SEVEN
publicações acadêmicas

Farmer's judicial recovery in Brazil – A dialogue between law, economics and business

Crossref doi
https://doi.org/10.56238/sevened2023.006-021

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ABSTRACT
The work promotes a historical-normative-conceptual analysis of the judicial reorganization of rural producers in Brazil, involving Law, Economics and Administration. Although it occurs through a judicial process, this is a complex way of solving the economic crisis of the rural debtor that requires the participation of various professionals, such as economists, administrators, accountants, and others. With judicial reorganization, an organizational structure is created, autonomous in relation to the figure of the debtor, which acts not only in the process, but also in the market, by specific rules and which requires management with maximum efficiency in the pursuit of its objectives.

Keywords: Interdisciplinarity, Judicial reorganization, Rural producer, Economic Analysis of Law and Organizations.

1 INTRODUCTION

The judicial reorganization of the business debtor, created by Law No. 11,101/2005, is the main tool for solving economic and financial crises of business organizations provided for in Brazilian Law. It is a means of "outside the market" solution, as it takes place in the environment of the Judiciary, through its own judicial action, with the collaboration of specific actors, such as the judge himself, the judicial administrator and the creditors' meeting. However, even if it is an "off-market" solution, the way judicial reorganization works requires the application of management rules, involves employees, presupposes compliance with labor, tax, and social security obligations, among several others, which gives judicial reorganization its own organizational character.

About the judicial reorganization of rural producers, the rules by which the solution of the crisis will be developed are even more specific than those of the common entrepreneur, given the specialties of the activity, the legal treatment and the jurisprudential and doctrinal development on the subject.

This article presents a literature review on the judicial reorganization institute and its specificities in relation to rural producers, promoting an interdisciplinary study between Law, Economics and Administration.

This study is justified because the judicial reorganization of rural producers is not an institute limited to the area of legal sciences, although it occurs through a judicial process. On the contrary, it is a complex solution to the debtor's economic crisis that, in order to occur properly, requires the participation of various professionals, such as economists, administrators, accountants and others. The theoretical study of the various areas of knowledge that affect judicial reorganization is, therefore, essential in order to allow a broad and in-depth view of the subject, identifying the main doctrinal contributions of these sciences to the reorganization institute.

The objective is to promote an interdisciplinary theoretical analysis of the judicial reorganization of rural producers, through the normative study of the institute and from the perspective of the Legal Theory of the Company and the Economic Analysis of Law and Organizations, with the contribution of concepts of the New Institutional Economics and the Theory of Organizations. *Stakeholders*, to demonstrate that the judicial reorganization process of the rural producer, as established in Law No. 11,101/2005, with the reform brought by Law No. 14,112/2020, creates its own organizational environment, which differs from the debtor organization, with its actors and specific collaboration rules with the market, public authorities and other agents involved.

The methodology used in this work is that of narrative-integrative analysis, based on works in books and articles by authors who deal with the themes researched here, with interpretation and discussion of the results at the end. Through it, a historical-normative-conceptual evaluation of judicial reorganization will be presented, notably that of the rural producer, as well as a conceptual review of the Economic Analysis of Law and Organizations, visiting related themes such as the Theory of Constitutional Law and the Theory of Judicial Rights. *Stakeholders*. In the end, it will be demonstrated how the judicial reorganization of the rural producer is its own organization, autonomous in relation to the figure of the debtor, who acts not only in the process, but also in the market, by specific rules.

The article is organized into introduction, sections I and II, conclusion and references.

2 LITERATURE REVIEW

2.1 NORMATIVE ANALYSIS OF JUDICIAL REORGANIZATION AND JUDICIAL REORGANIZATION OF RURAL PRODUCERS

2.1.1 Historical development of Judicial Reorganization: from punitive Bankruptcy Law to Reorganization Law

Bankruptcy law, related to bankruptcy, and reorganization law, which regulates the recovery of the entrepreneur in crisis, form what the legal doctrine calls bankruptcy law, because in these actions the creditors do not sue the debtor individually, but are organized in the form of a contest, that is, a collective body, which is called the Creditors' Meeting. These two branches of law cannot be confused,

because, while bankruptcy aims to liquidate the assets of the insolvent debtor, recovery aims to overcome the business crisis and maintain the activity (COELHO, 2012).

