# CHAPTER 109

## The monocratic decisions of the federal supreme court in times of a pandemic – the necessary sufficient deliberation

10.56238/pacfdnsv1-109

**Ricardo Morishita Wada**
Bachelor of Laws from PUC/SP, Master of Laws from USP/SP and Doctor of Laws from PUC/SP. Professor of Consumer Law – Brasília Law School – IDP.
E-mail: rm@idp.edu.br

**Carlos André Coutinho Teles**
Doctoral candidate in Law, Institutions and Business at PPGDIN-UFF. Master in Law from PPGD-UVA (2018). Specialist in Civil Liability and Consumer Law (2006) by UCAM and in Labor Law and Process by IBMEC (2016)
E-mail: carlos.teles@ctfl.adv.br

**Eduardo Chow De Martino Tostes**
PhD student at UFF. Master by UFF. Invited professor of the lato sensu postgraduate course at UFF, PUC-Rio and UCAM. Public Defender
E-mail: eduardo_tostes@id.uff.br

**ABSTRACT**
The research aims to investigate the socioeconomic consequences of the monocratic decision handed down by Minister Ricardo Lewandowski in the records of ADI 6363 during the state of public calamity, from the perspective of legal certainty. From the state of exception caused by Covid-19, the study aims to verify the (un)reasonableness of the monocratic decision when faced with the judgment of the precautionary measure by the Plenary of the Supreme Court. The methodology involved the study of the Federal Constitution and the federal legislation related to the subject, the Internal Regulations of the Federal Supreme Court, jurisprudence, addition to national and foreign doctrinal sources. The results bring reflections with the purpose of promoting the rational and univocal deliberation of the Supreme Court so that it is guided by consensus and not by the isolated dispute of which of the votes should prevail over the other. Likewise, it was concluded that the precautionary decision issued in a monocratic way in the records of ADI 6363 generated significant legal uncertainty for social actors while not being reformed by the Plenary of the Supreme Federal Court.

**Keywords**: plenary reservation, legal certainty, exception state.

## 1 INTRODUCTION

On March 11, 2020, the World Health Organization classified the new coronavirus (COVID-19) as a pandemic, highlighting its high risk of transmission, especially the reasonable mortality rate, which rises among elderly people and those with chronic diseases. .[1]

With this, the National Congress, through Legislative Decree No. 6 of 2020, approved the declaration of a state of public calamity due to the public health emergency of international importance related to the coronavirus (Covid-19). Thus, several preventive measures were adopted by the authorities, in all governmental spheres; the most important of which is to collect people at home, in order to avoid contact and the spread of the disease, as has been adopted in other countries.

Indeed, under the prism of law, in the concept of a pandemic, the restriction of some fundamental freedoms must be understood as a probable measure. This is because epidemiological surveillance comprises both isolation and quarantine as prescribed by art. 3, I and II of Law 13.979/2020. In addition, the aforementioned legislation authorizes the public power to impose on the citizen, within the scope of its

[1] Available at https://www.unasus.gov.br/noticia/organizacao-mundial-de-saude-declara-pandemia-de-coronavirus . Accessed on May 23, 2020.

competence, among others, the compulsory performance of medical examinations and treatments, laboratory tests and clinical collections, restrictions on the right to come and go by means of closing highways, ports and airports, requisition of goods and services, as verified by the regulations created in the period.

In a recent monocratic decision (ADPF 672/DF), Minister Alexandre de Moraes granted full autonomy to States and Municipalities to regulate restrictive measures of rights through norms that do not necessarily need to be in step with the health planning of the Federal Government.

Nowadays, in the three spheres of the Federation, it is generally discussed that, in order to make the fight against pandemics effective, three pillars of the globalized economy must be restricted, namely: the free movement of goods, services and people. On the other hand, the result of the present pandemic is spreading in a context of economic crisis of quite significant proportions, and, as a result, the Federal Government has issued Decrees and normative acts in order to alleviate the perverse effects resulting from this exceptional situation. , with the aim of also guaranteeing the subsistence of informal and unemployed workers, aiming to avoid mass layoffs.

It so happens that, to date, it appears that a large part of the legislation enacted during the state of calamity is having its constitutionality challenged before the STF. In spite of the fact that the country is going through a moment of exception, many of the monocratic decisions verified are not consistent with this true State of Exception, [2]given that, instead of pacifying the conflict, there are Supreme Court decisions that are having the effect on the contrary, creating a situation of legal uncertainty, which will be the object of analysis of this work.

This is a discussion that should, of course, precede pandemics; the (un)reasonableness of the *modus decidendi* through monocratic decisions by Ministers of the Constitutional Court in actions of concentrated control of constitutionality, more precisely, direct actions of unconstitutionality, contrary to the dictates of an adequate and expected deliberation of the highest body of the Judiciary, as well as the revealing provisions of art. 10 of Law 9,868/99. The unreasonableness of these monocratic decisions would be confirmed from their reform by the plenary, a hypothesis that is intended to be confirmed or not.

The Brazilian State is going through an unusual social and economic crisis, caused by a pandemic that has already killed thousands of people; and all the powers that be, from all spheres of the federation, could, as part of federative harmony for the benefit of life, be, jointly and organized, making efforts to bring reasonable economic solutions in order to minimize the socio-economic impacts for the largest portion. of the population.

This article aims to analyze the socioeconomic consequences of the monocratic decision of Minister Ricardo Lewandowiski in the records of ADI 6363, issued as a precautionary measure during the

[2]According to the United Nations, this expression includes situations designated by the following terms: state of emergency, state of siege, state of necessity, state of alert, state of prevention, state of internal war, suspension of guarantees, law martial arts, crisis powers, special powers, curfews, and all measures adopted by governments that subject the exercise of human rights to restrictions that go beyond those regularly authorized in ordinary situations (DESPOUY, 1997, p. 8).

state of public calamity under the prism of legal certainty. The methodology involved the study of the Federal Constitution and the federal legislation related to the subject, the Internal Regulations of the Federal Supreme Court, jurisprudence, in addition to national and foreign doctrinal sources.

The results bring reflections with the purpose of promoting the rational and univocal deliberation of the Supreme Court, so that it is guided by consensus and not by the isolated dispute between competing judges. In the same way, it was concluded that the precautionary decision rendered in a monocratic way in the records of ADI 6363 brought significant legal uncertainty in the face of the moment of exception through which the country passes.

