judges "would be performed in cases which it was justified as a demand from the law itself, instead of solely rebuke them", being one of the examples "the control of the courts over Regulatory Agencies, while respecting their bigger technical capacity and political legitimacy to act upon certain matters", without this becoming "trapped in a simple taboo of judicial deference", especially when there is excess in competencies and violation of rights (2020, p. 186).

Such reflections might be adequate to discuss over precedents and summulas made by the courts of audit turning eventually into an object of discussion in the judicial sphere. This is not about establishing or proposing an *a priori* method of deference, but to bring concrete and abstract elements that will allow us to better comprehend this dynamic between controlling and judicial decisions.

5 CONCLUSION

This brief essay was aimed to approach the regimen of precedents and summulas from the CPC to the courts of audit, looking to contextualize this analysis with the institutional capacity of those bodies. From the start was highlighted that it was given to these review bodies, as stated in the Constitution, competencies to audit and control demanding expertise, becoming possible to note the array of their institutional capacities. This is one of the reasons why points further explored by scholars of institutional matters may be of use, as courts of audit and Judiciary Power are different expert systems, even though oftentimes rule over the same matter. If Law is closer to literature as Dworkin desires and is chain novel is a metaphor undoubtedly beneficial for hermeneutic reflection, it is equally right to state the bodies with decision power present different institutional capacities. The weave of Law cannot dismiss

such capacities when dealing with precedents and summulas coming from different institutions.

There is a clear purpose of the legislator in valuing the aforementioned decision standards, and its best proof is the CPC itself and the dialogue with the LINDB. However, the remaining responsible bodies for decisions as courts of audit, could and should profit from these relevant contributions related to decision theory, precedents, and summulas, which have been approved in the civil procedural law, besides having the possibility of absorbing the sophisticated production of the doctrine that has been produced. The courts of audit are bodies with the aptitude to make and apply precedents likewise the judicial bodies are. On the other hand, working with decision standards demands the development of institutional capacities in the need of being concretely observed, and besides, the LINDB expressively states this when the binding effect is considered. In this manner, it is understood that it was possible to point out some elements which that helped compose an analysis of the concrete institutional capacity of the courts of audit regarding make and apply decision standards.

REFERENCES

ARGUELHES, Diego Werneck. LEAL, Fernando. O argumento das "capacidades institucionais" entre a banalidade, a redundância e o absurdo. **Direito, Estado e Sociedade**, n. 38, jan-jun., 2011.

BRASIL. **Constituição Federal**. (1988). Disponível em: http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm Acesso em: 27 jun. 2021.

BRASIL. Decreto-Lei nº 4.657, de 4 de setembro de 1942. **Lei de Introdução às Normas de Direito Brasileiro**. Disponível em: http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/lei/L13655.htm Acesso em: 21 jun. 2021.

BRASIL. Lei 13.105, de 16 de março de 2015. **Código de Processo Civil**. Disponível em: http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2015/lei/l13105.htm Acesso em: 27 jun. 2021.

BRASIL. Lei Complementar nº 101, de 4 de maio de 2000. **Lei de Responsabilidade Fiscal**. Disponível em: http://www.planalto.gov.br/ccivil_03/leis/lcp/lcp101.htm Acesso em: 27 jun. 2021.

BRASIL. Lei nº 10.028, de 19 de outubro de 2000. **Altera o Decreto-Lei no 2.848, de 7 de dezembro de 1940 – Código Penal, a Lei no 1.079, de 10 de abril de 1950, e o Decreto-Lei no 201, de 27 de fevereiro de 1967**. Disponível em: http://www.planalto.gov.br/ccivil_03/leis/l10028.htm Acesso em: 27 jun. 2021.

BRASIL. Lei nº 13.655, de 25 de abril de 2018. **Inclui no Decreto-Lei nº 4.657, de 4 de setembro de 1942 (Lei de Introdução às Normas do Direito Brasileiro), disposições sobre segurança jurídica e eficiência na criação e na aplicação do direito público**. Disponível em: http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/lei/L13655.htm Acesso em: 27 jun. 2021.

BRASIL. Lei nº 14.133, de 01 de abril de 2021. Lei de **Licitações e Contratos Administrativos**. Disponível em: http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2021/lei/L14133.htm Acesso em: 28 jun. 2021.

BRASIL. Lei nº 8.443, de 16 de julho de 1992. **Lei Orgânica do Tribunal de Contas da União**. Disponível em: http://www.planalto.gov.br/ccivil_03/leis/l8443.htm Acesso em: 27 jun. 2021.

BRASIL. Lei nº 8.666, de 21 de junho de 1993. **Regulamenta o art. 37, inciso XXI, da Constituição Federal, institui normas para licitações e contratos da Administração Pública**. Disponível em: http://www.planalto.gov.br/ccivil_03/leis/l8666cons.htm Acesso em: 28 jun. 2021.

CABRAL, Antônio do Passo. **Juiz natural e eficiência processual**: flexibilização, delegação e coordenação de competências no processo civil. São Paulo: Thomson Reuters, 2021.

CÂMARA, Alexandre Freitas. **Levando os padrões decisórios a sério**: formação e aplicação de precedentes e enunciados de súmula. São Paulo: Atlas, 2018.

DWORKIN, Ronald, **O império do direito**. São Paulo: Martins Fontes, 1999.

DWORKIN, Ronald. **Levando os direitos à sério**. Tradução: Nelson Boeira. 3 ed. São Paulo: Martins Fontes, 2010.

DWORKIN, Ronald. **Uma questão de princípio**. 3 ed. São Paulo: Martins Fontes, 2019.