Until the advent of the Roman law known as the *Lex Poetelia Papiria*, in 428 B.C., the debtor could answer for his obligations through the loss of rights that are inherent to personality, such as freedom, physical integrity and life itself. In this way, the one who owed and did not pay could become a slave of his creditor, give him part of his own body, or even be killed due to his default (RAMOS, 2015).

The new Roman law represented an undeniable advance in civilization, since it was from it that patrimonial liability began to be the rule in relation to default, replacing personal liability. The assets then became responsible for the unpaid debts, and no longer the rights inherent to the debtor's condition as a person (RAMOS, 2015).

However, the Roman solution to insolvency aimed only at satisfying, even if minimal, the interests of creditors, not taking into account the possibility of economic recovery of the debtor. In addition, the ancients did not distinguish between the common debtor and the merchant debtor, who constituted their debts as a function of the exercise of an economic activity (RAMOS, 2015).

In the Middle Ages, when customs and customs became the basis of commercial laws, several mercantile cities, such as the Italian cities of Genoa and Venice, Flanders in what is now Belgium and the French region of Champagne, created specific rules to regulate the insolvency of debtors. These rules, much closer to what we know today as bankruptcy law and reorganization law, did not yet distinguish the common debtor from the commercial one, treating everyone indistinctly, regardless of the origin of their obligations (RAMOS, 2015).

It was only with the advent of the French Napoleonic Codes, being the Civil Code of 1804 and the Commercial Code of 1808, that the Roman law began to give specific treatment to those who engaged in trade, including with regard to their debts. The central change that the French Commercial Code brought to bankruptcy law was the provision of a set of special rules, applicable strictly to insolvent debtors who had the status of traders. For the insolvent debtor of a civil nature, the rules of bankruptcy law did not apply, but the provisions contained in the general legal regime, that is, civil law (RAMOS, 2015).

The undeniable advance brought about by the French codifications did not correct the primordial historical problem of bankruptcy law: the repressive and punitive treatment of the debtor, seen almost as a criminal by society, who was not granted the slightest chance of economic recovery. It is only throughout the twentieth century, with its more liberal and economically advanced societies, that the world, and especially Western law, will turn its eyes to the solution of the debtor's crisis, through institutes such as bankruptcy and judicial and extrajudicial reorganization.

During the colonial period and even after independence, the Ordinances of the Kingdom of Portugal were in force in Brazil. With regard to bankruptcy law, the Lusitanian legislation was strongly influenced by the Italian mercantile rules, highlighting the Charter of 1756, promulgated by the Marquis of Pombal, which, among other determinations, obliged the insolvent debtor to appear before the Royal Board of Trade to hand over the keys to his establishment and the Diary book. During the term of the Ordinances, 90% of the proceeds collected from the liquidation of the debtor's assets were used to pay creditors, with the remaining 10% being reserved for his and his family's support (RAMOS, 2015).

With the enactment of the Brazilian Commercial Code in 1850, the bankruptcy of the debtor was finally regulated by a national law. However, there were several criticisms of the ineffectiveness of the procedure regarding the "breaks" provided for therein, which culminated in a radical reform of the legislation in 1890, through Decree 917. Since then, several laws and decrees have modified the matter, which only ended in 1945, with the enactment of Decree-Law No. 7,661, then known as the Bankruptcy Law (RAMOS, 2015).

The first Brazilian Bankruptcy Law, which was in force for 60 years, modernized the treatment of commercial insolvency and consolidated in Brazilian law the institution of composition, which allowed the commercial debtor, once a series of requirements were met, to plead with the Judiciary for a renegotiation of its obligations, aiming at its economic recovery and avoiding the decree of bankruptcy.

The radical transformations that Brazilian society and economy went through during the second half of the twentieth century, with the urbanization of its population, technological development in industry and in the countryside, and the advent of the internet, made the bankruptcy and recovery mechanisms provided for in the then current Bankruptcy Law ineffective. As a result, the Brazilian business community began to clamor for a more modern and efficient legislation, especially with regard to the possibility of debtor recovery, culminating in the advent of Law No. 11,101, of February 9, 2005.

