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Judicial Debts: The case of the State of Rio Grande do Sul

Author: Helio Rubens Clemente Guerra

Treasury of the State of Rio Grande do Sul

Advisor: Reid Click, Phd

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And, finally, to my family and all special people for me. The distance from Brazil, the distance from you was not easy, but the time helped to confirm the certainty of how important you are.

Thank you all!

Preface

Working and writing about Precatorios is not an easy job, nor an easy research theme.

On one side is the government, with constant financial management pitfalls and budgetary constraints. On the other, the society, with the judicially confirmed right to receive the payments of the precatorios.

Dealing with this important issue has been a daily pitfall for me, because the state needs to find the best solution to this question. Situations where it takes a quarter century to receive the money is a thing that cannot last.

But we can't forget that the public servants only can act according to the law. So, during this 18 months that I am managing the judicial debts section on the Treasury of the State of Rio Grande do Sul, the biggest pitfall has being try to find the best alternative for maximizing our payment efficiency, according to the law.

The recent judgments of the Federal Supreme Court about the theme probably will start a new phase in this payments, once it states that the right of the people have to be attended to now.

This work has the aim of making an overview of the principal themes related to this kind of judicial debts and propose some reflections about how the states are allowed to get the money for paying judicial debts, as ordered by the Judiciary.

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1. Introduction

This paper aims to give an overview of the history of the present situation of judicial debts for the Brazilian state of Rio Grande do Sul.

The great amount of judicial debts from this state is mainly due to the wage policy of the State in 1995, when by Law 10.395/95, known as "Britto Law", several wage increases were granted. But in subsequent years they cannot be honored because the state of RS overstepped its maximum index of relationship Personal/Revenue, which at that time was defined by the "Camata Law" (60%). In the same way, the two subsequent governments did not pay it. In the early 2000s the public servants filed a lawsuit to request payment of their increases. After some years of discussion the courts understood that Rio Grande do Sul is indebted to the servants included in the group described in the Law.

In 2008, through Law 12.961 of 05/14/2008, this liability was frozen but interest still accrued, with the regular administrative payment to all beneficiaries. The State, thereafter, started to pay the wages after 2008, however, the past wages remained unpaid, from 1995 to 2008, which has begun to be paid by the state. It is estimated that this liability involves more than 200,000 lawsuits.

In 2009, by the Constitutional Amendment 62 (EC/62), the states were allowed to adopt a special Payment System, with a minimum annual monthly payment and the period of 15 years to pay the debt.

However, in the end of March/2013 the Supreme Federal Court judged the Amendment unconstitutional and now the states are trying to figure out how deal with the new rules.

2. Definitions (Translated by the author)

Precatorios

Precatorios are the result of court rulings in the amount of more than 40 times the minimum monthly wage established by federal government, per beneficiary, payable by the State Treasury in the judicial conviction.

RPVs (Small Value Recquisitions)

The RPVs have their legal basis in the constitution, specifically :

Article 86. Debts that must be paid by the federal, state, federal district, or Municipal Tax Authorities by virtue of final and non-appealable judicial decisions shall be paid in accordance with the provisions of article 100 of the federal constitution, the parceling rule established in the head paragraph of article 78 of this Temporary constitutional provisions act not being applicable, if such debts meet the following cumulative conditions:

I – having been the subject of a court order;

II – having been defined as small amount debts by the law referred to in paragraph 3 of article 100 of the Federal Constitution, or by article 87 of this Temporary Constitutional Provisions Act;

3. Payment System Established by Constitutional Amendment 62 (EC/62)

In the year of 2009, the Federal Constitution was amended to establish criteria for the states' court-ordered payments.

For these payments, the State of Rio Grande do Sul, through Decree No. 47,063, as permitted by Article 97 of the Temporary Constitutional Provisions Act of the Federal Constitution (ADCT), opted for Special Regime set out in § 1, item I, and in § 2 of the said article 97, that allows the states to pay their debts along 15 years.

Thus, for the payment of the judicial debts, the state deposits monthly 1/12 (one twelfth) of the amount corresponding to 1.5% (one point five percent) of net current revenue calculated on the second month preceding the month of deposit, in accordance with § 3 and its subsections of Article 97 of the ADCT.

Half of the funds are deposited into an account for the payment of judicial debts in chronological order of submission, respecting the constitutional preferences and other half is intended to account for payment reconciliations, auctions or ascending order of value. Within preferences are included people 60 or more years of age and people suffering from illnesses included in specific law.

The beginning of the skyrocketing amount of judicial debts to be paid

For many years the State have not paid the precatorios and the RPVs. In Governor Yeda Crusius's administration started to make the payments. The amount of processes to be paid grew exponentially and the state budget was not able to support the demand. To contain this movement the government created the Law 13756/2011.

It established an annual limit of 1.5% of RCL (Net current revenue). It also established two fixed lines, two periods of payment: 30 and 180 days, depending of the amount of the debt.

The small amount of credit will not be subject to the regime of precatorios and must be paid through escrow deposit, within 180 days from the date it is filed before the relevant governing body, the request issued by execution of the judgment, observed the chronological order itself, as regulation.

§ 1 The deadline for payment of requests, for the principal amount, where the total current is equal to or less than 7 times the minimum monthly wage established by federal government will be up to thirty days from the date the request issued by the court of enforcement is filed before the court competent observed chronologically specific.

As required by the new law, the RPV's are being restated the date of shipment to the date of payment, and, if in arrears, with added interest.

Law 13756

Article 1 These are considered of small value, for the purposes of § 3., Article. 100 of the Federal Constitution, the obligations that the State of Rio Grande do Sul, associate government agencies and their foundations should pay off due to final court decision where updated value does not to exceed 40 times the minimum monthly wage established by federal government.

Article 2 The small amount of credit will not be subject to the precatorio rules and must be paid through escrow deposit, within one hundred and eighty days from the date it is filed before the competent department, the request issued by execution of the judgment, observed the chronological order itself, as regulation.

§ 1 The deadline for payment of requests, for the principal amount, where the total current is equal to or less than 40 times the minimum monthly wage established by federal government will be up to thirty days from the date the request issued by the court of enforcement is filed before the court competent in the order they were received.

§ 2 The update of the amounts due, between dispatch and the effective payment as well as the incidence of default interest, in the event of payment arrears occur, will be conducted in accordance with § 12 of art. 100 of the Federal Constitution.

Article 4 If the value exceeds the established in Article 1, payment will be done through precatory, but the petitioner's is allowed to give up from the exceeding amount, for making the option to receive the balance by the rules in the "caput" of art. 2. of this Law.

§ 1 Shall also be given to the party judgment creditor the waiver of the excess amount to the provisions of § 1. Article 2 of this Law, so you can choose to pay the balance as provided by this device.

