

CPC/2015, juristocracia e os limites da criatividade judicial: efetividade da execução, segurança jurídica e autocontenção hermenêutica

CPC/2015, juristocracy, and the limits of judicial creativity

CPC/2015, juristocracia y los límites de la creatividad judicial

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RESUMO O artigo examina a tensão entre efetividade executiva e segurança jurídica no âmbito do Código de Processo Civil de 2015. Parte-se da premissa de que o CPC/2015 foi concebido não apenas como instrumento de aceleração procedimental, mas como projeto de racionalização, coerência, integridade e previsibilidade decisória. A partir de uma reconstrução teórica do fenômeno da juristocracia, sustenta-se que a interpretação judicial para além da literalidade é, em certos contextos, legítima e até necessária, sobretudo diante da textura aberta da linguagem jurídica e da maior velocidade das transformações sociais em comparação com o tempo do processo legislativo. Essa ampliação interpretativa, contudo, encontra limites quando deixa de concretizar cláusulas abertas e passa a neutralizar critérios objetivos e escolhas normativas expressamente positivadas pelo legislador. O problema é analisado a partir de dois recortes centrais: a utilização de medidas executivas atípicas com fundamento no art. 139, IV, do CPC, e a controvérsia acerca da penhora de verbas salariais inferiores a cinquenta salários mínimos para pagamento de dívidas não alimentares, à luz do art. 833, IV e § 2º, do mesmo diploma. Defende-se que a efetividade da execução é um valor constitucionalmente relevante, porque o credor também é titular de tutela jurisdicional adequada, tempestiva e útil; porém, a busca pela satisfação do crédito não autoriza a erosão de direitos fundamentais do executado nem a substituição judicial da ponderação legislativa. Conclui-se que a legitimidade do Poder Judiciário, em um Estado Democrático de Direito, depende de autocontenção hermenêutica, fundamentação rigorosa e respeito às consequências práticas da decisão.

Palavras-chave: CPC/2015; juristocracia; execução civil; medidas executivas atípicas; impenhorabilidade salarial.

ABSTRACT This article examines the tension between executive effectiveness and legal certainty under the 2015 Civil Procedure Code (CPC/2015). It posits that the CPC/2015 serves as a project for rationalization, coherence, and predictability, rather than mere procedural acceleration. Within the framework of "juristocracy," the study argues that judicial interpretation beyond literalism is often necessary due to the open texture of legal language and rapid social change. However, this interpretive



expansion finds its limit when it neutralizes objective criteria and express legislative choices. The analysis focuses on two core issues: the application of atypical enforcement measures (Art. 139, IV) and the controversy surrounding the garnishment of salaries below fifty minimum wages for non-alimony debts (Art. 833, IV). While enforcement effectiveness is a constitutionally protected right of the creditor to timely and useful judicial protection, it must not erode the debtor's fundamental rights or substitute for legislative balancing. The study concludes that judicial legitimacy in a Democratic State of Law requires hermeneutic self-restraint, rigorous legal reasoning, and due regard for the practical consequences of judicial decisions.

Keywords: CPC/2015; juristocracy; civil enforcement; atypical enforcement measures; salary immunity from attachment.

RESUMEN Este artículo examina la tensión entre la efectividad ejecutiva y la seguridad jurídica en el Código de Procedimiento Civil de 2015 (CPC/2015). Se parte de la premisa de que el CPC/2015 es un proyecto de racionalización, coherencia y previsibilidad, y no solo de aceleración procesal. Bajo el concepto de "juristocracia", se sostiene que la interpretación judicial extraliteral es necesaria ante la textura abierta del lenguaje jurídico y las rápidas transformaciones sociales. No obstante, esta expansión interpretativa tiene límites: no puede neutralizar criterios objetivos ni opciones normativas expresamente positivadas. El problema se analiza mediante dos ejes: el uso de medidas ejecutivas atípicas (art. 139, IV) y el embargo de salarios inferiores a cincuenta salarios mínimos para deudas no alimentarias (art. 833, IV). Se defiende que, aunque la efectividad de la ejecución es un valor constitucional y un derecho del acreedor a una tutela útil, no autoriza la erosión de derechos fundamentales del ejecutado ni la sustitución de la ponderación legislativa. Se concluye que la legitimidad judicial en un Estado Democrático de Derecho depende de la autocontención hermenéutica, una fundamentación rigurosa y el respeto a las consecuencias prácticas de los fallos.