2.1.2 Judicial Reorganization as a way to solve the business crisis

Since the redemocratization of Brazil in the 1980s and the Federal Constitution of 1988, the Brazilian Judiciary has acquired a leading role never before seen by this power in society, as the main arena for resolving conflicts of interest.

The Brazilian Magna Carta is based on the doctrine of European neo-constitutionalization, founded with the German Constitution of 1949, which, in turn, has post-positivism as its philosophical framework. Under the justification of positivist legality, which defines the value of the norm in itself without taking into account social principles and values, the Nazi-fascist regimes of Germany and Italy

promoted all kinds of barbarity, and their agents claimed that, they only obeyed laws. Thus, post-positivism seeks to go beyond the strict analysis of legality, not despising the established law, but undertaking a moral reading of it (BARROSO, 2006).

With the new constitutional airs, the Judiciary now has the role not only of enforcer of the law, but, and perhaps more importantly, of interpreter of the norm according to the values that guide society. Society gradually began to trust more and more in the role of the Judge-State as an agent of social pacification and convergence and regulation of diverse interests (BARROSO, 2006).

The figure of the judicial reorganization of the company, a means of solving the business crisis in which the Judiciary acts as a harmonizer of the interests of creditors and debtors in order to ensure the maintenance of business activity, arises within this new scenario provided by the Federal Constitution now in force.

After 11 years of processing, Law No. 11,101/2005 extinguished the inefficient tool of bankruptcy, replacing it with the recovery of companies, which can be done judicially or extrajudicially.

In the judicial form, the request for reorganization is made by the debtor to the Judiciary, but who approves it, in the final analysis, are the creditors of the entrepreneur in crisis, who are summoned and organized by the court, through the figure of the judicial administrator. Thus, the Judiciary remains as an arena for resolving conflicts of interest between debtor and creditors, and between creditors themselves, but acting in an organizing and conciliatory manner, allowing the judicial reorganization plan to be discussed and approved by those who effectively have a direct interest in the process.

2.1.3 Experiences in other countries

Obviously, a company recovery legislation is not exclusive to Brazil, despite the extremely advanced nature of the law. 11,101/2005, especially after the reform brought by Law No. 14,112/2020. Several other countries, notably those that preach obedience to the market economy and free enterprise, have laws that provide for procedures aimed at the economic reorganization of the debtor entrepreneur, always with the aim of preserving the commercial activity.

There is no business recovery model followed by the different countries. Each national law seeks its own path in the difficult question of the reorganization of business activity in crisis, taking into account the particularities of each economy. The great diversity of responses demonstrates a difficulty in understanding and applying legal solutions "outside the market" for a phenomenon that is purely internal to it, that is, the insolvency of the debtor (COELHO, 2012).

2.1.3.1 Portugal

Currently, in Portugal, Decree-Law No. 53/2004 is in force, called the Insolvency and Business Recovery Code – CIRE.

Lusitanian law provides for a single procedure for bankruptcy and recovery, with creditors choosing the first or second solution for the debtor's insolvency (SALOMÃO, 2021). In reorganization, it is up to the judge to declare insolvency and, based on that, approve the reorganization plan or the adoption of other measures, such as the early sale of the business establishment.

In 2012, Portuguese Law No. 16/2012 established the possibility for the debtor entrepreneur in crisis to establish negotiations with the respective creditors in order to promote its economic recovery, in the so-called Special Revitalization Process (SALOMÃO, 2021).

2.1.3.2 Germany

Since 1999, the Insolvency Code has been in force in Germany.*Insolvency Code – InsO*).

For both bankruptcy and reorganization, the aforementioned law provides for the equitable treatment of creditors and their autonomy, establishing the possibility for creditors themselves to establish a debtor recovery plan outside the provisions of the Code, being able to adopt measures such as: liquidation of assets with the distribution of the proceeds among the parties involved, liability of the debtor, among others (SOLOMON, 2021).

The Code provides for three types of insolvency plans, namely: liquidation, reorganization and transfer of the business establishment. The first solution is in the event of the debtor's impossibility of recovery, representing his bankruptcy. The other two measures serve the recovery of entrepreneurs whose activity is still viable. Coelho (2012) states that recovery has a secondary character, however, in German law, which prefers the solution of the bankruptcy to the business crisis.