§ 2 The option for receiving credit as provided in this Act involves giving up the rest of the credits that may exist from the same lawsuit.

Article 5 To satisfy the requests of small value, State of Rio Grande do Sul, associate government agencies and their foundations will monthly deposit into an

account specially created for this purpose, 1/12 (one twelfth) of the amount corresponding to 1.5% (one point five percent) of current annual net revenue, in accordance with art. 97, § 3. Thereof, of Temporary Constitutional Provisions Act, the Constitution, calculated on the second month prior to the payment.

§ 1 The deposit monthly by the State, local authorities and their foundations shall be limited to the total amount due in the month under requisition of small value, where this is less than the amount provided in the "caput" of this article

§ 2 Requisitions small value of this Law shall be paid solely by the funds deposited in the account created specifically mentioned in the "caput" of this article.

§ 3 Except in cases of infringement of the right of precedence provisions of § 6, Article. 100 of the Federal Constitution, the amount can only be sequestered in the accounts of the State, local authorities and their Foundations, for failure to release the funds in a timely manner mentioned in the "caput" of this article, to the extent the amount is not deposited.

§ 4 In addition to the amount set forth in the "caput", as set forth in § 1. Hereof, shall be allocated to a special account to pay off the requests of small value, an amount equivalent to 40% (forty percent) of the increase in revenue the collection of outstanding debt, in terms of regulation, considering the following:

I - for completion of intake in each month, increased collection of outstanding debt will be verified by comparing the value of outstanding debt collected in the second month prior to the respective contribution to that collected in the third month preceding II
- will be excluded from the calculation values related to any new special programs of recovery of loans from Finance Secretariat (Sefaz).

4. History of payments



Finance Secretariat

Treasury of the state of RS

PRECATORIOS EC 62/2009

MONTHLY DEPOSITS (1,5% RCL) AND SIAC ACCOUNT BALANCE (financial data)

ACCOUNT A – PREFERENCES AND CHRONOLOGICAL ORDER

MONTH	DEPOSIT (R\$)	PAYMENTS (R\$)	INTERESTS (R\$)	³ RETURNED VALUES (R\$)	BALANCE (R\$)
Total 2010*	136.804.362,61	23.982.113,43	5.275.094,74	99.094,84	118.196.438,76
Total 2011	156.378.899,70	191.603.374,77	12.632.352,55	8.445.594,67	104.049.910,91
JAN/2012	13.611.614,39	465.055,66	927.607,62	539.810,48	118.663.887,74
FEB/2012	13.704.940,59	4.473.386,58	873.742,66	0,00	128.769.184,41
MAR/2012	13.821.556,76	23.612.622,54	939.421,16	59.514,00	119.977.053,79
APR/2012	13.839.941,59	1.162.078,45	851.927,53	64.206,66	133.571.051,12
MAY/2012	14.024.815,43	36.090.871,88	847.262,48	45.560,16	112.397.817,31
JUN/2012	14.141.089,76	17.964.183,59	713.089,34	27.050,52	109.314.863,34
JUL/2012	14.283.474,43	14.449.123,04	679.256,62	0,00	109.828.471,35
AUG/2012	14.379.031,32	4.981.303,61	744.169,33	36.573,60	120.006.941,99
SEP/2012	14.485.994,73	18.087.681,14	562.175,34	3.740,74	116.971.171,66
OCT/2012	14.492.888,95	0,00	718.720,24	1.279.058,43	133.461.839,28
NOV/2012	14.558.339,51	16.370.839,01	690.785,42	138.755,76	132.478.880,96
DEC/2012	14.605.513,95	17.798.068,54	709.394,12	0,00	129.995.720,49
Total 2012	169.949.201,41	155.455.214,04	9.257.551,86	2.194.270,35	129.995.720,49
JAN/2013	14.807.581,18	0,00	785.075,02	44.836,33	145.633.213,02
FEV/2013	14.819.158,50	13.439.551,14	673.709,19	0,00	147.686.529,57
MAR/2013	14.920.550,81	29.278.312,44	691.456,84	44.104,57	134.064.329,35
TOTAL	507.679.754,21	413.758.565,82	29.315.240,20	10.827.900,76	

ACCOUNT B - ANOTHER MODALITIES

MONTH	DEPOSIT (R\$)	PAYMENTS (R\$)	INTERESTS (R\$)	³ RETURNED VALUES (R\$)	BALANCE (R\$)
Total 2010*	136.804.362,61	0,00	6.059.398,99	0,00	142.863.761,60
Total 2011	156.378.899,70	90.310.063,88	22.294.048,29	15.253.928,97	246.480.574,68
JAN/2012	13.611.614,39	437.737,45	2.195.878,15	731.431,40	262.581.761,17
FEB/2012	13.704.940,59	2.779.069,42	1.954.401,57	0,00	275.462.033,91
MAR/2012	13.821.556,76	10.984.848,15	2.218.153,99	1.143,22	280.518.039,73
APR/2012	13.839.941,59	1.295.930,42	1.993.378,05	0,00	295.055.428,95
MAY/2012	14.024.815,43	14.900.699,45	2.127.354,41	0,00	296.306.899,34
JUN/2012	14.141.089,76	1.663.671,62	1.899.939,96	1.068.349,36	311.752.606,80
JUL/2012	14.283.474,43	3.003.046,18	2.107.498,78	18.248,15	325.158.781,98
AUG/2012	14.379.031,32	3.006.060,73	2.238.481,29	0,00	338.770.233,86
SEP/2012	14.485.994,73	36.336.486,20	1.634.847,53	57.220,61	318.611.810,53
OCT/2012	14.492.888,95	0,00	1.946.120,49	9.936,18	335.060.756,15
NOV/2012	14.558.339,51	8.417.552,99	1.817.425,07	0,00	343.018.967,74
DEC/2012	14.605.513,95	6.155.653,61	1.884.479,82	1.234.227,11	354.587.535,01
Total 2012	169.949.201,41	88.980.756,22	24.017.959,11	3.120.556,03	354.587.535,01
JAN/2013	14.807.581,18	0,00	2.134.446,71	0,00	371.529.562,90
FEV/2013	14.819.158,50	17.064.390,78	1.801.845,81	0,00	371.086.176,43
MAR/2013	14.920.550,81	51.916.744,00	1.905.056,68	4.072.236,93	340.067.276,85
TOTAL	507.679.754,21	248.271.954,88	58.212.755,59	22.446.721,93	