Palabras clave: CPC/2015; juristocracia; ejecución civil; medidas ejecutivas atípicas; inembargabilidad salarial.

Recebido em: abril de 2026

Aceite em: julho de 2026

Publicado em: agosto de 2026

1. Introduction

Contemporary legal theory lives with a permanent tension between normative stability and the adaptation of the legal order to social transformations. There is no minimally sophisticated legal system that can be reduced to the mechanical application of legislative literalism, as though the language of the law were capable of exhaustively anticipating all future cases; nor is there a rule-of-law state that remains stable when the normative text is converted into a mere starting point for



entirely free decisional reconstructions. Between rigid formalism and unlimited plasticity lies the central problem of legal interpretation: how to preserve the democratic authority of the law without fossilizing the law itself and, at the same time, how to interpret the legal order in an evolutive manner without dissolving the very idea of legality (Hart, 2007; Dworkin, 2014; Streck, 2018).

In Brazil, this tension acquired new intensity after the 1988 Constitution (Brasil, 1988). The expansion of the catalogue of fundamental rights, the centrality of constitutional adjudication, and the institutional strengthening of the courts produced a profound transformation in the understanding of the judge's role. Jurisdiction ceased to be conceived merely as an activity of subsumption and came to be perceived, often, as an instance of constitutional concretization, including in scenarios of legislative omission, deliberative slowness, and accelerated social change. This movement generated undeniable civilizational gains on several fronts, but it also created fertile ground for the expansion of judicial protagonism to an extent capable of straining the separation of powers and legal certainty (Hirschl, 2007; Ramos, 2015; Barbosa, 2019).

It is within this framework that the phenomenon of juristocracy, or, in a less technical usage, “jurisprudocracy”, must be situated, understood as the progressive displacement of the center of normative production from representative bodies to the courts. The concept is particularly useful for understanding situations in which the Judiciary does not limit itself to resolving controversies in light of positive law, but begins, by interpretive means, to undertake tasks involving the substantive revision of legislative choices. Rather than mere jurisdictional application of the law, one then observes a kind of institutional reconfiguration of normative authority (Tate; Vallinder, 1995; Hirschl, 2007; Britto; Barbosa, 2023).

Civil procedure is especially fertile ground for this debate. CPC/2015 was designed not only to make judicial relief faster, but also to strengthen the system's coherence, integrity, and predictability. Articles 489, paragraph 1, 926, and 927 clearly reveal this commitment to the public rationality of judicial decisions. It is not enough merely that decisions be rendered; they must also be rendered in a way that is controllable, coherent, and institutionally justifiable (Brasil, 2015; Ávila, 2021).

At the same time, Brazilian civil enforcement continues to be one of the major bottlenecks of judicial protection. The National Council of Justice recorded that, even

with record productivity in 2024, the Judiciary closed that year with 80.6 million pending cases. Tax enforcement remains an especially sensitive component of this stock: although recent efficiency policies reduced its relative weight, CNJ data still identify it as a central source of congestion and delay (Conselho Nacional de Justiça, 2024a; Conselho Nacional de Justiça, 2025). Considering this scenario, the pressure for greater enforcement effectiveness is entirely understandable. The problem, however, is that creditor protection, however relevant it may be, does not, by itself, authorize the indiscriminate relativization of the debtor's guarantees or the judicial rewriting of objective normative criteria.

This study begins precisely from that tension. Its aim is to examine, from a theoretical and dogmatic perspective, the limits of judicial creativity within CPC/2015. To that end, four axes will be addressed: the conceptual reconstruction of juristocracy and its difference from mere judicialization; the relationship between social change, legislative slowness, and evolutive interpretation; the crisis of enforcement effectiveness and the system's controlled opening to atypical means; and, finally, the paradigmatic case of the attachment of salaries below fifty minimum wages. The central hypothesis is that judicial interpretation beyond literalism is legitimate when it operates in open normative zones but becomes institutionally problematic when it replaces clear legislative balancing with variable judicial criteria. Methodologically, the research adopts a qualitative, theoretical-dogmatic, and critical-reconstructive approach. It is based on the systematic interpretation of CPC/2015, on specialized legal scholarship, and on selected case law from the STF and the STJ. The precedents examined were chosen according to three criteria: institutional relevance, thematic pertinence to the tension between enforcement effectiveness and legal certainty, and argumentative density regarding articles 139, IV, 489, paragraph 1, 805, 833, IV and paragraph 2, 926, and 927 of CPC/2015. The study does not claim to provide an exhaustive quantitative mapping of national case law; rather, it reconstructs paradigmatic decisions capable of revealing the main interpretive vectors currently in dispute.