2.1.3.3 Spain

Spain is one of the countries in continental Europe with one of the most advanced bankruptcy and business recovery laws. In September 2020, Royal Legislative Decree 1/2020 entered into force in that country, consolidating in its 752 articles the bankruptcy legislation established in Bankruptcy Law No. 22/2003 and subsequent reforms. The rule also incorporates into Spanish law the European Directive 2019/1023, which deals with preventive frameworks for restructuring, debt exemption and measures to guarantee efficiency in restructuring and insolvency procedures (SALOMÃO, 2021).

Spanish law provides for a single procedure, called tender, with two possible solutions, the agreement or the liquidation. The agreement aims at the recovery of the debtor, who presents a proposal to be analyzed and accepted by the creditors and, subsequently, approved by the court. Liquidation will

be applicable when no proposal for an agreement is presented or the unfeasibility of the company's recovery is verified, implying the sale of assets to the satisfaction of creditors (SALOMÃO, 2021).

2.1.3.4 France

The rule to regulate insolvency in France is 845/2005, which amended the French Commercial Code of 1807, which had already been greatly improved by then.

According to Coelho (2012), French law provides for alert systems, in some cases providing and, in others, obliging certain people, such as the accountant, the employee committee, the minority shareholder, among others, who, when anticipating a crisis situation, adopt measures to avoid insolvency.

The French system provides for two systems of business recovery, one extrajudicial and the other through the action of the Commercial Court. The system most similar to the Brazilian judicial reorganization is, of course, the second.

In its work, the French Commercial Court is not limited to the role of a mere moderator, deciding and important to the reorganization of the debtor, from the safeguard to the judicial reorganization, to the liquidation of the company, in the event of a finding of its unviability. Judicial reorganization presupposes the cessation of payments by the debtor, in addition to proof that the asset is no longer sufficient to pay the debts, thus characterizing insolvency (SALOMÃO, 2021).

2.1.3.5 Italy

In January 2019, Italy, following the example of other European countries, improved its legislation on corporate insolvency, through Legislative Decree No. 14/2019, which established the Company Crisis and Insolvency Code.

The new Italian law defined a single procedure for verifying the state of crisis or insolvency of the company, substantially changed the preventive composition procedure, instituted a specific procedure for warning and assisted composition of the crisis, in addition to several other changes (SALOMÃO, 2021). There is also the role of a commissioner appointed by the judge to supervise the company under reorganization, a figure that has been widely criticized given the inefficiency in preventing bankruptcies in that country (COELHO, 2012).

2.1.3.6 United States of America

North American liberalism is present in its recuperational legislation, as it could not be otherwise. Chapter 11 of the *Bankruptcy Code* (Bankruptcy Code), devised during the crisis of the railway sector in the mid-nineteenth century, establishes mechanisms that aim to create a scenario conducive to negotiations between the parties interested in the crisis of the debtor entrepreneur.

Solutions such as the conversion of credits into shares of the debtor company, making the creditors partners, are possible within a reorganization plan resulting from the agreement between the parties. The Judiciary is limited to intervening in order to ensure fair treatment among the various classes of creditors (COELHO, 2012).

2.1.4 Judicial reorganization of rural producers

The judicial reorganization of rural producers is one of the most controversial topics today, and gains relevance due to the importance of the activity, as well as the crises that the agrarian sector periodically witnesses. Rural producers, from a possible critical period, may momentarily experience difficulties in resolving financial commitments, which can lead to the compromise of their assets, as well as generate obstacles to the continuation of their operations (RONQUIM FILHO AND CEZARINO, 2020).

From this analysis, it can be seen that the rural activity, although characterized as mercantile, has its own characteristics that distinguish it from other economic activities, notably those classified as "urban". This distinction is more accentuated when the risks to which the rural producer is subjected are analyzed, such as climatic factors, occurrence of pests, exchange rate variation impacting the price of inputs or production, among others, in addition to the seasonality of what they produce.

The indebtedness of rural producers in Brazil has been growing in recent years, impacting the competitiveness of national agribusiness. According to Romanelli (2020), data released in 2020 by the Institute of Applied Economic Research (IPEA) show that rural producers have become worse payers. According to the government agency, the historical delinquency in rural credit modalities has always remained at levels very close to 1% until mid-2013, but in 2016 the percentage increased, reaching 3%, and in 2019 there was no improvement, the index remained stable. Comparing the same data for legal entities in 2019, delinquency in rural credit operations was only 0.8%, much lower (ROMANELLI, 2020).