A + B TOTAL VALUES

MONTH	DEPOSIT (R\$)	PAYMENTS (R\$)	INTERESTS (R\$)	³ RETURNED VALUES (R\$)	BALANCE (R\$)
Total 2010*	273.608.725,22	23.982.113,43	11.334.493,73	99.094,84	261.060.200,36
Total 2011	312.757.799,40	281.913.438,65	34.926.400,84	23.699.523,64	350.530.485,59
Total 2012	339.898.402,82	244.435.970,26	33.275.510,97	5.314.826,38	484.583.255,50
JAN/2013	29.615.162,36	0,00	2.919.521,73	44.836,33	517.162.775,92

FEB/2013	29.638.317,00	30.503.941,92	2.475.555,00	0,00	518.772.706,00
MAR/2013	29.841.101,62	81.195.056,44	2.596.513,52	4.116.341,50	474.131.606,20
TOTAL	1.015.359.508,42	662.030.520,70	87.527.995,79	33.274.622,69	



Finance Secretariat

Treasury of the state of RS

VALUES DEPOSITED TO PAY OFF PRECATORIOS - Art 97, § 2 ADCT

Month	Net Income Revenue month	12-month Net Income Revenue	1/12 of 1,5% Net Income Revenue	Account 11.327155.0-8 - "Precatorios EC 62/09 – RS State – chronological order"	Conta 11.327156.0-5 - "Precatorios EC 62/09 – RS State – another modalities"
Jan-12	Nov-11	21.778.583.025,35	27.223.228,78	13.611.614,39	13.611.614,39
Feb-12	Dec-11	21.927.904.938,78	R\$ 27.409.881,17	R\$13.704.940,59	13.704.940,59
Mar-12	Jan-12	22.114.490.812,66	27.643.113,52	13.821.556,76	13.821.556,76
Apr-12	Feb-12	22.143.906.550,07	27.679.883,19	13.839.941,59	13.839.941,59
May-12	Mar-12	22.439.704.689,94	28.049.630,86	14.024.815,43	14.024.815,43
Jun-12	Apr-12	22.625.743.618,91	28.282.179,52	14.141.089,76	14.141.089,76
Jul-12	May-12	22.853.559.077,24	28.566.948,85	14.283.474,43	14.283.474,43
Aug-12	Jun-12	23.006.450.117,35	28.758.062,65	14.379.031,32	14.379.031,32
Sep-12	Jul-12	23.177.591.560,56	28.971.989,45	14.485.994,73	14.485.994,73
Oct-12	Aug-12	23.188.622.319,42	28.985.777,90	14.492.888,95	14.492.888,95
Nov-12	Sep-12	23.293.343.230,00	29.116.679,04	14.558.339,51	14.558.339,51
Dec-12	Oct-12	23.368.822.311,41	29.211.027,89	14.605.513,95	14.605.513,95
Jan-13	Nov-12	23.692.129.885,04	29.615.162,36	14.807.581,18	14.807.581,18
Feb-13	Dec-12	23.710.653.600,52	29.638.317,00	14.819.158,50	14.819.158,50
Mar-13	Jan-13	23.872.881.296,84	29.841.101,62	14.920.550,81	14.920.550,81

FONTE: CAGE Reports/ SEFAZ - RS



Finance Secretariat

Treasury of the state of RS

Precatorios and RPV Payments History, from 1999 to 2012			
Year	Precatórios ¹	RPVs ²	Total (R\$)
1999	9.790.943		9.790.943
2000	6.744.406		6.744.406
2001	299.231		299.231
2002	5.106.571		5.106.571
2003	2.722.862		2.722.862
2004	11.092.792	1.856.266	12.949.058
2005	10.360.232	4.089.287	14.449.519
2006	7.515.544	10.580.249	18.095.793
2007	1.045.603	21.265.220	22.310.823
2008	7.430.931	61.169.640	68.600.571
2009	82.675.349	220.020.789	302.696.138
2010	273.608.725	498.330.977	771.939.702
2011	312.757.799	484.184.329	796.942.128
2012	339.898.403	343.125.116 ³	683.023.519

Source: Reports and DW SEFAZ - RS

Note 1: Values according to EC/62 and Decree 47.063/2010.

Note 2: RPVs created by EC 37/2002

Note 3: Values according to Law 13.756/2011.

Major changes introduced by Law 13,756, published on 18.07.2011:

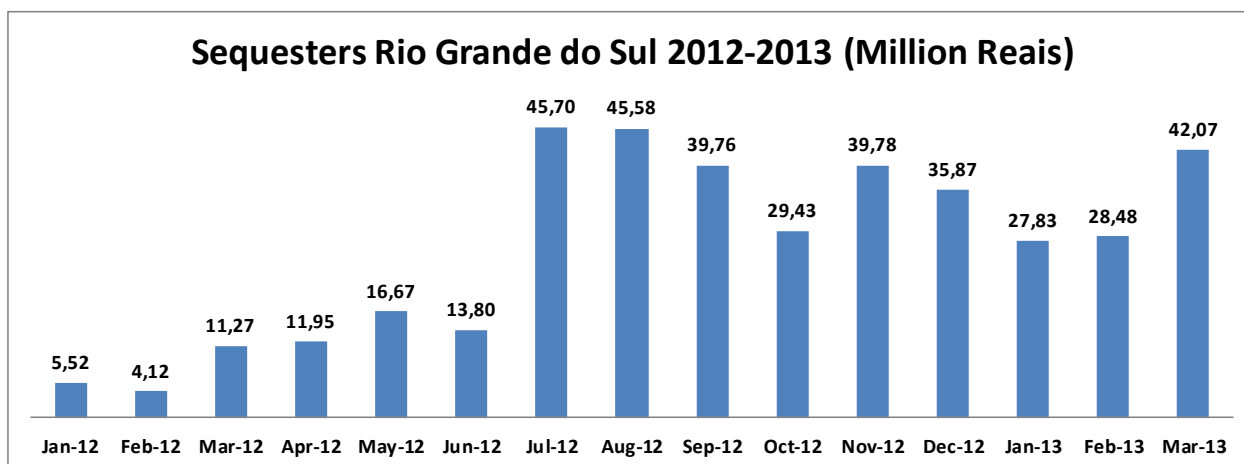
- RPV's value with up to 7 times the minimum monthly wage established by federal government the payment period was reduced from 60 days to 30 days;
- RPV's with values greater than 7 times the minimum monthly wage established by federal government had changed the deadline from 60 days to 180 days;
- The RPV's start to be paid solely from the monthly contribution of the state, in a specific account, the amount corresponding to 1/12 of 1.5% of its Net Current Revenue - RCL, adding further value equivalent to 40% of the increase in collection of the Debt;
- The above changes affect the RPV's filed with the competent state (Finance Secretariat-SEFAZ or Attorney State General - PGE), from the publication of the Law;

Amounts deposited in a specific account from Jan/2012 (1/12 of 1.5% of RCL + 40% increase in the recovery of Debts):

These amounts are being deposited in a specific account, opened exclusively for this purpose, and do not appear in the system Box Single State, with their financial returns appropriate to their own account.