FINE, Toni M. **Introdução ao sistema jurídico anglo-americano**. Tradução: Eduardo Saldanha. São Paulo: Martins Fontes, 2019.

GIDDENS, Anthony. **As consequências da modernidade**. Tradução: Raul Fiker. São Paulo: Editora UNESP, 1991.

GOMIDE, Alexandre de Ávila. Capacidades estatais para políticas públicas em países emergentes: (des)vantagens comparativas do Brasil. In: GOMIDE, Alexandre de Ávila. BOSCHI, Renato Raul. (Org.). **Capacidades estatais em países emergentes**. Rio de Janeiro: IPEA, 2016, p. 15-47.

GONÇALVES, Marcelo Barbi. **Teoria geral da jurisdição**. Salvador: Juspodivm, 2020.

HOLMES, Stephen. SUNSTEIN, Cass R. **O custo dos direitos**: por que a liberdade depende dos impostos. Tradução: Marcelo Brandão Cipolla. São Paulo: Martins Fontes, 2019.

LOPES FILHO, Juraci Mourão. **Os precedentes judiciais no constitucionalismo brasileiro contemporâneo**. 3 ed. Salvador: Juspodivm, 2020.

LOPES, Ziel Ferreira. **Onde habita o juiz Hércules**: uma aproximação entre teorias da interpretação e questões institucionais. Tese de Doutorado. Unisinos. São Leopoldo: 2020.

MARINONI, Luiz Guilherme. **Precedentes obrigatórios**. 6 ed. São Paulo: Thomson Reuters Brasil, 2019.

MINAS GERAIS. Tribunal de Contas do Estado. Resolução nº 12, de 17 de dezembro de 2008. **Regimento Interno**. Disponível em: https://tclegis.tce.mg.gov.br/Home/Detalhe/978636 Acesso em: 27 jun. 2021.

MITIDIERO, Daniel. **Cortes superiores e cortes supremas**: do controle à interpretação, da jurisprudência ao precedente. São Paulo: Revista dos Tribunais, 2017.

MITIDIERO, Daniel. **Precedentes: da persuasão à vinculação**. 3 ed. São Paulo: Thomson Reuters Brasil, 2018.

MOTTA, Fabrício. NOHARA, Irene Patrícia. **LINDB no Direito Público**: Lei 13.655/2018. São Paulo: Thomson Reuters, 2019.

outras providências. Disponível em: http://www.al.rs.gov.br/filerepository/repLegis/arquivos/LEI%2015.266.pdf Acesso em: 27 jun. 2021.

PEIXOTO, Ravi. **Superação do precedente e segurança jurídica**. 4 ed. Salvador: Juspodivm, 2019.

PERNAMBUCO. **Lei Estadual nº 16.309, de 8 de janeiro de 2018**. Dispõe sobre a responsabilização administrativa e civil de pessoas jurídicas pela prática de atos contra a administração pública, nacional ou estrangeira, no âmbito do Poder Executivo Estadual. Disponível em: https://legis.alepe.pe.gov.br/texto.aspx?tiponorma=1&numero=16309&complemento=0&ano=2018&tipo=&url= Acesso em: 27 jun. 2021.

RIO GRANDE DO SUL. **Lei Estadual nº 15.266, de 24 de janeiro de 2019**. Dispõe sobre o Estatuto do Concurso Público no do Estado do Rio Grande do Sul e dá

RIO GRANDE DO SUL. Tribunal de Contas do Estado. Resolução nº 1.028, de 04 de março de 2015. **Regimento Interno**. Disponível em: https://atosoficiais.com.br/lei/regimento-interno-tcers?origin=instituicao Acesso em: 27 jun. 2021.

SIMIONI, Rafael Lazzarotto; GUIMARÃES, Henrique Cassalho. O Sentido das Súmulas: uma reflexão teórica a partir da análise de discurso de Michel Pêcheux. **Seqüência (**Florianópolis), n. 83, p. 122-141, dez. 2019.

SOUZA, Fábio. **Quem deve decidir?**: confiança na aptidão decisória como critério de definição dos limites do controle judicial das decisões administrativas. Curitiba: Alteridade, 2018.

STRECK, Lenio. ABBOUD, Georges. **O que é isto – o precedente judicial e as súmulas vinculantes?** Porto Alegre: Livraria do Advogado, 2013.

STRECK, Lenio. **Dicionário de hermenêutica**. 2 ed. Belo Horizonte: Coleção Lenio Streck de Dicionários Jurídicos; Letramento; Casa do Direito, 2020.

STRECK, Lenio. **Precedentes judiciais e hermenêutica**: o sentido da vinculação no CPC/2015. 2 ed. Salvador: Juspodivm, 2019.

SUNSTEIN, Cass R. **O mundo segundo Star Wars**. Tradução: Ricardo Donielli. Rio de Janeiro: Record, 2016.

SUNSTEIN, Cass. R. VERMEULE, Adrian. **Interpretation and Institutions**. Michigan Law Review. 2003.

TRINDADE, Jonas Faviero. **A função consultiva dos tribunais de contas do Rio Grande do Sul**: reflexões acerca dos discursos e dos deveres de abertura procedimental a partir das teorias discursivas e democráticas de Jürgen Habermas. Dissertação. Mestrado. UNISC. Santa Cruz do Sul, 2017.

VALE, André Rufino do. **Argumentação constitucional**: um estudo sobre a deliberação nos tribunais constitucionais. 2015. 415 f., il. Tese (Doutorado em Direito) - Universidade de Brasília, Universidad de Alicante, Brasília, 2015.

VIANA, Aurélio. NUNES, Dierle. **Precedentes**: a mutação no ônus argumentativo. Rio de Janeiro: Forense, 2018.

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