Precisely because of the importance of the agribusiness segment for the Brazilian economy and the risks inherent to the activity, the legislator dispenses specific legal treatment for the indebtedness of rural producers. Initially, article 970 of the Brazilian Civil Code establishes that the law will ensure favored treatment to rural entrepreneurs, regarding the registration of the Mercantile Registry and the resulting effects. Article 971, also of the Civil Code, provides that the registration of the rural producer as an entrepreneur is optional, and there is no irregularity in the exercise of rural activity without registration, unlike what happens with urban entrepreneurs.

Law No. 11,101/2005, with the reforms brought about by Law No. 14,112/2020, also provides for differentiated treatment for rural producers in crisis. It exempts the rural entrepreneur from the minimum period of two years of commercial registration for the filing of the request for judicial

reorganization, and the producer can prove that he already carried out the activity before the registration through various documents, such as those of the Tax Accounting Bookkeeping. In addition, it allows rural producers who are not registered as entrepreneurs to also file for judicial reorganization, as long as the total value of the reorganization plan does not exceed R$4.8 million.

The possibility of filing a request for judicial reorganization provided for in Law No. 11,101/2005 allows, therefore, a greater capacity for debt renegotiation by rural producers who find themselves in situations of serious financial crisis, for which the classic instruments of renegotiation of the market itself no longer have an effect, avoiding the bankruptcy of these producers. with the socioeconomic losses inherent in any business failure. It is, undoubtedly, an instrument of great importance for the management and competitiveness of Brazilian agribusiness and should be within the reach of all rural producers operating in the country.

2.2 JUDICIAL REORGANIZATION FROM THE PERSPECTIVE OF THE LEGAL THEORY OF THE COMPANY, THE NEW INSTITUTIONAL ECONOMICS AND THE THEORY OF *STAKEHOLDERS* – JUDICIAL REORGANIZATION AS AN INSTITUTION

2.2.1 The Legal Theory of the Company and the New Institutional Economics

Sztajn (2010) teaches, quoting Ronald Coase, that the company, or firm, is a hierarchical bundle of contracts, commanded by the entrepreneur who coordinates relations with suppliers, collaborators, employees and customers, aiming at the stability of production.

Williamson (1985) says that the firm is formed by a contractual complex whose most important variables are the sum of transaction and production costs, the performance of the product or service, the sociocultural context in which the transactions occur and, finally, the role of institutions and organizations themselves. It also considers that in the event of conflicts, the first instance for the resolution of disputes occurs within the firm itself, that is, privately between the agents.

It so happens that the company, or firm, whether urban or rural, is permanently subject to risks. These risks are of various natures, such as competition, climate, interest rates, exchange rates and many others. What is certain is that such risks, if not properly mitigated and corrected by correct management practices, that is, within the firm, as Williamson (1985) teaches, can lead the entrepreneur to a situation of crisis, compromising the continuity of the commercial activity, with losses not only to the entrepreneurs, but to society as a whole.

Coelho (2012) states that the company's crisis can be fatal, generating losses not only for entrepreneurs and investors who employed capital in its development, but also for creditors and, in some cases, in a chain of successive crises, also for other economic agents. The fatal crisis of a large company means the end of jobs, shortages of products or services, a decrease in tax collection and,

depending on the circumstances, the paralysis of satellite activities and serious problems for the local, regional or even national economy.

The judicial reorganization introduced by Law No. 11,101/2005, much broader than the simple bankruptcy, is a complex process, which can be developed by various means depending on the reality of the debtor, and it is precisely in this complexity that its effectiveness rests. For Schio (2019), judicial reorganization is defined as a legal instrument that allows the debtor to present in court a plan for restructuring the company and paying creditors through renegotiation of debts, in order to keep the company in business and circumvent the situation of economic and financial crisis experienced.

Thus, judicial reorganization, as provided for in Law No. 11,101/2005, is a collective renegotiation of most of the debts of the entrepreneur, whether urban or rural, aiming at the maintenance of the firm. It clearly has an institutional content since, for the theorists of the New Institutional Economics, such as North (1990), the environment of institutions is constituted by entities that determine the norms that will be followed and what will be the control system adopted. In this way, by bringing together creditors to deliberate on the judicial reorganization plan, there is a true institutional rearrangement that can effectively allow the debtor's economic recovery.