## 2 A EXCEPTIONALITY CAUSED BY A PANDEMIC

In the national order, there is a differentiation between the system of normality , in which fundamental rights and guarantees impose limitations on political power in a broad and rationally concatenated way; and the system of abnormality, or of extraordinary legality , in which, in the face of crisis situations, represented by social, political, economic, ideological or similar unrest, they impose restrictions on certain fundamental rights or suspension of certain constitutional guarantees, in order to guarantee the activity of the state organization.[3]

The Federal Constitution has constitutional mechanisms for the defense of the State that are summarized as predisposed means to ensure the observance and, therefore, the conservation of a constitutional order (MORAES, 2003, p. 198). The instruments responsible for restoring institutional normality are the state of defense (art. 136 of the CF) and the state of siege (article 137 of the CF), which will not be the object of this study as they are outside the object that it is proposed to investigate.

Legislative Decree No. 6, of March 20, 2020, recognized, for the purposes of art. 65 of Complementary Law No. 101, of May 4, 2000, the occurrence of the state of public calamity throughout the national territory. With this, numerous health and economic measures are being taken by the Federal Government, States and Municipalities with the purpose of minimizing the damage caused by Covid-19.

In a democratic society, where political pluralism prevails, it is natural for opposition parties to contest normative acts issued by the Federal Government before the Constitutional Court. The political clash, including its judicialization, is fair and legitimate, even in the face of such an exceptional and abnormal moment, despite the legitimate expectation of the population to observe a union of forces, a combination of efforts in favor of the attacked public good ( life of Brazilians), including all political segments, in order to minimize the loss of life of thousands of people and the socioeconomic damage created by the pandemic.

[3]Paul Leroy (1966, p. 34) mentions three different crisis situations that can affect the state organization in: (i) those triggered with the purpose of destroying the independence or territorial integrity of the State, (ii) those engendered to overthrow the political-institutional regime and (iii) economic-financial ones.

In times of exception, the ordinary rules are relaxed, certain rights, such as property, coming and going, the right to meet and others are relativized in favor of the right to life and the maintenance of public and economic order. The legal discipline becomes the target of adaptation to the moment and the state of exception [4]starts to guide the decision-making of the heads of the Executive Powers of all layers of the Republic.

The exceptionality caused by a pandemic was not analyzed by Giorgio Agambem in his work "O Estado de Exception", although some new lessons from the author can serve as a reflection for the current moment [5]. It is not a question here of a void of law or a zone of anomie where all legal determinations are deactivated, quite the contrary, but of normative production meeting the socioeconomic needs of its people at this exceptional moment. Let's look at the social reality of Brazil. According to the newspaper "A Folha de São Paulo" [6]unemployment increased in all regions of Brazil with the advance of Covid-19 and according to the IBGE, Brazil ended the first quarter of 2020 with 1.2 million more people. in the unemployment line. According to the website UOL [7], applications for unemployment insurance in Brazil increased by 22.1% in April compared to the same month last year, to 748,500, and the government estimates that there are up to 250,000 applications for the benefit held back in the year amid the difficulties imposed by social isolation because of the outbreak of the new coronavirus.

From these data, it is inferred that, despite the creation of programs to maintain jobs, through the edition of Provisional Measures (MPV) - 927 and 936 - as well as the availability of credit to micro and small entrepreneurs (MPV), 948) to subsidize the payment of the payroll of its employees; these measures have not yet been sufficient to contain the advance of unemployment. Likewise, the National Congress enacted Law 13,982 of April 2, 2020, instituting emergency aid in the amount of R$ 600.00 (six hundred reais) whose first installment, out of a total of three, has already been allocated to more than 50 million Brazilians [8].

With regard to Provisional Measures No. 927 and No. 936, both were issued considering the strong impact on the productive sector and on labor relations caused by the isolation and quarantine measures

[4]The state of exception is not a dictatorship (constitutional or unconstitutional, commissioner or sovereign), but an empty space of law, a zone of anomie in which all legal determinations — and, above all, the very distinction between public and private — are disabled. Therefore, all those doctrines that try to directly link the state of exception to the law are false, which happens with the theory of necessity as an original legal source, and with the one that sees in the state of exception the exercise of a right of the State to self-defense or the restoration of an original pleromatic state of law (the "full powers"). But equally fallacious are the doctrines that, like Schmitt's, try to indirectly inscribe the state of exception in a legal context, basing it on the division between norms of law and norms of realization of the law, between constituent power and constituted power, between norm and decision. The state of necessity *is not* a "state of law", but a space without law (even if it is not a state of nature, but presents itself as the anomie that results from the suspension of law). (AGAMBEN, 2015, p. 78/79)

[5] Emphasizing Agamben's (2020b) criticism of the argument of a state of exception arising from the pandemic, in light of his positions on a supposed permanent state of exception, with the creation of fears to keep the submissive population under control.

[6]Available at: https://www1.folha.uol.com.br/mercado/2020/05/desemprego-aumentou-em-12-estados-com-avanco-do-coronavirus.shtml . Accessed on: May 17, 2020.

[7]Available at: https://economia.uol.com.br/noticias/reuters/2020/05/11/pedidos-de-seguro-desemprego-no-brasil-sobem-221-em-abril.htm?cmpid=copiaecola . Accessed on: May 17, 2020.

[8]Available at: http://www.portaltransparencia.gov.br/comunicados/603517-portal-da-transparencia-divulga-lista-de-beneficiarios-do-auxilio-emergencial . Accessed on: July 22, 2020.

necessary to contain the transmission of the virus and, consequently, to reduce in the number of cases of Covid-19 disease and possible deaths [9]. Thus, the normative propositions were intended to mitigate damage to the economy and family subsistence, and could be adopted by employers to preserve workers' employment and income during this pandemic period.

As for the constitutional jurisdiction exercised by the constitutional courts, the issue is even more complex [10]. These courts assume a greater role in the legal response to these demands not only because of the general repercussion, but also because of the binding effects and the persuasive force of precedents. The effect of its decisions on public and private accounts and on the promotion of universalizable rights is considerably wider. As a result, the analysis of this response needs to be more cautious.

It is then that the concept of crisis jurisprudence is completed. In a strict sense, the term refers to the set of precedents in which the Judiciary appreciates the constitutionality of austerity measures, while in a broad sense it contemplates the legal rearrangement necessary to respond to the demands that arise due to the critical reality. In this line, it would be comparable to a "negotiation process between the normative interpretation of the Constitution and the need to give in to the demands of circumstances" (PINHEIRO, 2014, p. 170).

It is precisely in the "requirements of the circumstances" that the pragmatic opening of judicial action to the context of a serious economic crisis is justified. It is not exactly about flexibilization, a pejorative term that suggests a certain propensity for concessions to the economic argument, but the need to adopt a more systemically coherent posture, concerned with the consequences (MAGALHAES, 2017, p. 12).

