EDITOR'S LETTER

The consolidation of Brazilian democracy brought the Brazilian Judiciary to the center of the public debate. Its decisions have being currently discussed by the public sphere, preoccupied with the quality of their justification. To control and to question the choices made by judges is becoming a common thing for law researchers and citizens in general.

This edition of Revista DIREITO GV publishes articles on this subject, especially on the Brazilian Federal Supreme Court decisions. There are two additional articles on the theory of statute interpretation and on the decisions of the Brazilian Supreme Court of Justice.

This issue also publishes two articles on Law & Development by ***Brian Z. Tamanaha*** *and by* ***Kevin E. Davis*** *e* ***Michael J. Trebilcock****. Both of them review the literature on L&D and are a good introduction to the results of the empirical research in this area and to its theoretical paradigms. The authors also review the perspectives on the issue taking into account the characteristics of the accumulated knowledge on the theme.*

Furthermore, Revista DIREITO GV publishes a book review by ***Leonardo Arquimino de Carvalho*** *on the "publish or perish" question.*

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The first six articles of this issue are on the Brazilian Federal Supreme Court decisions. The first four are based on empirical research and

the last two are critical commentaries of selected cases.

The first article, "Writing a Novel, Chapter One: Precedents and Decision Process in the Brazilian Supreme Court", by ***Adriana de Moraes Vojvodic****,* ***Ana Mara França Machado*** *and* ***Evorah Lusci Costa Cardoso,*** *argues that one reason for the tendency by the Brazilian Supreme Court (STF) to disregard judicial precedents is the difficulty to create a common* ratio decidendi *in Court decisions. This is due, in part, to the court's own decision process. The lack of a decision pattern entails that each case is decided without reference to previous cases. This context might foster an atmosphere in which decisions are not transparent, something which risks creating a democratic* deficit *on the STF.*

"How to take the Brazilian Federal Supreme Court seriously: on the suspension of advance claim rights' concession n. 91*", by* ***Vera Karam de Chueiri*** *and* ***Joanna Maria de Araújo Sampaio****, aims at analyzing the suspension by Brazilian Federal Supreme Court of the suspension of advance claim rights' concession n. 91 under the perspective of Ronald Dworkin's theory, concerning the understanding that it is necessary for judiciary power to have a critical and constructive attitude in order to decide, especially for constitutional courts. In this sense, every decision rendered by the court in favor of a fundamental right must prevail, once it is founded on arguments of principle and it is coherent with the constitutional system. It also follows the question about the legitimacy of the court, that is, does the Brazilian Federal Supreme Court should have the last word on decisions of the executive and legislative powers, especially concerning their public policies?*

"The Brazilian Supreme Court and the institutional design of the public authorities of the national financial system: an ADIns' empirical study", by ***Camila Duran-Ferreira****, analyses how the Brazilian Federal Supreme Court's decisions have influenced the institutional design of the national monetary council and the Brazilian Central Bank. During the last 20 years, STF provided limits to the power of these public authorities, by judging Direct Actions of Unconstitutionality (ADIns). This research is based on empirical study that intends to identify the actors and the issues submitted to the court and how its decision enforced their power of regulating the financial system. As a result, it is possible to perceive directions to enact the law that intends to regulate the financial system and eventually to attribute the independence to the Brazilian Central Bank.*

"The ability to pay principle in the decisions of the Brazilian Supreme Court", by ***Leonel Cesarino Pessoa****, analyzes the application of the 'ability to pay' principle to decisions of the Brazilian Supreme Court. In research carried out on the court website, the term 'ability to pay' appeared 70 times in court decisions, until November, 2008. In order to analyze the decisions, I began with texts from Italian jurists, especially Pietro Boria, who sought to demonstrate that the ability to pay principle in Italy is applied both in the protection of taxpayer interests as well as the protection of the state. Decisions were divided into five groups, according to the interest protected and the subject involved. I concluded that, although some times the principle has been applied in the protection of the taxpayer interests, it was almost always applied in the protection of the state interests.*

"Real equality in brazilian Supreme Court decisions", by ***Walter Claudius Rothenburg****, discusses critically some Brazilian federal Supreme Court decisions on equality to highlight the consequential analysis undertaken. A more particular approach was chosen instead of a conceptual one, and two decisions were selected on the basis of content (benefits and its impact on poor people) and focus (evaluation of economic consequences). Both decisions were submitted to a critical evaluation. We verified how the principle of equality is*

effectively applied by the court and how the socioeconomic consequences of the possible answers were considered.While interpreting equality and worrying about the consequences of decisions, the Brazilian Supreme Court makes social justice only when it holds a wider distribution of rights and turns to the most needy.

"The Brazilian Supreme Court and the Compensation National System of Units of Natural Environment Conservation (SNUC): the ADIN 3.378-DF", by ***José Marcos Domingues****, examines and criticizes recent Brazilian Federal Supreme Court verdict, not in definite yet, which judges legal the financial compensation National System of Units of Natural Environment Conservation (SNUC) although giving partial origin to the direct action brought by the National Industry Confederation in order to "declare the unconstitutionality of expressions indicated in the relater's readjusted vote". The text discusses some possibilities of interpretation of legal standards and discusses the limits of the judicial power, suggesting the best solution for the concrete case.*

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The last two articles published here discuss theory of legal interpretation and decisions by the Brazilian Supreme Court of Justice on moral damages.

"The hermeneutics philosophy for democratic jurisdiction. Validating / applying the legal rule in present days", by ***Valéria Ribas do Nascimento****, analyses the importance of the heidegerian-gadamerian philosophy, as well as the influence of these authors to contemporary law, as a way to avoid early decisions and arbitrariness. In sequence, the transformation suffered by jurisdiction with the advent of neo constitutionalism is highlighted.*

"The predicability of moral damages lawsuits' results: a reflection based upon STJ' decisions in bank-consumer relations", by ***Júlia Caiuby de Azevedo Antunes****, shows how the Brazilian Supreme Court of Justice quantifies the value of moral damages regarding bank consumers relations, whose amounts were revised by this high court from October 2000 to April 2007. The article shows that the high court tends to reduce the amounts quantified by the inferior courts. Therefore, this work highlights the possibility that the court might establish a monetary limit or a "price control" to the moral damages and inquires if the supposed "price control" may work as an obstacle to future consumers' demands.*

The Editor-in-Chef