According to Pigatto *et al.* (2017), the fundamental pillar of judicial reorganization is embodied in article 47 of Law No. 11,101/05, which, in turn, enshrines the principles of i) preservation of the company, ii) social function and iii) stimulation of economic activity, by establishing that judicial reorganization aims to enable the debtor's economic and financial crisis to be overcome. in order to allow the maintenance of the source of production, the employment of workers and the interests of creditors, thus promoting the preservation of the company, its social function and the stimulation of economic activity.

De Assumpção Alves and Licks (2021), when analyzing the legislator's reasons for creating a recovery mechanism for the debtor in crisis, state that, according to Richard Posner's lessons, the Theory of Law based on Utilitarianism would be premised on the understanding that the function of Law would be the maximization of happiness. Hence, "the moral value of an action, conduct, institution, or law which is to be judged by its efficacy in promoting happiness." In the context of recovery, the "promotion of happiness" for the creditor is closely related to the recovery of credit, even in the long term. Without this hope, there is no point in keeping the debtor in recovery, as the scenario would be worse than in a possible bankruptcy decree.

2.2.2 The Stakeholder Theory

For Freeman (1984), the *stakeholders* They are individuals or groups who can affect or be affected by organizational actions and who therefore have legitimacy over the organization. Freeman further states that the main purpose of the company should be to serve as a vehicle for coordinating

the interests of the *stakeholders.* Savage *et al* (*apud* Lyra *et al.*, 2009) understand that *stakeholder* They include those individuals, groups, and other organizations that have an interest in a company's actions and who have the ability to influence it.

Donaldson and Preston (1995) state that, in addition to the descriptive and instrumental aspects, the Theory of *Stakeholders* It has a normative character, which requires the acceptance of the following ideas: *stakeholders* They are persons or groups with legitimate interests in the substantive and procedural aspects of corporate activities. They are identified by their interests in the corporation, while the corporation has a corresponding functional interest in their *stakeholders*; the interests of *stakeholders* They have intrinsic value, which means that each group of these agents makes decisions according to its own interests and not necessarily taking into account the interests of other groups, such as partners or managers.

Based on the previously supported premise that Judicial Reorganization has an institutional nature as a rearrangement of the debtor's contracts through a collective agreement with creditors and through the intermediation of the Judiciary, this institution should also be analyzed in terms of their interests *stakeholders* most directly affected by the recovery, i.e., the rural producer's creditors. There is no judicial reorganization without creditors' approval. They are the ones most interested in the reorganization of the debtor, so that they have their credits satisfied and, ultimately, can maintain economic exchanges with the entrepreneur.

Also analyzing the Judicial Reorganization from its institutional point of view, it can be stated that the creditors of the debtor are *stakeholders* primaries, defined by Van der Laan *et al* (2008) as those who establish reciprocal and permanent relationships with the organization. Therefore, organized in a specific body provided for in Law No. 11,101/2005, the Meeting of Creditors, it is held that the interests of the Creditors are *stakeholders* that will determine the success or not of the Judicial Reorganization of the rural producer.

For Salomão (2021), Law No. 11,101/2005 seeks to reverse the trend of creditors' neglect of the debtor, because, with greater participation of creditors in the procedure, the results obtained are more appropriate to market solutions, including avoiding the occurrence of fraud in the execution of the judicial reorganization plan. Finally, it is emphasized that the participation of creditors gives the decision-making process in the reorganization a more democratic character, especially regarding the direction of the company in difficulty.

2.3 ECONOMIC ANALYSIS OF LAW AND ORGANIZATIONS

Zylbersztajn and Sztajn (2005) state that the Law, when establishing the norms of conduct that shape personal relationships, must take into account the economic consequences that will derive from such norms, as well as the effects on the distribution and allocation of resources and the incentives that

may influence the behavior of private economic agents. They conclude by saying that, therefore, the Law influences and is influenced by economic agents and that Organizations influence and are influenced by the institutional environment. Thus, institutions and organizations influence the transformation of the legal system and the achievement of economic results.