## 2.1 THE PLENARY RESERVE TO DECIDE ON PRECAUTIONARY MEASURE IN DIRECT ACTION OF UNCONSTITUTIONALITY

It is the exclusive competence of the Plenary of the Federal Supreme Court to take a precautionary measure in a direct action of unconstitutionality, which follows from the principle of *plenary reservation* , a rule that follows from art. 97 of the Constitution and art. 10 of Law 9,868/99 and is also expressly provided for in the Internal Regulations of the Federal Supreme Court (article 5, X).

Gilmar Ferreira Mendes and André Rufino do Vale (2011, p. 06)) teach that the submission to the plenary reservation of both the merit decision and the precautionary decision is based on the fact that both have direct effects on the applicability[11] of the norms. As a result, the authors continue to add that, even in

[9] Although Agamben (2020a) himself understands the exception measures adopted in the light of his much criticized understanding that the epidemic is serving as a pretext to create a state of collective panic, such as the use of the state of exception as a normal government paradigm.

[10]The concept of André Ramos Tavares (2012, p. 266) is adopted by all, for whom constitutional jurisdiction designates "the union developed judicially with the Constitution as a parameter and, as appropriate, the behavior in general and, mainly, of the Public Power, contrary to that parametric norm"

[11]This was the understanding signed by the STF in the judgment of RE 168.277.

cases of “exceptional urgency”, Law n. 9.868/99 reserves exclusively to the Plenary of the Court the competence to appreciate the precautionary measure [12].

It is important to emphasize that this same infra-constitutional legislation exempts the plenary reservation in the scope of the provisional provision, when in art. 10, *caput* , of Law 9,868/99, highlights the impossibility of meeting all members of the Court during recess periods [13].

With this, the Internal Regulations of the Federal Supreme Court (RISTF) grants the Minister President the authority to know and decide on urgent issues (art. 13, VIII), allowing him to consider requests for injunction in direct actions of unconstitutionality.

Indeed, even in the face of this exceptionality, the precautionary measure must be taken to the plenary referendum, through its Rapporteur, as soon as the recess or vacation period ends (art. 21, IV and V, RISTF). In exceptional circumstances, the Minister President himself may refer his decision to the plenary referendum, as occurred in the judgment of ADI 3.929-MCQO [14].

On the other hand, in some cases, waiting for the judgment of the plenary session following the request for a precautionary measure can cause the complete loss of utility of the jurisdictional provision. In this way, the ministers of the highest Court, making use of the general power of precaution, decide monocratically on the request for a precautionary measure in direct action, applying, analogically, § 1 of art. 5 of Law 9,882/99, referring to the claim of non-compliance with a fundamental precept, which allows for a monocratic precautionary decision “in cases of extreme urgency or danger of serious injury”. In these cases, it is essential to immediately submit, in the subsequent Plenary session, the precautionary decision to the referendum of the Court (art. 21, V, RISTF).

---

[12]"The decision on the precautionary measure is the responsibility of the Full Court and its granting depends on the vote of the absolute majority of its members, after hearing, in advance, the 'organs or authorities from which the law emanated' (Law 9.868/99, art. 10) The law makes a single exception to the rule: 'Except during the recess period' (Law 9,868/99, art. 10). At no time, except for the recess, does the law authorize a precautionary decision by the rapporteur. ‘exceptional urgency', the law maintains the competence of the decision with the Court. It authorizes that such a decision can be taken ‘without the hearing of the bodies or authorities from which the law emanated...' (Law 9.868/99, art. 10 , § 3). The law also allows the Court to remove the general rule from the *ex nunc effect* of the injunction and grant it with `retroactive effectiveness' (Law 9.868/99, art. 11, § 1). With this last rule the legal treatment of exceptionality is completed. At no time, `except during the recess period', is it possible to make a monocratic decision. (...) The orient is peaceful. action of the Court in the sense that the *periculum in mora is not configured* , for the purposes of granting a precautionary measure, if the law object of the challenge has been in force for a long time." ( MS 25.024-MC , rel. min. **Eros Grau** , monocratic decision handed down by President Min. Nelson Jobim, judgment on 8/17/2004, *DJ* on 8/23/2004.)

[13](...) although Law 9,868/99 only mentions the word “recess”, it also applies to the Court's “vacation” periods. (MENDES, DO VALE, 2011, p. 09)

[14]Question of order. Direct action of unconstitutionality. Request for a precautionary measure. Grant, by the presidency, during the court's forensic vacation period. Articles 10, *caput*, of Law 9,868/99, and 13, VIII, of the RISTF. Reporting of the plenary referendum attributed to the President herself, due to the exceptional nature of the specific case. Possibility. The *heading* of art. 10 of Law 9,868/99 authorizes, during periods of recess of the Court, the exceptional monocratic granting of the precautionary measure in direct action of unconstitutionality. By imposition of article 21, items IV and V, of the Internal Regulations, preliminary decisions granted by the Presidency in these circumstances are then submitted to a referendum by the Collegiate, normally after the distribution of the records of the direct action to a certain supervening rapporteur. Present peculiarities that recommend the exposition of the case by the body responsible for the decision brought to the referendum of the Plenary of the Federal Supreme Court. Issue of order resolved in order to authorize the Presidency, exceptionally, to report the referendum of the monocratic injunction rendered in the records of the present direct action." (ADI 3.929-MC-QO, Rapporteur Min. Ellen Gracie, judgment on 8/29 /07, *DJ* of 10/11/07).

In the same sense, in case of exceptional urgency, the Court may grant the precautionary measure without hearing the bodies or authorities from which the law or the contested normative act emanated (art. 10, §3 of Law 9,868/99).

As a general rule, art. 11, §1, of Law 9,868/99, provides for the possibility of granting tem injunction with *ex tunc effects* , suspending the effects of the questioned rule since its publication, as a mechanism to avoid the loss of law and ensure the future definitive pronouncement of the Court, since it is necessary to recognize that the hypotheses presented above are extremely exceptional.

Furthermore, the hermeneutic technique of modulation of effects is tem effective instrument to ensure compliance with the decision on the merits in the direct action of unconstitutionality and, with this, it fulminates, in most cases, the need for tem urgent monocratic decision by the reporting minister. The normalization of tem exceptional situation of monocratic decision leaves the STF in the shadow of its individual members, which does not prove to be adequate as a technique of deliberation or as tem idea of a collegiate institution, as advocated by Conrado Hübner (2012, p. 13-14).

During the state of calamity, a monocratic decision sharpened the debates in the most diverse segments of society: it is the decision given by Minister Ricardo Lewandowski in the records of MC ADI 6363.

Even before submitting to the plenary, Minister Ricardo Lewandowski partially granted the precautionary measure in ADI 6363 to establish that individual agreements to reduce working hours and wages or temporary suspension of the employment contract provided for in MP 936/2020 only they would be valid if the workers' unions were notified within 10 days and expressed their opinion on its validity. According to the decision, the union's non-expression, in the form and within the deadlines established in labor legislation, would represent consent to the individual agreement.