2. Juristocracy, separation of powers, and legal theory

The literature on juristocracy has as its unavoidable landmark the work of Ran Hirschl. In his formulation, the global rise of judicial power is explained not merely by



an abstract strengthening of legality, but by a political-institutional rearrangement in which elites, state actors, and power structures shift sensitive decisions to constitutional courts and superior courts, turning them into stable centers of normative production and arbitration of major public conflicts (Hirschl, 2007). Even before Hirschl, Tate and Vallinder had already described the “global expansion of judicial power” as one of the most striking characteristics of late constitutionalism, associating it with the broader phenomenon of the judicialization of politics (Tate; Vallinder, 1995).

It is important, however, to distinguish between concepts that are close, but not equivalent. Judicialization denotes, in a broad sense, the displacement of socially relevant conflicts to the judicial sphere. Judicial activism refers, in more dogmatic terms, to an expansive posture of judicial action beyond the limits traditionally recognized for the function of judging. Juristocracy, in turn, is a structural category: it is not limited to the decisional style of a judge or court, but points to a deeper alteration in the balance among institutions, in which the Judiciary comes to occupy a space of normative centrality previously reserved for politically responsive bodies (Ramos, 2015; Barbosa, 2019; Britto; Barbosa, 2023).

In the Brazilian debate, Claudia Maria Barbosa observes that juristocracy cannot be analyzed merely as a symptom of constitutional maturity. In contexts of judicial hypertrophy, the phenomenon may generate dysfunctional effects: the weakening of democratic deliberation, the undue displacement of political responsibility, and the production of insecurity arising from excessive interpretive variability (Barbosa, 2019). In the same direction, Melina Carla de Souza Britto and Claudia Maria Barbosa stress that the expansion of judicial protagonism may fuel institutional reactions, crises of legitimacy, and backlash movements, precisely because jurisdiction ceases to be perceived only as a guardian of the law and comes to be seen as a competing forum for the formulation of substantive political choices (Britto; Barbosa, 2023).

From the standpoint of legal theory, the problem is not in recognizing that judges interpret. That is an elementary datum. The problem lies in determining to what extent interpretation can still be understood as a juridically conditioned activity. Hart showed, in his classic analysis of the open texture of language, that there are penumbral zones in which the application of law requires evaluative judgment; but

Hartian theory itself does not eliminate the distinction between easy and hard cases, nor does it transform every decision into a purely discretionary choice without ties to the system (Hart, 2007).

Dworkin, in turn, reacted against the discretionary paradigm by arguing that legal decisions must be constructed in light of the integrity of law, that is, as part of a coherent institutional practice in which principles and precedents confer continuity and justificatory density upon interpretation. The right answer, in this framework, is not to be confused with the judge's personal preference, but with the best interpretive effort to reconstruct law as a shared institutional practice (Dworkin, 2014).

In the Brazilian context, Eros Roberto Grau warned forcefully about the risks of the undue expansion of judicial subjectivity. His criticism is not directed at interpretation as such, but at the emptying of the institutional mediations that distinguish applying the law from producing it. In a similar vein, Lenio Streck insists that legal hermeneutics cannot be converted into authorization for judicial arbitrariness disguised as principled reasoning. For him, the difference between text and norm does not legitimize interpretive “anything goes”; on the contrary, it imposes hermeneutic responsibility and fidelity to the institutional horizon of democratically produced law (Grau, 2018; Streck, 2018).

The question, therefore, is not to defend a return to naive positivism, nor to romanticize the figure of the creative judge. The decisive point is to recognize that the openness of legal language and the historical dynamism of law do not abolish the need for institutional limits. There is a legitimate difference between interpreting to concretize normative possibilities already contained in the system and interpreting to replace, according to one's own evaluative judgment, choices that the legislature explicitly made. The first movement belongs to the normal life of law; the second approaches the terrain of juristocracy.