Coase, in its two central works, *The Nature of the Firm* (1937) and *The Problem of Social Coast* (1960), identifies the "contractual firm", replacing the classical function of production with the nexus of contracts and the importance of property rights. For him, organizations are contractual relationships maintained by tools idealized by productive agents, which is the object of the sciences of business management. For Coase, if firms are complex contractual relationships, the problems of contractual breaches and the protection of property rights require mechanisms that allow the resolution of such problems by the courts and private bodies. In this aspect, judicial reorganization can be cited as one of these mechanisms, the main one in the case of Brazilian law.

Willianson (2005) points out that social scientists have long asserted that organizations have a life of their own, which implies that the logic of the Economics of Organizations requires an early analysis of the effects of legal norms on organizational design. Bringing this understanding to the object of this study, it can be seen that, once the debtor's judicial reorganization is decreed, its own organizational structure will emerge, led by the Judiciary. The reorganization will operate according to the rules provided for by law, its creditors will no longer act individually, but jointly, organized according to the nature of their credits, and new management bodies will emerge, such as the judicial administrator, the meeting and the creditors' committee. Thus, judicial reorganization can be analyzed from the perspective of the Economic Analysis of Law and Organizations, as it is a mechanism formed by multiple contractual relationships, coordinated by the Judiciary and by auxiliary bodies, in order to solve the problem of contractual default and the property rights of the creditors of the debtor.

3 RESULTS AND DISCUSSION

In view of the literature review, it is clear that the institution of judicial reorganization is the result of a long evolution of bankruptcy law, whose origins date back to Roman law. Over the course of two millennia, there has been a transition from a punitive system of the debtor, which included his imprisonment or slavery and robbed him of all assets, including those of little value and necessary for his survival and that of his family, to a preventive model, focused on the search for economic recovery, without harming the interests of creditors, guaranteeing them the minimum and equitable satisfaction of their credits.

The current model of judicial reorganization in Brazil, established by Law No. 11,101/2005, is complex and presupposes the need for legal action, and the debtor must be represented by a lawyer. The recovery process is conducted by the judge, who in turn is assisted by a specialized professional,

called a judicial administrator. Creditors, according to the nature of their credits, are organized into a creditors' meeting, whose main attribution is to represent creditors in the reorganization process, in addition to approving and supervising compliance with the judicial reorganization plan.

The legal model of judicial reorganization adopted in Brazil has certain similarities with those adopted in European countries and the United States of America, with the participation of the Judiciary as the central actor to conduct the deed being the main one. However, among the countries surveyed, the Brazilian model seems to be closer to the American system, with a focus on preserving the company and maintaining economic activity as an alternative to the debtor's bankruptcy.

The judicial reorganization of rural producers is gaining prominence in the Brazilian system. In the literature searched, no reference was found to specific rules for the judicial reorganization of rural producers in other countries. The importance of agribusiness to Brazil's economy justifies and explains the differential treatment given to the sector by the legislator.

The researched studies show that there is a worrying scenario of indebtedness of rural producers in Brazil, a situation that is further aggravated when taking into account the specificities of the activity, such as climatic and biological risks, high susceptibility to exchange rate volatility, seasonality of production, the perennial need for investment in technology, among others. In this sense, the favored treatment of rural entrepreneurs established in the Civil Code is justifiable, in addition to the facilitation of the request for judicial reorganization, both for registered rural producers and for those not registered as entrepreneurs, provided for in Law No. 11,101/2005.

It can be seen, from the researched literature, that the decree of judicial reorganization creates, procedurally, a specific structure of the firm, according to the definition of Coase (1937), which gives the reorganization process an organizational nature distinct from the debtor itself. Thus, with the judicial reorganization, a contractual structure of its own will emerge, organized according to the rules established in Law No. 11,101/2005. The control of the judicial reorganization will be carried out by the Judiciary, through the figure of the judge, having as a specialized professional collaborator, appointed specifically for the function, which is the judicial administrator. The creditors will be organized into a meeting, divided into instances according to the nature of the claim. The decree of judicial reorganization will imply the early maturity of the debts due and all creditors, except those excluded by the law itself, must enable their credits in the reorganization process and, if the reorganization plan is approved, must submit to the payment conditions set forth therein, which may imply discounts on the total amounts of credits in addition to modification in the payment terms originally contracted. The creditors' meeting may approve the judicial reorganization plan or reject it, at which point the debtor's bankruptcy will be decreed. The meeting will also be responsible for overseeing the debtor's judicial reorganization plan, and may form a committee to facilitate this oversight.