The chronological order and sequesters:

As the law stipulates, payments shall be made respecting the chronological order. However, due to sequesters and restricted deposits in the accounts of the State, amounts related to RPV's, eluding the predictability and scope of the Secretary of the Treasury, increase the difficulties in implementing the chronological order. In fact, every judicial sequester skip the line, which have to be completely reconstituted every time.



Consequences of increased volume of sequesters:

To make the monthly payments from the monthly amount deposited in the account-specific RPV's, SEFAZ pay first the RPV's due in 30 days and then the maturing within 180 days. As can be seen in the table, the value of sequesters multiplied by 10 compared with the beginning of 2012. This increase makes it impossible to continue the payment of RPV's maturing in 180 days, since the value has been sequestered is greater than the amount deposited in the special account for payment of RPV's

Causes of the Value Sequester

The judicial sequester is currently carried out by the judge, through a system called "BACEN-JUD" that can "sweep" all accounts of the state to find enough cash to sequester. The amount actually comes out of the State account and made available to the court, which is subsequently deposited in a judicial account. After the judge authorizes the lawyer to withdraw the money, the lawyer deducts his fee and then gives the balance to the client.

Sequesters occur mainly for two reasons:

- Operational problems, management, depending on the lot, the RPV was not paid within the prescribed period (currently on a smaller scale);
- The judges in the state interpreting the law differently.

5. Initiatives of the State of Rio Grande do Sul to rationalize payments of Precatórios and RPVs

After the skyrocketing amount of judicial debts to be paid, became clear that the payment work could be improved. The amount of people working in the departments was becoming bigger and bigger also.

These involved in the direct payment process are: Court of Justice, Attorney State General (PGE) and the Finance Secretariat. The responsibilities of each participant are as follows:

- Court (TJ): precatórios queue management, selection of judicial requests for payment of amounts payable update, and dispatching the license payment.
- PGE: an analysis of process values (original and updated).
- Finance Secretariat: calculation of tax and social security withholdings, commitment, settlement and payment.

All the above steps were implemented in systems and processes through individual and without communication.

The PRE system creates a common environment for those involved in order to expedite the analysis, avoiding rework, facilitate controls and allow economies of scale in the process as a whole.

Solution

The PRE was developed to centralize in a single platform, the data and analyzes all precatórios to better monitor, manage and pay.

This way will be possible:

- Decrease the time needed for payment of the precatório;
- Eliminate the need for rework caused by typing the same information in multiple systems;
- Allow the management and control of an integrated writ of the state;
- Diminish the amount of sequestrers

System goals

The PRE system was developed by the State Treasury to enable full automation of process requisitions Small Value (RPVs) and enable the integration of all areas involved in this process, since the presentation of the calculation to the expedition permit for payment of RPV. Moreover, the system eliminates triple typing of RPVs - currently the data are entered in PGE, in SEFAZ and TJ - which will speed up the processing of litigation.

Currently the RPVs of Court for payment are processed using the PRE, which has already generated great saving of time in processing orders.

Key features

Among the main features of the PRE system are included:

- Value party calculation
- Calculation of fees
- RPV Resume
- Automation of PGE
- Decision of the Judge
- Automation Expedition RPV

Number and profile of users

Number of active users: 560

User Profile for:

- Administrators - 3
- PRE - Calculation of IRC - 36
- PRE - Consultation - 495
- PRE - Engagement Manager - 3
- PRE - Commitment Operator - 21
- PRE - Production - 58
- PRE - Recalculation of tax - 6
- PRE - Sequester - 21

IT Infrastructure Support

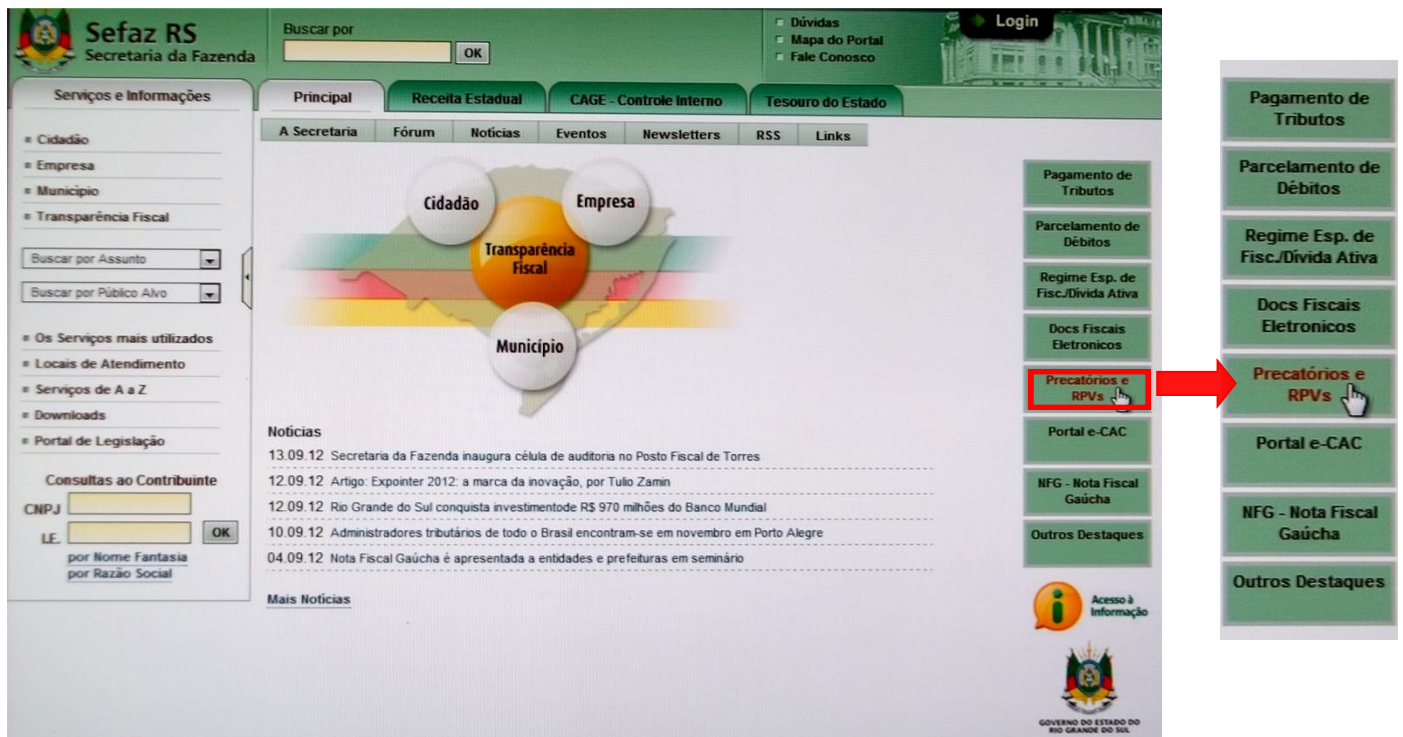
The PRE system has the following IT infrastructure support:

- Database Server: Virtual Operating System with Microsoft Windows Server 2008 R2, with 16 Gb of RAM and 1 TB Hard Disk Database and Microsoft SQL Server 2008 R2
- Application Server: Virtual Operating System with Microsoft Windows Server 2008 R2, with 8 Gb of RAM and 90 GB Hard Drive, and Microsoft Internet Information Server. Net Framework 3.5



6. Initiatives of the State of Rio Grande do Sul to publicize the payment of Precatórios and RPVs

In order to improve the transparency in the payments of RPVs, the Treasury developed a functionality on the Finance Secretariat website that allows those making searches to also know about the payment status of an RPV.



1. Type <http://www.sefaz.rs.gov.br>

2. Click the Precatórios e RPVs button

3. Click Consulta Pagamentos RPV

4. Insert one of the 3 required data (CPF Individual taxpayer Registry number, execution number or Administrative Number)

5. Click Send

For more information, see the menu "Precatórios and RPVs"

For searching Precatórios access <http://www.tjrs.jus.br/busca/?tb=proc>

Judicial debts volume of Brazilian States

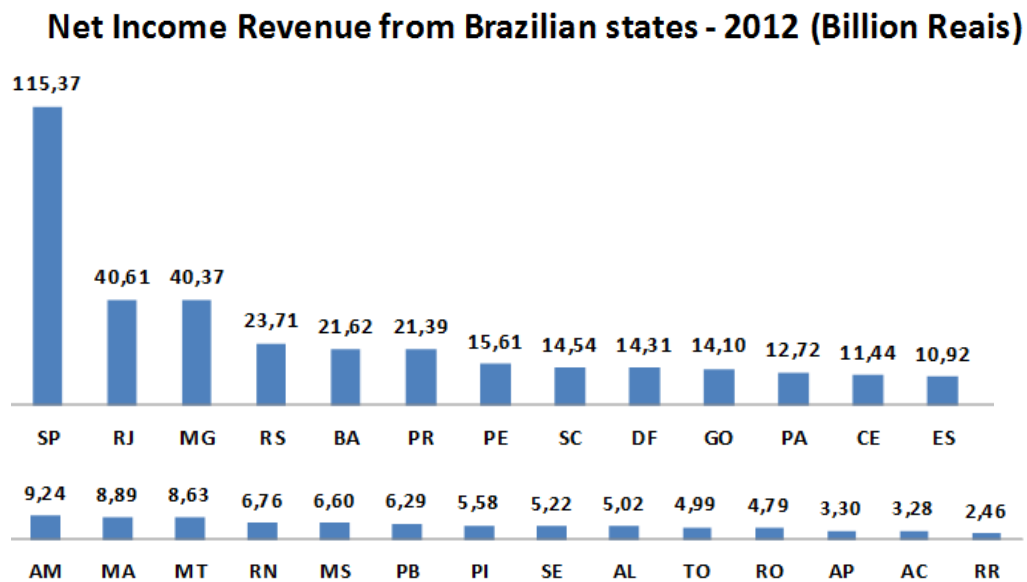
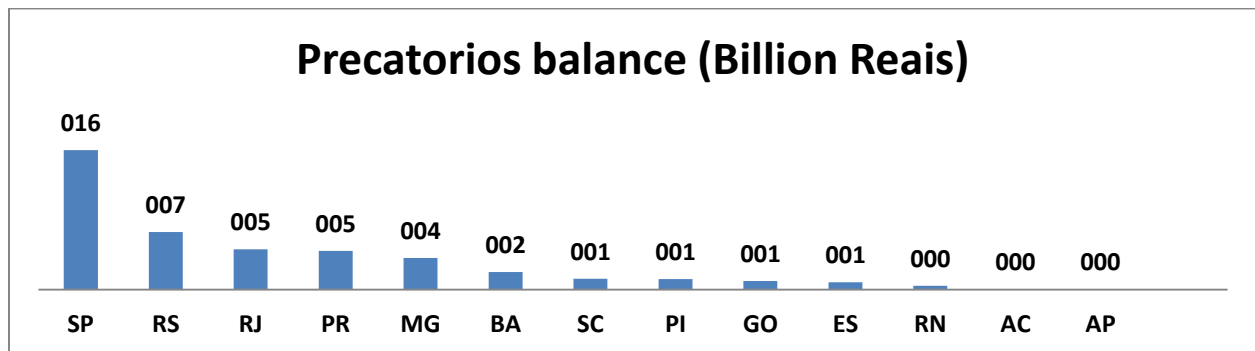
The Judicial debts are not only a big problem for the state of Rio Grande do Sul, as can be seen in the following table:

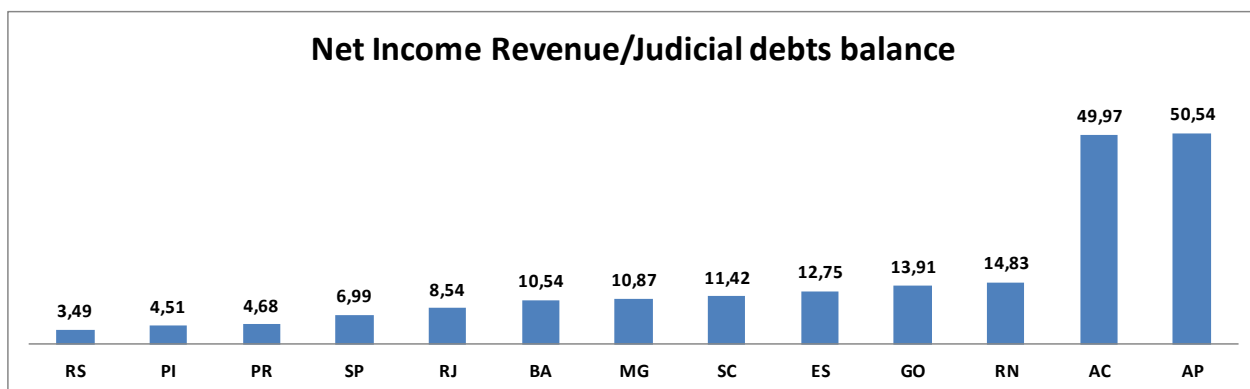
UF	Precatorios Balance (values in Reais)				
	Total Balance in 2012	Transference to tribunal in 2010	Transference to Tribunal in 2011	Transference to Tribunal in 2012	Forecast paymet in 2013
AC	65.667.868,65	10.301.474,40	8.204.681,82	7.607.987,63	7.606.242,48
AP	65.329.443,52	1.627.378,76	3.632.000,00	5.444.120,29	6.000.000,00
BA	2.052.180.052,23	98.528.432,04	102.745.452,90	134.462.905,00	171.015.004,33
ES	856.459.950,00	127.381.968,62	175.857.428,14	205.817.812,23	200.704.706,00
GO	1.014.147.904,13	56.109.508,16	64.351.650,66	69.767.416,10	75.592.956,84
MG	3.714.608.773,69	96.000.000,00	185.897.568,24	282.698.134,80	309.550.731,14
PI	1.235.013.063,45	43.183.255,02	57.861.610,14	63.750.032,91	76.814.500,39
PR	4.574.036.729,78	264.671.913,40	356.087.422,16	413.308.816,08	473.064.774,70
RJ	4.755.878.307,80	175.166.514,32	253.009.597,06	337.705.671,74	469.643.306,00
RN	456.000.000,00	23.333.333,33	23.333.333,33	23.333.333,33	38.000.000,00
RS	6.800.000.000,00	273.608.725,00	312.757.799,00	339.898.403,00	367.000.000,00
SC	1.273.255.618,42	37.501.411,10	42.398.226,48	44.097.199,20	99.352.464,36
SP	16.493.497.643,93	1.387.079.132,12	1.545.533.557,64	1.673.972.102,30	1.752.580.467,50
TOTAL	43.356.075.355,60	2.594.493.046,27	3.131.670.327,57	3.601.863.934,61	4.040.925.153,74

Source: Technical report about unconstitutionality of ammendment 62 – by CONFAZ (Financial Policies National Council) Date: 04/08/2013

Another data important to be analyzed is the capacity of the states to pay their judicial debts, compared with their Net Income Revenue

As can be see the state of Rio Grande do Sul has the second biggest debt with precatorios, the forth Net Income Revenue, but the worst relation.





7. The recent judgment of Supreme Federal Court (STF)

If before, for many states, specially Rio Grande do Sul, was not easy to pay the precatórios, now it became more difficult because of the recent decision of the STF.

Recently the STF was petitioned via direct actions of unconstitutionality (ADI) number 4425 and 4357. These petitions were against the EC/62 and articles of the Temporary Constitutional Provisions Act.

The ADI 4425 questioned the constitutionality of Articles 2 (which adds Article 97 to the Temporary Constitutional Provisions Act), 3, 4 and 6, all of Constitutional Amendment No. 62/2009, in addition to paragraphs 9 and 12 from Article 100 of the Constitution, introduced by Article 1 of the EC/62.

The ADI 4357 questioned the art. ADCT 97 to plus 62 EC by instituting special arrangements for payment of writ by States, Federal District and Municipalities.

After the judgment the ministers concluded by the complete unconstitutionality of the Special Payment system introduced by Article 97 EC 62 in ADCT, and for unconstitutionality of some parts of article 100 as follows:

Previous text	New text
<p>article 100. payments owed by the federal, state, federal district, or municipal treasuries, by virtue of a court decision, shall be made exclusively in chronological order of submission of court orders and charged to the respective credits, it being forbidden to designate cases or persons in the budgetary appropriations and in the additional credits opened for such purpose. (CA No. 20, 1998; CA No. 30, 2000; CA No. 37, 2002; CA No. 62, 2009)</p>	<p>article 100. payments owed by the federal, state, federal district, or municipal treasuries, by virtue of a court decision, shall be made exclusively in chronological order of submission of court orders and charged to the respective credits, it being forbidden to designate cases or persons in the budgetary appropriations and in the additional credits opened for such purpose. (CA No. 20, 1998; CA No. 30, 2000; CA No. 37, 2002; CA No. 62, 2009)</p>
<p>paragraph 1. support-related debts include those arising from wages, salaries, pay, pensions, and their supplementations, social security benefits and compensation for death and disability, such compensation being based on civil liability, by virtue of a final and unappealable judicial decision, and shall be paid before any other debts, except those referred to in paragraph 2 of this article.</p>	<p>paragraph 1. support-related debts include those arising from wages, salaries, pay, pensions, and their supplementations, social security benefits and compensation for death and disability, such compensation being based on civil liability, by virtue of a final and unappealable judicial decision, and shall be paid before any other debts, except those referred to in paragraph 2 of this article.</p>

<p>paragraph 2. support-related debts owed to persons aged 60 (sixty) or over on the date the respective court order is issued, or to persons with serious diseases, as defined by law, shall be paid before any other debts, up to an amount equivalent to three times the amount stipulated by law for the purposes of paragraph 3 of this article, parceling for such end being permitted, whereas the remaining amount shall be paid according to the chronological order of submission of respective court order.</p>	<p>paragraph 2. support-related debts owed to persons aged 60 (sixty) or over on the date the respective court order is issued, or to persons with serious diseases, as defined by law, shall be paid before any other debts, up to an amount equivalent to three times the amount stipulated by law for the purposes of paragraph 3 of this article, parceling for such end being permitted, whereas the remaining amount shall be paid according to the chronological order of submission of respective court order.</p>
<p>paragraph 3. the provision contained in the head paragraph of this article, regarding the issuance of court orders, does not apply to obligations defined by law as small amounts, which must be paid by the treasuries herein referred to by virtue of a final and unappealable court decision.</p>	<p>paragraph 3. the provision contained in the head paragraph of this article, regarding the issuance of court orders, does not apply to obligations defined by law as small amounts, which must be paid by the treasuries herein referred to by virtue of a final and unappealable court decision.</p>
<p>paragraph 4. for the purposes of the provision of paragraph 3, different amounts may be stipulated for the</p>	<p>paragraph 4. for the purposes of the provision of paragraph 3, different amounts may be stipulated for the</p>