3. Social change, legislative time, and interpretation beyond literalism

A simplistic criticism of judicial protagonism ignores an elementary datum of legal experience: society changes at a much faster pace than legislation. The legislative process is deliberately slower because democracy requires debate, composition, negotiation, and majority-building. That slowness is not merely a defect; it is also a

guarantee. Yet it produces an inevitable consequence: social reality often outstrips legal wording, requiring the interpreter to reconstruct the norm in a manner compatible with constitutional principles and with the historically situated meaning of legal institutions.

This observation explains why law cannot be reduced to mere grammatical exegesis. There are institutions whose social meaning changes over time, and whose normative reading must follow this transformation if law is not to become incapable of responding to concrete life. In such cases, interpreting beyond literalism does not mean violating the law, but preserving its normative force within a changed social context. The challenge, however, lies in distinguishing between legitimate updating and judicial replacement of the legislature.

Recognition of this interpretive space, however, does not eliminate the need for criteria. The semantic openness of language is not distributed evenly throughout the legal system. There are rules intentionally drafted with open texture, clauses that demand concretization, and concepts whose indeterminacy is an integral part of their structure. But there are also rules containing objective, quantified, and explicitly delineated criteria. The more the text reveals a clear legislative choice, the narrower the room for judicial substitution should be.

The distinction can be operationalized through a set of dogmatic indicators: normative texture, legislative density, the presence of quantifiers, clauses of openness, and the legislative history or structure suggesting deliberate openness or closure. Low-density provisions, drafted with open-ended language and without numerical parameters, tend to invite stronger judicial concretization. High-density provisions, especially those containing explicit thresholds, percentages, time limits, or exceptions, tend to narrow the legitimate space for judicial replacement. This is not a mechanical formula, but it provides a controllable hermeneutic test: the more explicit the legislative criterion, the greater the burden of justification for any judicial departure from it.

This point is decisive for the debate developed in this article. CPC/2015 did not ignore the limits of legislative foresight; it internalized them. The Code deliberately combines techniques of openness and closure. On the one hand, it admits flexibility in provisions such as article 139, IV, which authorizes all inductive, coercive, mandatory, or subrogatory measures necessary to ensure compliance with judicial

orders. That provision is structurally open and demands functional concretization by the judge. On the other hand, the Code establishes objective criteria in provisions such as article 833, paragraph 2, which defines the conditions under which salary amounts may be attached by means of an express numerical threshold. Treating a quantified rule as if it were a general clause, or projecting onto it the same logic applicable to open-ended procedural management provisions, distorts the very architecture of the Code.

Hence, social change, though relevant, cannot be invoked as a generic key for judicially correcting every law deemed inadequate, outdated, or disproportionate. In the context of CPC/2015, the argument from legislative slowness cannot be invoked indiscriminately, as if every perceived inadequacy of the statutory text authorized judicial correction. Where the legislature anticipated change by creating open clauses, judicial creativity is part of the statutory design. Where it chose closure through quantified criteria, judicial self-restraint is also part of that design. Without that distinction, every exercise of interpretation becomes a latent exercise of legislation.

4. CPC/2015 as a project of effectiveness with legal certainty

Reading CPC/2015 merely as a code of efficiency unduly reduces it. The statute represents, at once, a commitment to effectiveness and to legal certainty. It was enacted in a context in which the Brazilian legal system sought not only to accelerate proceedings, but also to reduce jurisprudential volatility, increase the quality of reasoning, and strengthen the normative authority of judicial precedents. This dual commitment is evident throughout the Code's architecture.

Article 489, paragraph 1, is eloquent in treating as unreasoned any decision that merely invokes generic arguments, abstract principles, or normative formulas without demonstrating their relevance to the concrete case. Articles 926 and 927, in turn, establish the duty of the courts to standardize their case law and keep it stable, integral, and coherent, while also providing for the observance of qualified precedents. There is, therefore, a clear legislative intention to contain arbitrariness and to treat predictability as a value inherent in due process (Brasil, 2015).