Thus, the next chapter intends to verify whether during the state of calamity it would be reasonable for the Supreme Court minister to decide in a monocratic way, a sensitive issue that had and still has repercussions in the social and economic sphere of millions of people and the State.

## 2.2 THE CONCRETE CASE – ANALYSIS OF THE MONOCRATIC DECISION – CRITICISM AND SOCIOECONOMIC REFLECTIONS

The Rede Sustentabilidade party filed ADI 6363 before the STF against normative texts of MP 936/2020, which established the Emergency Employment and Income Maintenance Program, introducing complementary labor measures to face the state of public calamity resulting from the new coronavirus pandemic. . The party, on a precautionary basis, intended to suspend rules that authorized the reduction of wages and the suspension of employment contracts by means of tem individual agreement signed, without the intervention of the class union, between employee and employer.

MP 936/2020 (now converted into Law n. 14.020/2020) allows the proportional reduction of working hours and wages and the temporary suspension of the employment contract, including through

individual agreement, for employees with a salary equal to or less than R$ 3,135.00 (three thousand, one hundred and thirty-five reais). Likewise, it allows the same measures for holders of higher education diplomas who receive a monthly salary equal to or greater than twice the benefit ceiling of the General Social Security System (RGPS).

The Sustainability Network argued that the reduction of remuneration would only be possible through collective bargaining and with the purpose of guaranteeing the maintenance of jobs. He also argued that, even if individual negotiation were admitted for higher-income workers, this hypothesis would be unfeasible when dealing with the most vulnerable, who form the largest part of the productive workforce.

According to the political party, the normative act attacked affronted the constitutional principle of protection, which gives security to employees, the most vulnerable part of the labor relationship. Wage irreducibility is a constitutional guarantee intrinsically linked to the principles of human dignity and the social value of work and therefore could never be made more flexible through individual agreement.

Finally, the party argued that the provisions of the MP violated Conventions 98 and 154 of the International Labor Organization (ILO), which deal with collective bargaining. It is important to make it clear that this article does not have the power to analyze the legal grounds that led the party to request that the provisions of MP 936/2020 were declared unconstitutional.

In this context, in spite of the fact that the Attorney General's Office (AGU) handled the relevant motions for clarification against the monocratic decision rendered, we will not comment on the consequent decision since it is not of interest to the purpose of the research.

The rapporteur of the ADI, Minister Ricardo Lewandowski, delivered a monocratic decision *ad referendum* of the plenary, understanding that due to the distribution of the action of concentrated control of constitutionality it has taken place on April 2 of this year, with the MP attacked coming into force the day before, such facts, by themselves, would demonstrate the urgency in delivering the judicial service.

Under normal conditions of temperature and pressure, outside the state of public calamity caused by the new coronavirus, it is understood as less unreasonable the conduct of the rapporteur minister, making use of the general power of caution, to decide monocratically on the request for a precautionary measure in the action of abstract control of constitutionality, applying, analogously, § 1 of art. 5 of Law 9,882/99, referring to the claim of non-compliance with a fundamental precept, which allows for a monocratic precautionary decision "in cases of extreme urgency or danger of serious injury".

It could also adopt the rite provided for in art. 10, §3 of Law No. 9,868/99, at which time, after submitting the precautionary measure to the plenary, the collegiate could grant or not the precautionary measure without hearing the bodies or authorities from which the law or the contested normative act emanated.

Presented, even in a succinct way, the normative act contested by means of ADI 6363, the research will be carried out from the perspective of legal certainty [15], if the monocratic decision in the injunction issued during the state of public calamity brought or not legal certainty.[16]

Well then. The precautionary decision granted by Minister Ricardo Lewandowiski in the records of ADI 6363 caused public opinion [17]and the STF website itself [18]to convey the information that the agreements would only be valid upon acceptance by the union entity.

From this decision, companies should inform the union of employees of their respective category about individual agreements to reduce working hours and wages or temporary suspension of employment contracts, within a period of up to tem calendar days, counted from the date of your celebration. With this, within this period, the unions could initiate a collective negotiation to discuss the terms of the agreement. On the other hand, in the case of inertia and the term has expired, the contracts would be valid.

The main effect of the monocratic decision was the legal uncertainty created at the expense of the need to submit to the unions all individual agreements object of MP 936/2020, since the Federal Government accounted for almost 8,000 (eight thousand) individual agreements to reduce working hours and wages. Or suspension of the employment contract from the moment MP 936/2020 was published until the date of the monocratic decision, agreements that ran the risk of not being effective after the injunction of Minister Lewandowiski [19].

However, by majority vote, in a judgment held on April 17, the preliminary injunction was revoked by the STF Plenary, which decided to maintain the full effectiveness of MP 936/2020, authorizing the reduction of working hours and salary or suspension. Of the employment contract, through individual agreements, with the mere communication to the Union, regardless of its consent.

In this plenary session , the ministers: Alexandre de Moraes, Luís Roberto Barroso, Luiz Fux, Carmen Lúcia, Marco Aurélio Mello, Gilmar Mendes and Dias Toffoli voted for the effectiveness of individual agreements.

The understanding prevailed that, due to the exceptional moment, the prediction of individual agreement is reasonable, as it guarantees a minimum income to the worker and preserves the employment relationship, beyond the period of the crisis. Thus, according to Minister Alexandre de Moraes, the requirement for union action, opening collective bargaining or not manifesting itself within the legal

[15]Gustav Radbruch (1979, p. 417) praises legal certainty as one of the three purposes of law. The other two would be justice and the common good.

[16]The decision of the STF that declares the unconstitutionality of a normative act is definitive: here the Court, in fact, has the last word and its command must be obeyed without recalcitrance. In fact, in lawsuits in general, it is really essential that there is a last word ending the dispute, otherwise one of the essential purposes of the process, which is to definitively resolve intersubjective conflicts, bringing legal security and social pacification (SOUZA NETO ; SARMENTO, 2014, p. 408).

[17] Available at: https://politica.estadao.com.br/blogs/fausto-macedo/lewandowski-decide-que-acordos-de-reducao-de-salario-so-terao-validade-apos-manifestacao-de-sindicatos / . Accessed on: 20 July 2020.

[18] Available at: http://portal.stf.jus.br/noticias/verNoticiaDetalhe.asp?idConteudo=440927&ori=1 . Accessed on: 20 July 2020.

[19] Available at: https://www.em.com.br/app/noticia/opiniao/2020/04/11/interna_opiniao,1137633/adi-6363-eo-risco-de-demissoes-em-massa.shtml . Accessed on: 20 July 2020.

deadline, would generate legal uncertainty and increase the risk of unemployment. For the Minister, given the exceptionality and temporal limitation, the rule is in line with the constitutional protection of the dignity of work and the maintenance of employment.

