
THE NEW BRAZILIAN CODE OF CIVIL PROCEDURE AND THE POSSIBILITY OF ADVANCED PARTIAL JUDGMENT OF THE LAWSUIT

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Concerned about the length of proceedings in Brazil, the Brazilian legislator brings in the New Code of Civil Procedure the possibility for the applicant to obtain the judgment of part of its claims in advance.

In force since March 18th, 2016, the new Brazilian Code of Civil Procedure (CPC) promoted various significant changes to the procedural rules applicable in the country.

The legislator's main objective with the adoption of the new code was to introduce new mechanisms in order to solve the various problems verified in the Brazilian Judiciary, especially the recurring procedural delays.

Based on this premise, the new CPC instituted the possibility of adopting a partial judgment in the lawsuits, when the Court verifies the existence of different requests by the plaintiffs that can be ruled at different times.

Under the previous legislation, the parties were not entitled to obtain the advanced definitive judgment of only one or part of their claims.

The new CPC, therefore, promotes a significant change in relation to this matter, altering the whole procedural dynamics in Brazil.

Article 365 of the new CPC, which is responsible for regulating the issue, created two requirements for obtaining the advanced partial judgment of lawsuits.

The first one refers to the lack of controversy as to the Party's claim. The second requirement is that the production of new evidence related to the claim is not needed, or the lack of response by the Defendant concerning the claim.

If the fulfillment of these two conditions is verified, the Court may rule the case partially, accepting or rejecting in advance one or part of the plaintiff's claims. The remaining claims, in this case, are subject to further analysis and shall be ruled further to the production of evidence.

In order to illustrate this new possibility introduced by the new code, we take as an example the case of a consumer who files a lawsuit against a medical clinic seeking the reimbursement of amounts related to improper charges, as well as compensation for damages for a defective provision of service. In this case, if the irregular charges can be proved exclusively through documents, while proof of the defective service – on the other hand – depends on an expertise, the applicant is entitled to claim for the partial judgment of the lawsuit.

It is important to note that the appeals against the partial judgment decisions on the merits do

not suspend the decision. The winning party is, thus, entitled to immediately and provisionally enforce the partial judgment, regardless of the presentation of a guarantee to the Court, and also if the counterpart filed an appeal.

In the event an appeal is not filed by the losing party, or if it is filed but rejected, the enforcement proceeding becomes final. If the partial judgment is partly revised, the party favored by the provisional execution may compensate the other party for any financial loss suffered in the lawsuit.

Considering the still recent entry into force of the new CPC, the applicability of the partial judgment on the merits will certainly still be extensively debated in the Brazilian Courts and, thus, many new questions concerning the matter may arise in the near future.

Almeida Advogados has a team specialized in Civil Law and Procedural Law, which is available to clarify any question regarding the topic discussed in this article.