Contemporary scholarship on legal certainty, especially that of Humberto Avila, makes it possible to understand why this design is so relevant. Legal certainty is not

to be confused with immobility; it is a normative condition that allows the addressee of law to foresee, with a reasonable degree of trust, the consequences attached to conduct and judicial decisions. It is, in this sense, a prerequisite for the exercise of freedom, for economic organization, and for the legitimacy of state power itself (Ávila, 2021).

In civil procedure, insecurity carries an even higher cost. Citizens do not litigate merely to obtain an abstract declaration; they litigate to solve a concrete practical problem. If, in addition to the uncertainty intrinsic to conflict, the process itself becomes a source of added unpredictability through oscillating or discretionary interpretations, judicial protection loses its own practical usefulness. The problem is aggravated when the areas most exposed to such oscillation are precisely those involving stronger state coercion, such as enforcement.

The crisis of enforcement effectiveness, however, exerts strong pressure in the opposite direction. In environments of low credit satisfaction, the system tends to seek increasingly incisive tools to overcome resistance, detect assets, and induce payment. This pressure is understandable, but it must not obscure the fact that effectiveness and legal certainty are not antithetical values. A system that satisfies credits at the cost of dissolving objective legal boundaries may appear efficient in the short term but produces systemic erosion of trust and equality in the medium and long term.

5. The crisis of civil enforcement and the creditor's right to effective judicial protection

A false dilemma must be avoided. Criticism of juristocracy does not authorize indifference to enforcement ineffectiveness. The creditor is also a holder of the fundamental right to adequate judicial protection. Constitutional process cannot be understood as a system designed solely to protect the debtor against coercion; it must also ensure that those who obtain a judicially or extrajudicially enforceable title can, within reasonable limits and by constitutional means, effectively obtain satisfaction of their rights.

Available institutional data confirms the magnitude of the problem. According to the CNJ, even with record productivity in 2024, the Judiciary still ended that year with 80.6 million pending cases. Tax enforcement proceedings stood out as one of the



main bottlenecks: they accounted for approximately 26% of pending cases, with a congestion rate of 73.8% and an average duration of 7 years and 7 months. Although these figures reflect an improvement when compared with the preceding report, they still reveal a severe deficit in the practical realization of credits (Conselho Nacional de Justiça, 2025).

The institutional response to this scenario has not been exclusively normative; it has also manifested itself in the improvement of asset investigation tools. The replacement of Bacenjud by Sisbajud, the integration of systems, and the expansion of electronic mechanisms for locating assets are examples of a strategy focused on making enforcement more effective without necessarily intensifying personal restrictions. The CNJ itself recorded a significant increase in the rates of conversion into judicial deposits after the introduction of Sisbajud, which indicates that technical and managerial improvements may often be more effective than expansively reinterpreting legal limits (Conselho Nacional de Justiça, 2024b).

Enforcement effectiveness, therefore, is a constitutionally relevant value, but it is not an absolute value. Civil enforcement remains, in principle, patrimonial in nature, not personal. Its purpose is not to punish the debtor for moral failure, but to satisfy the credit through legitimate expropriatory or coercive means. This premise is crucial because it shows that not every measure that increases pressure on the debtor is, for that reason alone, consistent with the Constitution or with the structure of the Code.

6. Atypical enforcement measures: legal basis, constitutionality, and functional limits

Article 139, IV, of the CPC assigns the judge the power-duty to determine all inductive, coercive, mandatory, or subrogatory measures necessary to ensure compliance with judicial orders, including in claims whose object is the payment of a sum of money. The provision is one of the clearest examples of a general clause of procedural management in the Brazilian system. It opens normative space for functional judicial creativity and seeks to overcome the chronic ineffectiveness of typical enforcement measures. From the outset, therefore, the legislature clearly opted for controlled openness.

That openness, however, never meant a license for arbitrariness. The constitutionality of article 139, IV, was recognized by the Federal Supreme Court in ADI 5.941. According to the Court, atypical enforcement measures are, in principle, compatible with the Constitution, provided they do not disproportionately affect fundamental rights and are applied with due reasoning. The STF thus acknowledged the validity of the legal opening but did not transform it into unrestricted authorization for personal restrictions detached from the concrete purpose of credit satisfaction (Supremo Tribunal Federal, 2023).