Therefore, at the end of the judgment of the precautionary measure, the wording of MP 936/20 prevailed, recognizing and validating the individual agreements on salary reduction and suspension of contracts are valid, without conditioning them to the manifestation of the unions, but only demanding the its communication to the unions, within 10 days. Finally, it is necessary to register that the decision refers only to MC ADI 6363, and the merits will still be submitted to a later judgment, by the plenary of the STF.

## 3 THE ADEQUATE DELIBERATION

It is not new that part of the doctrine, as well as Justices [20]of the Supreme Court, vehemently criticize the appreciation of precautionary measure in a monocratic way, contrary to the provisions of Law 9.868/99 and the Internal Regulations of the STF. In this context, Lênio Streck (2019, p. 323):

> It is necessary to recognize the existence of a fundamental right of citizens to comply with arts. 10 of Law 9,868/1999 and 97 of the Federal Constitution. In conclusion, therefore, that the monocratic granting of the precautionary measure cannot be used to replace the decision in *full bench mode* , therefore, it must be used only in cases of recess or vacation, and must be immediately taken to the plenary for a referendum.

In fact, the principle of plenary reservation and the federal legislation that regulates the matter have been, habitually, disrespected by the ministers of the STF. As a logical consequence, the provisions of art. 21, IV and V of RISTF.

[20]"Law No. 9,868, of 11.10.99, providing for the precautionary measure in an action of unconstitutionality, establishes, in art. 10: 'Art. 10. Except in the recess period, the precautionary measure in the direct action will be granted by decision of the absolute majority of the members of the Court, observing the provisions of art. 22, after the hearing of the bodies or authorities from which the contested law or normative act emanated, who must pronounce themselves within five days.' In § 1 of the aforementioned art. 10, the rapporteur is entitled to hear the Attorney General of the Union and the Attorney General of the Republic, within three days. In paragraph 2, in the judgment of the request for the injunction, oral support is granted to the parties. the art. 10, transcribed above, orders the observation, in the judgment of the precautionary measure, of article 22, saying that the decision will only be taken if at least eight ministers are present at the session. The law, as it turns out, surrounds the judgment of the injunction with various formalities, or requires, for the taking of the decision, the existence of several requirements: vote of the absolute majority of the members of the Court, special quorum for the opening of the session, allowing to the parties oral support. I think, therefore, that the President of the Court, in recess, competent to dispatch the request for injunction, should only do so in case of actual need, that is, in the event of the possibility of the loss of law. Another issue arises: the Internal Regulations of the Federal Supreme Court distinguishes vacation from vacation. Establishes art. 13, VIII, which are the duties of the President to decide, during recess or vacation periods, request for a precautionary measure. And more: the art. 78 of the aforementioned Internal Regulation provides that 'the judicial year at the Court is divided into two periods, with vacations falling in January and July.' Paragraph 1 of the aforementioned art. 78 defines recess: 'Forensic holidays between December 20 and January 1, inclusive, constitute recess.' Paragraph 2 adds that, 'Without prejudice to the provisions of item VIII of art. 13, the work of the Court is suspended during recess and vacations, [...]' And § 3 again refers to recess and vacations: "The Ministers will indicate their address for possible summons during vacations or recess. ' Now, Law 9,868, of 11.10.99, only saves the recess period, by prescribing, as we have seen, that, 'Except during the recess period...' That is to say, Law 9,868, of 1999, art. 10, only allows the granting of the precautionary measure, by the President of the Court, during the recess period of the Court. I admit that, during the vacation, in direct action, the possibility of the loss of the right, it will be lawful for the president to dispatch the request and grant it, if applicable. Apart from that, however, it does not seem possible to me, taking into account art. 10 of Law 9,868/99 and the regimental provisions indicated, which distinguish the recess period from the vacation period. From the above, I determine the forwarding of these records to distribution, in due course." (ADI 2244/DF).

In this sense, there is a precautionary decision in the records of ADI 4.917/DF [21], issued in 2013 by Minister Carmem Lúcia, outside of recess or vacation periods, which until now had not been ratified, and there was not even agenda for judgment [22].

Nowadays, during the state of public calamity, numerous monocratic decisions suspended the validity of law or normative act, among them we quote MP 936/2020, whose content we have already discussed, in brief. Another monocratic decision handed down by Minister Alexandre de Moraes, in this case, at the headquarters of MS nº 37.097, suspended the appointment of the director general of the Federal Police, Alexandre Ramagem.

Mention is made of this decision, despite not having been the object of abstract control of constitutionality, just to illustrate the legal and social relevance of a monocratic decision of the Constitutional Court.

In fact, Justice Marco Aurélio, already in the month of May, submitted to the Minister President, Dias Toffoli, a letter proposing the alteration of the Internal Regulations of the STF. The aforementioned instrument consists of a proposal for the plenary of the Court to be responsible for decisions involving acts of the Legislative and Executive powers. Thus, the magistrate proposed that issues of this nature not be judged individually by each of the 11 (eleven) ministers. In the minister's understanding, the amendment is necessary to "preserve the harmony recommended constitutionally" between the Powers:

> In the scenario, it is possible to have perplexity, reaching the individual performance of a unique scale. In this context, there is, so far, the possibility of examining the act of one of the Powers, as Power. So, with the Judiciary having the last word, one of the members of the Supreme Court, alone, can remove, from the legal world, an act practiced by a leader of another Power - Executive or Legislative.[23]

He also considered that " *efforts must be made aiming, as much as possible, to preserve the harmony recommended by the Constitution, emerging, in any case, with great value, the principle of self-restraint* ". A proposition like this demonstrates that, among the peers themselves, there are reservations about the limits of the monocratic decisions of the members of the STF.

To aim for harmony, the firm values of a modernity yet to be implemented, to the detriment of constant impulsive values, which translate and produce fear and panic in liquid modernity (BAUMAN, 2007) is an insurmountable condition for our Constitutional Court to provide a society of objective common, with achievements of a true, comprehensive and lasting nation.

[21]The substantive issue is of paramount importance, as it involves the (un)constitutionality of normative provisions of the Royalties Law (Law 12,734/2012), affecting the so fragile national federative balance and possible maladjustment of the financial regime of the federated entities.

[22](...) this MC should have been taken to the Plenary right away, which would only mean a few days. In fact, this Precautionary Measure, as it was granted in a normal period (not recess), could not even have been granted, because the only exception to the granting of a Precautionary Measure in ADI is that the court is in a recess period. Available at: [ http://www.conjur.com.br/2014-dez-04/senso-incomum-decisao-ministra-stf-valer-medida-provisoria ]. Accessed: 01 Jul 2020.