<p>federating units through their own legislation and according to their various economic capabilities, whereas the minimum amount shall be equal to the amount of the highest benefit paid by the general Social Security scheme.</p>	<p>federating units through their own legislation and according to their various economic capabilities, whereas the minimum amount shall be equal to the amount of the highest benefit paid by the general Social Security scheme.</p>
<p>paragraph 5. it is mandatory for the budgets of the federating units to include the funds required for payment of debts arising from final and unappealable judicial decisions, stated in court orders submitted until or on July 1, and payment shall be made before the close of the subsequent fiscal year, on which date their amounts shall be adjusted for inflation.</p>	<p>paragraph 5. it is mandatory for the budgets of the federating units to include the funds required for payment of debts arising from final and unappealable judicial decisions, stated in court orders submitted until or on July 1, and payment shall be made before the close of the subsequent fiscal year, on which date their amounts shall be adjusted for inflation.</p>
<p>paragraph 6. the budgetary allocations and the credits opened shall be assigned to the Judicial power, it being within the competence of the presiding Judge of the court which rendered the decision of execution to determine full payment and to authorize – upon petition of a creditor and exclusively in the event that his right of</p>	<p>paragraph 6. the budgetary allocations and the credits opened shall be assigned to the Judicial power, it being within the competence of the presiding Judge of the court which rendered the decision of execution to determine full payment and to authorize – upon petition of a creditor and exclusively in the event that his right of</p>

precedence is not respected or that the amount necessary to satisfy the debt has not been set aside – attachment of the respective amount.	precedence is not respected or that the amount necessary to satisfy the debt has not been set aside – attachment of the respective amount.
Paragraph 7. The Presiding Judge of the appropriate Court who, by means of an act or omission, delays or attempts to frustrate the regular payment of a court-ordered debt shall be liable to crime of malversation and shall also appear before the national council of Justice.	Paragraph 7. The Presiding Judge of the appropriate Court who, by means of an act or omission, delays or attempts to frustrate the regular payment of a court-ordered debt shall be liable to crime of malversation and shall also appear before the national council of Justice.
paragraph 8. the issuance of a court order as a supplementation to or in addition to an amount already paid, as well as the parceling, apportionment, or reduction of the amount under execution – so that the provision of paragraph 3 may be applied to a portion of the total amount – are forbidden.	paragraph 8. the issuance of a court order as a supplementation to or in addition to an amount already paid, as well as the parceling, apportionment, or reduction of the amount under execution – so that the provision of paragraph 3 may be applied to a portion of the total amount – are forbidden.
paragraph 9. at the time a court order is issued, irrespective of the relevant regulation, there shall be deducted from such court order, for the purpose of a set-	paragraph 9. at the time a court order is issued, irrespective of the relevant regulation, there shall be deducted from such court order, for the purpose of a set-

<p>off, an amount corresponding to clear legal debits, either registered or not under debts in execution and attributed to the original creditor by the treasury in debt, including future accruing installments of parcelings, save for those whose execution has been stayed by virtue of administrative or judicial challenge.</p>	<p>off, an amount corresponding to clear legal debits, either registered or not under debts in execution and attributed to the original creditor by the treasury in debt, including future accruing installments of parcelings, save for those whose execution has been stayed by virtue of administrative or judicial challenge.</p>
<p>paragraph 10. before a court order is issued, the relevant court shall request that the Treasury in debt must provide, within 30 (thirty) days, otherwise subject to loss of the right to offset, information on the debits which meet the conditions stipulated in paragraph 9, for the purposes set forth in said paragraph.</p>	<p>paragraph 10. before a court order is issued, the relevant court shall request that the Treasury in debt must provide, within 30 (thirty) days, otherwise subject to loss of the right to offset, information on the debits which meet the conditions stipulated in paragraph 9, for the purposes set forth in said paragraph.</p>
<p>paragraph 11. in accordance with legislation of the federating unit in debt, a creditor may employ court order credits to purchase public property belonging to the respective federating unit.</p>	<p>paragraph 11. in accordance with legislation of the federating unit in debt, a creditor may employ court order credits to purchase public property belonging to the respective federating unit.</p>

<p>paragraph 12. as from the date constitutional amendment no. 62 is enacted, the amounts stated in court orders, after such court orders are issued up until effective payment, irrespective of their nature, shall be adjusted according to the official rate applied to savings accounts, whereas, for the purpose of compensation of delay in the payment, simple interest will be applied at the same percentage of interest applied to savings accounts, the employment of compensatory interest being excluded.</p>	<p>paragraph 12. as from the date constitutional amendment no. 62 is enacted, the amounts stated in court orders, after such court orders are issued up until effective payment, irrespective of their nature, shall be adjusted according to the official rate applied to savings accounts, whereas, for the purpose of compensation of delay in the payment, simple interest will be applied at the same percentage of interest applied to savings accounts, the employment of compensatory interest being excluded.</p>
<p>paragraph 13. creditors may assign their court order credits, in whole or in part, to third parties, irrespective of consent by the debtor, and the provisions of paragraphs 2 and 3 shall not be applied to the assignee.</p>	<p>paragraph 13. creditors may assign their court order credits, in whole or in part, to third parties, irrespective of consent by the debtor, and the provisions of paragraphs 2 and 3 shall not be applied to the assignee.</p>
<p>paragraph 14. assignment of court order credits shall only produce effects after communication to the court of origin and to the federating unit in debt by filing a relevant petition.</p>	<p>paragraph 14. assignment of court order credits shall only produce effects after communication to the court of origin and to the federating unit in debt by filing a relevant petition.</p>

Paragraph 15. Without prejudice to the provisions of this article, a supplementary law to this federal constitution may establish a special regime for the payment of court-ordered debts owed by states, the federal district, and Municipalities, providing for earmarked net current revenues and for payment term and methods.	Paragraph 15. Without prejudice to the provisions of this article, a supplementary law to this federal constitution may establish a special regime for the payment of court-ordered debts owed by states, the federal district, and Municipalities, providing for earmarked net current revenues and for payment term and methods.
paragraph 16. the federal Government may, at its own discretion and under the terms of relevant law, take on debts resulting from court orders issued against a State, the Federal District, or a Municipality, and refinance them directly.	paragraph 16. the federal Government may, at its own discretion and under the terms of relevant law, take on debts resulting from court orders issued against a State, the Federal District, or a Municipality, and refinance them directly.

Now the discussion is focused in how the states and municipalities will apply this decision, once it has only general orientations. In order to receive this answers the Attorney general of Para, Sao Paulo, Goias, Mato Grosso do Sul, Piaui, Rio Grande do Sul e Sergipe petitioned the court asking about the details for this modulation effects.

In terms of this effects of modulation, there are three possibilities:

a) effects ex tunc (retroactive effects);

b) effect of the publication of the decision or judgment, and

c) effect of the date projected for the future.

The proposal for the state getting the money for paying the judicial debts

For attending to the order of the Federal Supreme Court, it seems that the Federal Level will have to help the states and the municipalities, especially the ones with big debts. One option for making it, using the permission from paragraph 16 of article 100, would it be by debt securitization.