The STJ, in turn, progressively developed infraconstitutional parameters for application. As early as 2019, the Third Panel held that, in the absence of signs of asset concealment, the suspension of a driver's license or seizure of a passport could not be justified, because in such a scenario these measures would not be coercive toward credit satisfaction, but merely punitive. The distinction is extremely important: a coercive measure seeks to influence conduct in order to facilitate the result of enforcement; a punitive measure simply imposes suffering or deprivation as a sanction for non-payment (Superior Tribunal de Justiça, 2019).

The same vector appeared, with an important nuance, in 2022, in HC 711.194/SP. In that case, the STJ did not fix an abstract maximum duration for atypical coercive measures; rather, it indicated that their temporal validity must be assessed in light of the concrete case and of their continuing aptitude to overcome the debtor's resistance. The point reinforces a temporal-functional limit: even without a pre-established term, a restriction that loses its causal connection to credit satisfaction ceases to be an enforcement instrument and approaches an improper form of civil punishment (Superior Tribunal de Justiça, 2022).

The stabilization cycle culminated, in 2026, in the STJ's adoption of a precedential thesis. According to the Second Section, in civil enforcement proceedings governed exclusively by the CPC, the judicial adoption of atypical means is permissible provided that, cumulatively, the principles of effectiveness and the least burdensome means to the debtor are weighed; the measure is applied primarily on a subsidiary basis; the decision contains reasoning tailored to the specificities of the case; and adversarial process, proportionality, reasonableness, and the temporal duration of the restriction are observed (Superior Tribunal de Justiça, 2026a).

These limits make it possible to formulate a conceptual distinction essential to this study: the difference between legitimate coercion and illegitimate punishment. Atypical enforcement measures are constitutionally defensible insofar as they function as indirect pressure mechanisms aimed at inducing conduct that may facilitate satisfaction of the credit. They lose legitimacy when they become deprivations devoid of practical aptitude to produce that result. In other words, what justifies the measure is not its severity, but its functional link to enforcement efficacy. From this follows a decisive criterion. Suspending a driver's license, seizing a passport, blocking cards, or imposing another unnamed measure may, in theory, be constitutionally admissible, but only if there are concrete elements indicating that such restriction may reasonably contribute to uncovering assets, overcoming strategic resistance, or inducing payment. If the debtor simply lacks attachable assets and there are no signs of concealment, the measure becomes a mere symbolic punishment. It ceases to serve the credit and comes to serve only the demonstration of state force.

For that reason, effectiveness by itself is not enough as a legitimating criterion. The atypical enforcement measure must be subsidiary, reasoned, causally connected to the intended result, temporally delimited, and materially proportionate. Without that set of requirements, article 139, IV, ceases to operate as a controlled opening clause and begins to function as a gateway to discretionary personal restrictions incompatible with a constitutional civil process.

7. Salary immunity from attachment and the risk of judicial substitution of legislative balancing

The discussion concerning the attachment of salary to pay non-support debts shifts the debate to another normative category. Unlike article 139, IV, which clearly adopts an open structure, article 833, IV and paragraph 2, of the CPC contains a more closed and objectively delineated legislative choice. As a rule, salary, wages, earnings, pensions, retirement benefits, and other amounts of an alimentary nature are immune from attachment; the law expressly allows attachment, outside support obligations, only with respect to amounts exceeding fifty monthly minimum wages.

From the standpoint of legal doctrine, this difference is crucial. When the legislature opens the system, as in article 139, IV, it transfers to the judge a space for prudential

concretization. When it establishes a quantified criterion, however, it has already carried out a balance between conflicting values and transformed the result of that balance into an explicit rule. In the first case, interpretation fills in the norm; in the second, substitution of the rule threatens to replace the legislative balance itself.

In 2023, the STJ's Special Court admitted the relativization of salary immunity from attachment even in relation to non-support debts and even when the debtor's income was below fifty minimum wages, provided that an amount deemed sufficient to preserve the debtor's and the debtor's family's dignified subsistence was maintained. The reasoning indicated that the removal of the word "absolutely" from the caput of article 833 would have rendered the immunity relative and therefore open to balancing by the judge in the concrete case (Superior Tribunal de Justiça, 2023).