[23] Available at https://portal.stf.jus.br/noticias/verNoticiaDetalhe.asp?idConteudo=442602&ori=1 . Accessed on May 23, 2020.

It is necessary for the STF to address its own members in the construction and adequate conviction of the grounds that support that decision. Looking only at the external public that watches as a spectator [24], as an audience of a spectacle of the Republic does not prove to be conducive in this area of immense legal uncertainty in which we live. Otherwise, we will be facing a "court of soloists", with competing judges, who only aim to win individually, for the audience, with their arguments made available to social media.

> Temperamentally, he refuses to speak in the first person plural. From a deliberative perspective, it continues to be a peripheral and inexpressive entity. Transforming a court of soloists into a deliberative court requires more than procedural rearrangements. It requires judges, personally, to understand and value the spirit of deliberation. That they finally become deliberators (MENDES, 2012, p. 20) .

It is very important to promote a formal and collective environment in essence of the STF, which should jointly and reasonably build the solution to social and legal problems that are already problematic and conflicting to the extreme by their very nature, especially at this time of exceptional measures in a situation of a global pandemic, not deserving greater incentives for individualistic conduct, disaggregation and social animosity by its judges (MENDES, 2018).

The harmony and cohesion of the STF must be the rule in this Constitutional Court, and there cannot be a preponderance of individuality and persuasion paths of the virtual auditorium in this scenario of "judicial shows" transmitted "online" and live.

In comparative law, especially in France, in the light of Millns' research, including field research through individual interviews with judges of the Constitutional Court and the Council of State of France, seeking to understand the perspectives and motivations in the elaboration of decisions of the members of the French Courts, there was a high degree of consensus and satisfaction with the process of drafting the judicial decisions of that body. Even noting that, in the view of those judges, the mere exposition of the dissenting vote seen as a demonstration of lack of cohesion and uncertainty in the decision, which undermines the credibility of the institution (let alone the individual decision to the detriment of the decision of the entire collegiate).

> The discussions covered a broad range of issues concerning the decision-making function of the Constitutional Council, its style of judicial reasoning, the composition of the body, divisions of opinion amongst members, the distribution of case load, the drafting of decisions and the rationale for not allowing the publication of dissenting opinions. The results of the interviews, somewhat disappointingly (but perhaps not surprisingly given the political, judicial and academic background of the members of the Council), revealed an enormous degree of consensus and satisfaction with the decision-making process. Members repeatedly stressed the importance of the Council giving, and being seen to give, a single, clear and unambiguous response to highly important constitutional questions. In particular, none of the interviewees favored the introduction of dissenting judgments believing they would demonstrate a lack of cohesion and degree of uncertainty in the decision which might then undermine the credibility of the institution. (MILLNS, 2004, p. 12).

[24] As this judge became a co-participant in the creation of Law, the legitimation of his decision will pass to legal arguments, to his ability to demonstrate the rationality, justice and constitutional adequacy of the solution he built. From this perspective, the interesting concept of auditorium emerges. The legitimacy of the decision will depend on the ability of the interpreter to convince the audience he is addressing that this is the correct and fair solution. (BARROSO, 2015, p. 32)

The logic of deliberation, by Kornhauser and Sager (1993, p. 13), in order to build the judicial decision in Constitutional Courts, reveals itself as a task that involves commitment, demanding a deliberation of the entire collegiate, a plural action of the members of the Court as an entity, and not a singular and individualistic vision of its parts.

The legal uncertainty brought about by a singular precautionary decision, of a constitutional nature, with relevant social and economic effects, at this time of a pandemic, translates or reveals the absence of an opinion of the Court, appearing to be an inadequate form of action or technique of decision of the *seriatim decisium* in a non-dialogical way, as well demonstrated by Mendes (2017, p. 147).

The idea of strengthening collegiality, of submitting very relevant issues of our society to the understanding of the plenary of the STF, reveals itself as a winning argument, in the face of an inadequate vision of 11 (eleven) supremes, in which there is a permanent dispute harmful to every society of judges, in a sense of individual victory or defeat of these judges (HOFFMANN-RIEM, WOLFGANG, 2006) . In this sense, Virgílio Afonso da Silva's view that our Supreme Court is a "non-cooperative and individualistic" Court (2013, p. 578) is correct .[25]

In this way, the importance of a change in the democratic deliberative posture of our Constitutional Court is revealed, as the only way to face an extremely critical and dubious society of the acts of the constituted powers. We conclude that it is extremely relevant that our Supreme Court ordinarily functions in a calm, harmonious way and with due deliberation collegiate by the few judges who "say the law" in the final analysis, building the true *ratio decidenci* of the Court [26], and not of the minister. The communicative action of ministers must be guided by non-instrumental behaviors, as recommended by Habermas:

> We can say, in summary, that the actions regulated by norms, the expressive self-representations and the manifestations or evaluative emissions come to complete the acts of constative speech to configure a communicative practice that, against the backdrop of a world of life, tends to achievement, maintenance and renewal of a consensus that rests on the intersubjective recognition of validity claims susceptible of criticism. The rationality immanent in this practice is manifested in the fact that the agreement reached communicatively must ultimately be based on reasons and the rationality of those who participate in this communicative practice is measured by their ability to base their manifestations or emissions in the appropriate circumstances (HABERMAS, 1992, p. 36).

The ministers of the STF must act in such a way as to build, together, as a body, an institutional position, deliberating in a rational and efficient manner, in order to reach a majority conclusion on the reasons for deciding, on the unique motivation that externalizes the institutional position of the STF. Supreme Court in its relationship with society, leaving the individual decisions and positions of its judges to very exceptional and brief situations, in order to facilitate the construction of a consensus through a non-

[25]Free translation of the aforementioned passage, which, in literal terms, we reproduce: "The Brazilian Supreme Court is an extremely uncooperative and individualistic court."

[26] (...) the lack of communication among justices, and the fact that an "opinion of the court" must not be delivered, have two further side-effects: the complete exclusion of defeated justices from discussing the justification for the final decision, and the difficulty (in some cases, the impossibility) of identifying the ratio decidendi of a given decision (DA SILVA, 2013, p. 576).

instrumental relationship, whether between the members of this collegiate body , or in relation to the entire Brazilian society.

The monocratic decision made by the rapporteur is isolated, without the participation of his peers in the Supreme Court. In Celso Lafer's analysis of the dignity of politics in Hannah Arendt (LAFER, 2018, p. 129) there is an important distinction between politics and "certain forms of knowledge". Politics implies the exercise of what is called plural thinking, which is the ability to "think about the place and position of others", where word and action allow the emergence of "freedom". It differs from the monologic discursive structure (FERRAZ JR., 70), which is more centered on the person and on the coherence of his decision with his internal convictions, even if backed and grounded. The problem is that "the State is not a product of thought, but of action", which comes into existence substantively with the free and collective exercise of judgment by all the members of our Supreme Court.