Obviously, creditors are the main group interested in the debtor's judicial reorganization and in the fulfillment of the obligations contained in the reorganization plan, which allows them to be classified as *stakeholders.* Thus, both the debtor under reorganization, as well as the Judiciary, the judicial administrator and the creditors' meeting, must adopt effective measures in the management of the reorganization process, so that the central objectives of the institute, which are the recovery of the debtor and the due fulfillment of its obligations, can be achieved with lower transaction costs. In addition, judicial reorganization implies socialized economic costs, including by third parties who are not *stakeholders*, since creditors affected by a judicial reorganization tend to transfer part of the loss they suffer to other customers, through increased prices of their products and services.

The analysis of transaction costs and the effectiveness of judicial reorganization processes, especially in the rural sector, is essential to the optimization of the institute, and should be done in the light of the Economic Analysis of Law and Organizations. This is because judicial reorganization is a form of organization of its own, as already demonstrated, which takes place in an institutional environment created by law, with its own actors and methods, and whose actions are of an eminently economic nature. The judicial reorganization process aims to allow the debtor to recover economically, while obliging him to comply with the payment of his debts, as provided for in the judicial reorganization plan. Thus, the use of theoretical and empirical economic instruments, such as the New Institutional Economics and the Economics of Transaction Costs, allows the researcher to measure the costs of judicial reorganization processes and their effectiveness, both with regard to the recovery of the debtor and with regard to the satisfaction of creditors.

4 FINAL THOUGHTS

The present work aimed to promote a literature review on the institute of judicial reorganization and its specificities in relation to the rural producer, from the perspective of the Economic Analysis of Law and Organizations, promoting an interdisciplinary study between Law, Economics and Administration.

The researched literature demonstrated the importance of judicial reorganization as a means to avoid the bankruptcy of the business debtor, allowing its economic reestablishment and continuity of its activities. It also allowed the development of a historical study on the subject, demonstrating how the law evolved in this aspect from a repressive and punitive system of the debtor to a recovery model, which aims at the preservation of the company.

The research showed that the system of corporate reorganization, judicial or extrajudicial, exists in the main European economies and in the United States of America, with particularities inherent to each legal model, with some laws prior to and others subsequent to the Brazilian law, as is the case of the Italian and Spanish legislation.

Among the countries surveyed, however, Brazil is the only one that has specific rules for the judicial reorganization of rural producers, which is justified by the importance of the agribusiness segment for the national economy. Since the beginning of the validity of Law No. 11,101/2005, the Brazilian courts have paid great attention to the recovery of rural producers, guaranteeing these entrepreneurs the favored treatment provided for in the Brazilian Civil Code.

Notwithstanding, however, the importance of rural activity in Brazil, there is a lack of empirical studies that allow us to assess the effectiveness of the judicial reorganization institute in the agribusiness segment. To this end, research is needed to identify the profile of rural producers who request judicial reorganization, how their debts are formed and the result of these actions.

The theoretical and empirical instrument of the Economic Analysis of Law and Organizations, which aims to assess the causes and consequences of legal institutes through methodologies of Economic Sciences and Administration, such as the Economics of Transaction Costs and the Theory of Transactions. *Stakeholders*, proves to be adequate to identify the reasons that lead the rural producer to requests for judicial reorganization, and the economic consequences of these actions, taking into account the roles of the debtor, its creditors, the government and all those who, directly or indirectly, are affected by the reorganization process.

Thus, the relevance of this work is demonstrated, which addresses the judicial reorganization of rural producers from an institutional and organizational perspective, going beyond the classic legal dogmatic studies, defining the reorganization process as its own organization, autonomous in relation to the figure of the debtor himself, conducted by the Judiciary, judicial administrator and creditors through management means that aim at maximum effectiveness in the pursuit of its objectives. As an organized network of contracts, judicial reorganization fits the concept of firm created and developed by the theorists of the New Institutional Economics, notably Coase, Williamson and North.

Further studies on the subject are needed, especially those based on empirical that can identify causes and effects of the judicial reorganization of rural producers.

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