The position favorable to broader relativization must be addressed in its strongest version. Its argument is not merely pragmatic. It rests on the idea that enforcement ineffectiveness compromises access to justice, that salary immunity cannot protect bad-faith resistance or asset shielding, and that the rule should be applied through proportionality so that the creditor's right to useful judicial protection is not emptied. In this view, preserving a concrete amount sufficient for dignified subsistence would allow partial attachment without destroying the debtor's existential minimum (Superior Tribunal de Justiça, 2023).

Precisely for that reason, the 2023 precedent should not be treated as a mere manifestation of judicial voluntarism. It responds to a genuine institutional deficit: a creditor who holds an enforceable title may still face years of fruitless enforcement, while the debtor continues to receive income that, in practical terms, may be sufficient to absorb a limited attachment. Its strongest contribution is to recall that access to justice also includes the creditor's right to useful relief. Its structural weakness, however, is the transfer to each judge of the power to redefine, without a legislative threshold, the level of income that must remain immune from attachment.

The theoretical problem is not in recognizing the relevance of the existential minimum. On the contrary: protection of alimentary income and of the material conditions of freedom is an essential requirement of constitutional process. The difficulty lies elsewhere: in article 833, paragraph 2, the legislature has already translated a political-normative judgment into objective language. The question, therefore, is whether the Judiciary may, under the banner of concretizing the

existential minimum, judicially reduce the level of protection that the legislature itself expressly established.

This does not mean denying the practical difficulties generated by the legal criterion. It is indeed possible to maintain that the threshold of fifty minimum wages is high in light of the Brazilian socioeconomic reality and that, for this very reason, it reduces the practical utility of the rule for many creditors. But that criticism, however plausible it may be, is primarily a criticism to be directed at the legislature. If the objective criterion is deemed socially inadequate, the most institutionally coherent path is legislative amendment, not its informal judicial reduction.

The referral of Theme 1.230 to the repetitive appeals system, publicized by the STJ in January 2024, confirms the density of the problem. The court recognized the need to establish a binding precedent capable of standardizing the matter, precisely because the controversy had already generated instability and uncertainty in case law (Superior Tribunal de Justiça, 2024a). The official repetitive-themes page identifies the submitted question as the definition of the reach of the exception provided in article 833, paragraph 2, of CPC/2015, in relation to salary immunity from attachment for the payment of non-support debts, including when the debtor's income is lower than fifty monthly minimum wages; at the time of this revision, the matter was still listed as under judgment (Superior Tribunal de Justiça, 2026b). This reinforces the need for caution: until a binding thesis is defined, the judicial reduction of the statutory threshold should not be justified by assumptions not expressly supported by the cited source or by the case record.

Whichever solution is eventually adopted in Theme 1.230, the controversy reveals institutional trade-offs rather than a perfect answer. Maintaining the statutory limit maximizes legal certainty, legislative deference, and predictability, but may leave some creditors without practical satisfaction against middle- or high-income debtors. Reducing the threshold by judicial interpretation may increase enforcement effectiveness in concrete cases, but it risks eroding the existential minimum and intensifying second-order uncertainty. Replacing the numerical threshold with a judicially determined existential minimum offers flexibility, yet it is precisely the model most exposed to satellite litigation, unequal outcomes, and fluctuating evidentiary standards. Legislative amendment is slower, but it would locate the recalibration of

the balance between creditor and debtor in the institution democratically authorized to redefine general rules.

The difficulty is aggravated because the concept of the existential minimum, although normatively relevant, cannot function as an empty rhetorical label. The LINDB itself, after the 2018 reform, came to require that decisions grounded in abstract values consider their practical consequences. That means that a judicial decision invoking human dignity and the existential minimum to reduce a legislatively fixed objective threshold must present empirical, social, and economic support considerably more robust than a simple intuitive assertion about what is “enough” to live with dignity (Brasil, 2018).

Consequentialist reasoning, therefore, requires more than the assertion that a given percentage is moderate or that a particular amount appears sufficient. If a court reduces the statutory protection of salary income, it should explain, based on concrete elements in the record, how the remaining amount preserves housing, food, health, transport, family support, and ordinary conditions of subsistence. Otherwise, the invocation of dignity and practical consequences becomes only apparent reasoning: it weakens the statutory criterion without demonstrating that the alternative threshold protects the debtor's existential minimum.