According to the National Treasury website:

“Securitization is the process by which an issuer creates a financial instrument from other assets, going to market to investors shares or quotas of this new instrument. This process can include various types of financial assets and promotes liquidity in the market. Under the Treasury securitization can be defined as the rescheduling of debts, with the underlying mechanism novation contract.

For creditors, the process has as its main advantage the recovery of the liquidity of its assets. From the point of view of the Government, securitization allows not only the adequacy of the financial liabilities of the Treasury to their ability to pay, but also contributes in a significant way to the rescue of public sector credit.

Currently, except for Fund Salary Variation Compensation (FCVS) debt, which has its own title set in law, debt securitization is effected through the issuance of only one kind of public security, in line with the objective of the Treasury, a national reduction

in the number of instruments and to provide greater liquidity for its securities. To this end, the title used is the National Treasury Notes - Series B - NTN-B.”

So, following this idea, the National Treasury would be able to issue bonds and sell them in the market, transferring the resources to the states in the form of the disbursements.

8. Conclusion

As can be seen in this paper, the issue of judicial debts has critical importance to the state of Rio Grande do Sul.

The amount of debts owed by the state of Rio Grande do Sul is among the biggest of all Brazilian states. It makes the situation especially difficult to manage. On the other side, however, there are people with their rights recognized by the Judiciary.

The state used to argue that it could not pay more because of the lack of money. Additionally, paying more would mean cutting public services for the public.

The decision of the Federal Supreme Court comes to define many important points in this discussion.

By the time the court determined that the states have to pay now the judicial debts, the discussion changed. Instead of debating the fact of having or not having money to pay, now the relevant discussion is how the states will get the money for paying the debts.

Regardless, the Federal Supreme Court has not answered the petition from the states about the modulation of the decision. Although until this moment the Court haven't published the appellate decision, nor the way in which it will be modulated, the decision of the Federal Supreme Court itself is an important fact because it will apparently force the States and the Federal level to find a faster solution to this problem. It could be an opportunity for the actual government of Rio Grande do Sul to do what former governments have not done completely: pay its Britto law judicial debts to society. And, the issuance of bonds by the Treasury for the states and municipalities would be a good viable option.

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10. Appendix

Glossary (from Supreme Federal Court)

Administrative Process ("Processo Administrativo")

Proceeding related to a government employee performing their duties. It may be a request for some benefit or a verification of a violation complaint, for example.

Procedures: The authority aware of any irregularities in public service is obliged to promote their immediate determination through an administrative disciplinary proceeding. The accused has the right to legal defense. The administrative process may be initiated by official letter or by request of the interested party. The initial request of the interested party must be written and contain the administrative entity or authority for whom is addressed, the identification of the concerned or their representative, the domicile or place for receiving communications, the request, with the facts exposed and its foundations, and the date and signature of the applicant or his representative.

Legal Basis: Arts. 131, 142 and 143 to 182 of Law No. 8112 of 12/11/90 (Federal Register, 12.12.90), as amended by Law No. 9527 (Federal Register 12.11.97). Article 2 of Law 9784 of 29/1/1999.

In portuguese: Processo administrativo

Appellate decision ("Acórdão")

Decision of the collegiate court. The lawyer can only appeal after the ruling is published in the Justice Journal of the Union.

Docket ("Acompanhamento processual")

In Brazil, docket is available on the Supreme Court website by simply filling certain fields such as name and case number (not available, however, for *in camera proceedings*). Lawyers may also see the record in person at the Court.

Web Docket: <http://www.stf.jus.br/portal/processo/pesquisarProcesso.asp>

See also: *E-filing*

Federal Intervention ("Intervenção Federal" - IF)

It is the measure of an exceptional and temporary suspends the autonomy of the states, Federal District or municipalities. The intervention can only occur in cases and limits established by the Constitution:

- When there is coercion against the Judiciary, to ensure the its free exercise (may occur on its own initiative, ie without the need for provocation or request of the interested party);- When a judicial order or decision is disobeyed (may occur on its own initiative, ie without the need for provocation or request of the interested party);- When there is a representation from the Federal Public Prosecutor (art. 34, VII of the Constitution);In the case of disobedience of court order, the Supreme also process requests forwarded by the President of the

Court of the state or federal court. If the disrespected order is from the Supreme Court, the party may also request action.

Parties: In the Supreme Court, the only requests for federal intervention processed are the ones against the states and Federal District.

Processing: The President of the Supreme Court is the rapporteur of requests for federal intervention. Before taking the case to trial, he takes actions that seem appropriate to resolve the issue administratively. If this is not possible, the process proceeds normally, with the state authority and the Federal Public Prosecutor being heard. Then, the process is brought to the plenary assembly.

Legal Consequences: Upheld the request, the President of the Supreme Court shall communicate the decision to the concerning Government agencies and request the intervention to the President, who shall, through a decree, determine the measure.

The decree of intervention, which specifies the extent, the term and conditions of implementation, shall be considered by the Congress in 24 hours. In cases of disobedience to court or the Prosecutor's Office, that assessment is waived. The decree in this case is limited to suspend execution of the act that led to intervention, it is sufficient to restore normality.

Legal basis: Federal Constitution, articles 34 to 36. 8.039/1990 Law, art. 19 et seq. Internal Regulation of the Supreme Court, Articles 350 to 354.

In portuguese: Intervenção federal

Filing ("Ajuizamento")

When one says that a lawsuit was filed, it means that it was brought before the judge or the court. It became, therefore, the object of a procedure.

See also: *Initial Pleading*

Final decision ("Decisão definitiva")

Claim preclusion – as when there has been a final judgment that is no longer subject to appeal.

In portuguese: Decisão definitiva

Item ("Inciso")

In the Brazilian codes, item is the subdivision of an article, often represented by a roman numeral (e.g.: I, XXXV etc..). For example, Article 5 of the Brazilian Constitution has 78 items. The items, in turn, are subdivided in subitems.

See also: paragraph, subitem.

In portuguese: Inciso

Legal Opinion ("Parecer")

Technical opinion of a lawyer, legal advisor, member of the Prosecutor's Office or any competent official on a determined issue. Judges only dispatch or decide, but they never give advice. In the Supreme Court, the legal opinion is primarily a manifestation of the Federal Public Prosecutor on the processes.

In portuguese: Parecer

Section ("Parágrafo")

In Brazilian codes of law, sections are represented by the symbol § (as they are called '*parágrafo*'). They complement the articles of law, being a secondary provision to their introduction ('*caput*'). Sections are not subdivisions as are items and subitems. When there is only one section, it is called "*parágrafo único*".

Subitem ("Alínea")

In the Brazilian code, the subitem (*alínea*) is the subdivision of an item (*inciso*). The item is always represented by a letter.

See also: *Section*