## 4 CONCLUSION

The Brazilian State is experiencing its greatest social-economic crisis caused by a global pandemic that has already killed thousands of people, and all the constituted powers, from all spheres of the federation, should be, jointly and organized, making efforts to bring economic solutions. reasonable in order to minimize the socio-economic impacts for the largest portion of the population.

In moments like this, the ordinary rules are relaxed, certain rights, such as property, coming and going, the right to meet and others are relativized in favor of the right to life and the maintenance of public and economic order. The legal discipline becomes the target of adaptation to the moment and the state of exception starts to guide the decision-making of the heads of the Executive Powers of all layers of the Republic.

In the present research, it was found that provisional measures enacted during the state of calamity had their constitutionality challenged before the STF. It was also found that, despite the fact that the country is going through a moment of exception, many of the monocratic decisions, it seems, are not weighing this true State of Exception, given that, instead of pacifying the conflict, some Supreme Court decisions are having the opposite effect, creating legal uncertainty.

This is what happened in the specific case object of this study. As demonstrated elsewhere, the injunction granted by Minister Ricardo Lewandowiski in the records of ADI 6363 caused public opinion and the STF's website to convey the information that the agreements between employees and employers would only be valid upon acceptance by the trade union entity. .

The main effect of the monocratic decision was the legal uncertainty created at the expense of the need to submit to the unions all individual agreements object of MP 936/2020, since the Federal Government accounted for almost 8,000 (eight thousand) individual agreements to reduce working hours and wages. or suspension of the employment contract from the moment MP 936/2020 was published until

the date of the monocratic decision, agreements that ran the risk of not being effective after the precautionary decision of Minister Lewandowiski.

However, by a majority of votes, the preliminary injunction was revoked by the Plenary of the STF, which decided to maintain the full effectiveness of MP 936/2020, authorizing the reduction of the working day and salary or the temporary suspension of the employment contract, for through individual agreements, with mere communication to the Union, regardless of its consent.

The understanding prevailed that, due to the exceptional moment, the prediction of individual agreement is reasonable, as it guarantees a minimum income to the worker and preserves the employment relationship, beyond the period of the crisis. Thus, according to Minister Alexandre de Moraes, the requirement for union action, opening collective bargaining or not manifesting itself within the legal deadline, would generate legal uncertainty and increase the risk of unemployment. For the Minister, given the exceptionality and temporal limitation, the rule is in line with the constitutional protection of the dignity of work and the maintenance of employment. Thus, the hypothesis of the present work was confirmed.

Indeed, it is necessary to recognize the existence of a fundamental right of citizens to comply with art. 10 of Law 9.868/1999 and art. 97 of the Federal Constitution in the light of an adequate and reasonable theory of judicial decision, through sufficient deliberation. In conclusion, therefore, that the monocratic granting of the precautionary measure cannot be used to replace the decision in the *full bench mode* , therefore, it must be used only in cases of recess or vacation, and must be immediately taken to the plenary for a referendum.

It is concluded that preliminary injunctions decided in a monocratic way are, as a rule, not adequate in view of the provision of Law n. 9.868/99 (art. 10) and art. 97 of the Constitution. Extremely exceptional cases should be well defined and defined in the Court's Internal Rules. The current situation requires it and, therefore, it is necessary to regulate the use of the general power of caution by the Rapporteur in the actions of abstract control of constitutionality.

Stimulate a formal and collective environment in essence of the STF, which should jointly and reasonably build the solution to social and legal problems that are already problematic and conflicting to the extreme by their very nature, especially at this time of exceptional measures in a pandemic situation, not deserving greater incentives for individualistic conduct, generating legal uncertainty, disintegration and social animosity.

Thus, the importance of a change in the deliberative posture of the STF is revealed, as the only way to face a plural society, extremely critical and dubious of the acts of the constituted powers.

A harmonious Supreme Court is fundamental for the construction of Law in Brazil, with decisions built through adequate and sufficient collegiate deliberation, thus building the true *ratio decidenci* of the Court, and not an individual, discursive monological thought.

## REFERENCES


Agamben, giorgio. State of exception: [homo sacer, ii, i] . Boitempo editorial, 2015.

_____l'invenzione di un'epidemic. Una voce by giorgio agambem. Available at: < https://www.quodlibet.it/giorgio-agamben-l-invenzione-di-un-epidemia >. Accessed on: 09 sep 2020a.
_____eccezione status and emergence status. One voice by giorgio agamben. Available at: < https://www.quodlibet.it/giorgio-agamben-stato-di-eccezione-e-stato-di-emergenza >. Accessed on: 09 sep 2020b.

Barroso, luis roberto. Reason without a vote: the federal supreme court and majority government. Brazilian journal of public policies , v. 5, no. 2, 2015. Available at: <http://www.publicacoes.uniceub.br/index.php/rbpp/article/view/3180>. Accessed on: 16 jul. 2019
Bauman, zygmunt; dentzien, pliny. Liquid modernity . Rio de janeiro: jorge zahar, 2007.

Brazil. Constitution of the federative republic of brazil. Official gazette of the federative republic of brazil , brasília, df, 05 oct. 1988.

_____ugc transparency portal publishes list of recipients of emergency aid. Available at: http://www.portaltransparencia.gov.br/comunicados/603517-portal-da-transparencia-divulga-lista-de-beneficiarios-do-auxilio-emergencial . Accessed on: july 22, 2020.

_____executive power. Law no. 9,868 of november 10, 1999. Brasília (df): dou of november 11, 1999. 1999, p. 1.

_____executive power. Law no. 9,882 of december 3, 1999. Brasília (df): dou of 06 dec. 1999, p. 1.

_____executive power. Law no. 13,979 of february 6, 2020. Brasília (df): dou of 07 feb. 2020, p. 1.

_____executive power. Law no. 13,982 of april 2, 2020. Brasília (df): dou of 02 apr. 2020, p. 1.

_____executive power. Law no. 14,020 of july 6, 2020. Brasília (df): dou of 07 jul. 2020, p. 1.

_____executive power. Provisional measure no. 927, of march 22, 2020 . Brasília (df): dou of 22 mar. 2020, p. 1.

_____executive power. Provisional measure no. 948, of april 8, 2020 . Brasília (df): dou of 08 apr. 2020, p. 1..

_____judicial power. Federal supreme court (stf). Internal rules [electronic resource] / federal supreme court. – brasília: stf, secretariat of documentation, 2018.

_____judicial power. Federal supreme court (stf). Wage reduction by individual agreement will only take effect if validated by labor unions. Available in: http://portal.stf.jus.br/noticias/vernoticiadetalhe.asp?idconteudo=440927&ori=1 . Accessed on: 20 july 2020.