The absence of such grounding generates two simultaneous risks. The first is material: the attachment may strike precisely the segment of income indispensable to housing, food, transport, health, and family maintenance. The second is institutional: objective law gives way to variable thresholds defined by judicial subjectivity, which intensifies asymmetry among cases, unpredictability, and the erosion of equality before the law. What should be solved by statutes depends on the judicial composition of the moment.

The practical consequence is a second-order uncertainty. Parties, lawyers, and lower courts no longer know whether the statutory threshold will operate as an objective rule, as a rebuttable presumption, or merely as a starting point for case-by-case balancing. This affects settlement incentives, increases satellite litigation over the debtor's living standard, and transfers to evidentiary disputes about subsistence a question that the statutory text attempted to resolve through a quantified criterion. The result may be more enforcement pressure in individual cases, but at the cost of systemic predictability.

The contrast with another precedent of the STJ itself helps to clarify the point. In 2024, the court held, in a repetitive appeal, that salary and savings up to forty minimum wages, as a rule, may not be attached to pay court-awarded attorneys' fees, because such fees are not equivalent to a support obligation for purposes of the legal exception. This shows that the court itself, in another context, preserved a more deferential reading of the objective legislative criteria, refusing to expand exceptions beyond the text (Superior Tribunal de Justiça, 2024b).

The doctrinal consequence is clear. If the legislature deliberately chose to fix the threshold of fifty minimum wages as an objective line of reinforced protection, judicially replacing that line with a lower threshold based on flexible evaluations of subsistence is no longer merely interpreting the law. It is materially reconfiguring the content of the rule. And that is precisely where the risk of juristocracy arises in the sphere of civil procedure.

8. Final considerations

The debate on CPC/2015 and juristocracy cannot be conducted in simplistic terms. Not every expansive judicial action is illegitimate, and not every appeal to legal certainty should be read as a defense of blind formalism. Contemporary law requires interpretation, historical sensitivity, and responsiveness to social change. But it also requires clear distinctions between interpretation and legislation, between controlled openness and objective closure, between constitutionally guided creativity and institutional substitution of the legislature.

CPC/2015 was not conceived as a statute of unrestricted judicial creativity. Alongside its commitment to effectiveness, the Code explicitly affirms the values of coherence, integrity, reasoned decision-making, and predictability. This means that the legitimacy of judicial innovation depends not only on the material goodness of the result, but also on the path taken to achieve it and on the degree of fidelity maintained toward the democratic and normative structure of the legal system.

Regarding atypical enforcement measures, the conclusion is one of constitutional and legal compatibility, provided that their legitimate conditions are preserved: subsidiarity, adequate reasoning, practical aptitude for credit satisfaction, proportionality, temporal delimitation, and respect for fundamental rights. Outside these conditions, the atypical measure ceases to be an instrument of effective

jurisdiction and becomes a mechanism of punishment disconnected from the patrimonial nature of enforcement.

As for the attachment of salaries below fifty minimum wages for the payment of non-support debts, the situation is different. Here, there is not an open-ended clause to be concretized, but a quantified legislative criterion already expressing an explicit balance between effectiveness and the protection of the debtor's existential minimum. For that very reason, judicial relativization of this threshold, however well-intentioned, projects serious risks of legal uncertainty and judicial substitution of legislative balancing.

The institutional cost of systematically relativizing objective criteria does not end in the individual case. In the short term, such relativization may increase enforcement pressure and facilitate the satisfaction of specific credits. In the medium term, however, it reduces predictability, weakens settlement incentives, and encourages satellite litigation over living standards, family expenses, and the evidentiary content of subsistence. In the long term, it may foster mutual distrust between courts and legislatures, encouraging legislative reactions that are more rigid and less sensitive to concrete circumstances. A judiciary that substitutes for the legislator too frequently may, paradoxically, provoke a legislative environment less open to judicial nuance.

In a Democratic State governed by the rule of law, the authority of the Judiciary is not measured by its capacity always to advance, but by its capacity to know when to concretize, when to refrain, and when to return to the legislature the task that belongs to it. A Judiciary that can relativize everything may perhaps seem strong in the short term; but a Judiciary that knows the boundaries of its own legitimacy is institutionally stronger, more trustworthy, and more consistent with the constitutional order.

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