_____judicial power. Federal court of justice, re nº 1 68.277 qo , full court, rapporteur min. Ilmar galvão , dj of 29 may. 1998 _

_____judicial power. Federal supreme court, ms nº 25.024/mc , rapporteur min. Eros grau, a monocratic decision handed down by president min. Nelson jobim, j. 17 aug. 2004, dj of 23 aug. 2004.

_____judicial power. Federal supreme court, ms nº 37.097 rapporteur min. Alexandre de moraes, j. 29 apr. 2020, dj from 30 apr. 2020

_____judicial power. Federal supreme court, adi nº 2.224/df , rel. Min. Marcus aurelius , j. 10 oct. 2002, plenary, dj of 07 feb. 2003.

_____judicial power. Federal supreme court, adi no. 3,929 mcqo , rel. Min. Ellen gracie, j. 17 apr. 2020, plenary, dje of 10 oct. 2007.

_____judicial power. Federal supreme court, adi nº 4.917 mc , rel. Min. Carmen lucia, j. 18 march 2013, dje of 20 mar. 2013.

_____judicial power. Federal supreme court, adi nº 6363 mc , rel. Min. Ricardo lewandowiski, j. 29 aug. 2007, plenary, dje of 17 apr. 2020

_____judicial power. Federal court of justice. Adpf 672 df , rel. Min. Alexandre de moraes, j. 8 apr. 2020, p, dje of 14 apr. 2020

_____legislative power. Legislative decree no. 6 of march 20, 2020 . Recognizes, for the purposes of art. 65 of complementary law no. 101, of may 4, 2000, the occurrence of a state of public calamity, pursuant to the request of the president of the republic sent through message no. 93, of march 18, 2020.

Brasília (df): dou of 20 mar. 2020, p. 1.

Da silva, virgilio afonso. Deciding without deliberating. International journal of constitutional law , v. 11, no. 3, p. 557–584, 2013. Available at: <https://academic.oup.com/icon/article-lookup/doi/10.1093/icon/mot019>. Accessed on: 24 jul. 2019

Despouy, leandro. Report of the special rapporteur on the independence of magistrates and lawyers to the general assembly (a/63/271). Geneva: un, 12 august 2008.

Ferraz jr., tercio sampaio. Justice and legal topic. Derecho's studies, vol. Xxix, no. 77, mar. 1970.

Garcia, diego. Desemprego aumentou em todas as regions do brasil com avanço do coronavírus. Uol, 2020. Disponível em: https://www1.folha.uol.com.br/mercado/2020/05/desemprego-aumentou-em-12-estados-com-avanco-do-coronavirus.shtml . Acesso em: 17 may 2020.

Habermas, juergen. Teoría de la communication communication . Madrid: taurus, v. 2, 1992.

Hoffmann-riem, wolfgang. The prudence of the decision resides in its making—even when the law is applied. Smart decisions. Disciplinary foundations and interdisciplinary links. Tubingen , p. 3-23, 2006.

Kornhauser, lewis; sager, lawrence. "the one and the many: adjudication in collegial courts." california law review 81, 1 (1993), p. 13).

Lafer, celso. Hannah arendt: thought, persuasion and power . 3.ed. Rio de janeiro/são paulo, peace and earth, 2018.

Leroy, paul. L'organization constitutionnelle et les crises . Paris: librairie générale de droit et de jurisprudence, 1966, p. 34.

Magalhaes, andrea. Crisis jurisprudence: a pragmatic perspective . Rio de janeiro: lumen juris, 2017.

Mendes, conrad hübner. The design of a deliberative court. In: constitutional jurisdiction in brazil. São paulo: malheiros, 2012.

_____the supreme federal tribunal of brazil. In: jakab, a.; dyevre, a.; itzcovich, g. (eds.). Comparative constitutional reasoning . Cambridge, united kingdom: cambridge university press, 2017. P. 115–153.

_____in practice, stf ministers attack democracy, writes a professor at usp. Uol, 2018. Available at: https://www1.folha.uol.com.br/ilustrissima/2018/01/1953534-em-espiral-de-autodegradacao-stf-virou-poder-tensionador-diz-professor.shtml . Accessed on june 28, 2020.

Mendes, gilmar ferreira; do vale, andré rufino. Current issues about precautionary measures in abstract control of constitutionality. Observatory of constitutional jurisdiction , v. 1, no. 1, 2011.

Millns, susan. Respect for human dignity: an anglo-french comparison . 2004. Doctorate - university of kent at canterbury, canterbury, 2004.

Moraes, humberto peña de. Defense mechanisms of the state and democratic institutions in the 1988 constitutional system: state of defense and state of siege: in revista da escola da magistratura do estado do rio de janeiro , nº 23, 2003, p. 198.

Moura, rafael moraes. Lewandowski decides that salary reduction agreements will only be valid after unions demonstrate. Estadão, 2020. Available at: https://politica.estadao.com.br/blogs/fausto-macedo/lewandowski-decide-que-acordos-de-reducao-de-salario-so-terao-validade-apos-manifestacao-de-sindicatos/ access at : 20 july 2020.

Pinheiro, alexandre sousa. The jurisprudence of the crisis: portuguese constitutional court (2011-2013) . Observatory of constitutional jurisdiction . Year 7, no. 1, p. 170, jan./jun. 2014.

Radbruch, gustav. Philosophy of law, trans. Cabral de moncada, coimbra: arménio armado editor , 1979.

Ribeiro, viviane licia. Adi 6363 and the risk of mass layoffs. Estado de minas, 2020. Available at: https://www.em.com.br/app/noticia/opiniao/2020/04/11/interna_opiniao,1137633/adi-6363-eo-risco-de-demissoes-em -mass.shtml . Accessed on: 20 july 2020.

Reuters coronavirus: unemployment insurance claims in brazil rise 22.1% in april. Available at : https://economia.uol.com.br/noticias/reuters/2020/05/11/pedidos-de-seguro-desemprego-no-brasil-sobem-221-em-abril.htm?cmpid=copiaecola . Accessed on: may 17, 2020.

Souza neto, cláudio pereira de; sarmento, daniel. Constitutional law: theory, history and working methods. Belo horizonte: forum , 2014.

Streck, luiz lenio. Constitutional jurisdiction . 6. Ed. – rio de janeiro: forensics, 2019.

_____can the decision of a stf minister be valid as a provisional measure? Available at: http://www.conjur.com.br/2014-dez-04/senso-incomum-decisao-minister-stf-valer-medida-provisoria . Accessed on: 20 july 2020.

Tavares, andré ramos. Constitutional law course. 10th ed. São paulo: saraiva, 2012 . P. 266.