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ARTIGO ORIGINAL

The Effects of Judicial Reorganization of Companies on the cost of credit in Brazil and its social impacts

Os efeitos da recuperação judicial de empresas sobre o custo do crédito no Brasil e seus impactos sociais

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Abstract: The present study aims to analyze whether the institute of judicial reorganization of companies has viability in the context of Economic Analysis of Law, taking into account its reflexes on the cost of credit in Brazil and consequently on society as a whole. The method of approach followed was empirical-dialectical, using bibliographic and legislative research. In conclusion, it was verified that the institute of judicial reorganization of companies, in the current national scenario, does not have viability in face of the theoretical framework of Economic Analysis of Law, considering that it provides short-term benefits only to those who participate directly in its process.

Keywords: Economic Analysis of the Law. Externalities. Banking *spread*.

Resumo: O presente estudo objetiva analisar se o instituto da Recuperação judicial de empresas possui viabilidade frente no âmbito da Análise Econômica do Direito, levando-se em consideração seus reflexos sobre custo do crédito no Brasil e consequentemente sobre a sociedade como um todo. O método de abordagem seguido foi o empírico-dialético, utilizando-se de pesquisa bibliográfica e legislativa. Em conclusão, verificou-se que o instituto da Recuperação judicial de empresas, no atual cenário nacional, não possui viabilidade frente ao referencial teórico da

Análise Econômica do Direito, haja vista que proporciona benefícios de curto prazo apenas para aqueles que participam diretamente de seu processo.

Palavras-chave: Análise Econômica do Direito. Externalidades. *Spread* bancário.

1 INTRODUCTION

The Judicial Reorganization Law has as its basic principles the preservation of the company and the protection of workers and the welfares of creditors. Thus, one can conclude that its social function is based on stimulating of economic activity and the maintenance of jobs.

The institute, as implemented in Brazil through Law N. 11,101/05, causes several externalities, between them are increase in the cost of credit and the resulting banking *spread*, which results in higher interest rates for borrowers and consequently in the reduction of investments on an unnumbered productive sectors.

The justification for this research is the unprecedented approach, at least regarding to the reflection over the viability of the Judicial Recovery of companies in the current Brazilian scenario, from the analysis of the foundations of the referred institute, as well as aspects of the banking *spread*.

As for the objective to be achieved, it is an attempt to clarify, in the light of the Economic Analysis of the Law - EAL, the viability of Judicial Reorganization of companies in the current Brazilian scenario, aiming to obtain conclusions through the analysis of externalities, transaction costs, efficiency and especially regarding the consequentialism and pragmatism that are peculiar to it.

Despite the importance of the subject, the theme still lacks thorough research from the perspective that is intended to be addressed, a gap that, when filled, will certainly bring doctrinaire to the interpreter as well as the applicator of law, allowing the norms to be applied in more effective ways and in sync with constitutional rules.

To obtain the results sought out by the research, the approach method to be followed will be the empirical-dialectic[1], using bibliographic and legislative research, having as its background a referral system based on *Law and Economics*[2] whose one of its exponents is Richard Allen Posner.

2 JUDICIAL REORGANIZATION OF COMPANIES: OBJECTIVES AND CONSEQUENCES

According to Law N. 11,101, of February 9, 2005, the Judicial Reorganization of companies aims to make it possible to overcome the debtor's economic-financial situation, in order to allow the maintenance of the source of production, employment of workers and the welfares of creditors. Thus, the Judicial Reorganization arises in order to attend to the social demand in order to recover or restore under operating conditions of continuity a business activity affected by crisis, which occurs through the reorganization of business activity, in spite of the use of the term "recovery" by the law (Sztajn, 2007, p. 220).

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1 To Lourival Vilanova, "[…] the cultural objects, amongst them is the law, are all those who are in the experience, having real existence, however always valuable, positively or negatively. The gnosiological act itself is the "understanding" and the method of the corresponding science is "empirical-dialectic" (VILANOVA, 2008, p.82, our own translation).

2 The economic analysis of law, as it now exists not only in the United States but also in Europe, which has its own flourishing law and economics association, has both positive (that is, descriptive) and normative aspects. It tries to explain and predict the behavior of participants in and persons regulated by the law. It also tries to improve law by pointing out respects in which existing or proposed laws have unintended or undesirable consequences, whether on economic efficiency, or the distribution of income and wealth, or other values. It is not merely an ivory-towered enterprise, at least in the United States, where the law and economics movement is understood to have influenced legal reform in a number of important areas. [...] Economic analysis of law is generally considered the most significant development in legal thought in the United States since legal realism petered out a half century ago (POSNER, 1998, p.2, our own translation).

In this context, it appears that its objective is to promote the preservation of the company, its social function and the stimulation of economic activity, highlighting the maintenance and generation of possible new jobs, as well as the payment of taxes (Toledo; Abrão, 2009, p. XXXVIII).

The basic principles are then the preservation of the company, the protection of workers and, finally, the welfares of creditors[3], according to article 47[4] of the referred law.

The debtor may require judicial reorganization according to article 48 of Law N. 11,101 / 2005, when, by the time of the request, had been in business regularly for more than two years and meets the following requirements, cumulatively: (1) not to be bankrupt and, if so, declared extinct, by final judgment, the responsibilities therefrom; (2) have not, for less than five years, obtained a judicial recovery grant; (3) have not, for less than five years, obtained a judicial recovery based on the special plan; (4) not to have been convicted or not to have, as administrator or controlling partner, a person convicted of any of the crimes listed on the bankruptcy law (Brasil, 2005).

Once the requirements are met, under the fundaments brought by article 47, of Law N. 11,101/2005, the debtor will be granted the benefit of the Judicial Reorganization, so that all actions and executions against the company are suspended for 180 days and their debts become part of a recovery plan, to be approved by creditors on a later meeting (Brasil, 2005).

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[3] According to Tarcisio Teixeira the "[...] principle of the preservation of the company, which can be understood as the one that seeks to recover the business activity from economic, financial or patrimonial crisis, in order to enable the business continuity, as well as the maintenance of jobs and interests of third parties, especially creditors (TEIXEIRA, 2012, p. 185, our own translation).

[4] Article 47. The judicial reorganization has as its purpose to allow the overcoming of the economic-financial crisis of the debtor in order to provide the maintenance of the source of production of the company, the employment of workers and interests of creditors, promoting, this way, the preservation of the company, its social function and the stimuli of economic activity (BRAZIL, 2005).

Generally, judicial reorganization plans presents unfavorable conditions to the big creditors, especially to the financial institutions, as they offer payments without the inclusion of interest rates, often with significant rebates, long deadlines and high grace periods.

Within this context, when the request for judicial recovery occurs, the amounts due by the companies to financial institutions are considered as default to the calculation of the banking *spread*, as they will not have the sums available to reapply on the market.

Therefore, as a logical consequence of this process, the financial resources available to the financial institutions become more sparse, because the interest rates imposed on the credit lines for the legal entities become more expensive for entrepreneurs.

3 COST OF CREDIT AND BANKING SPREAD

The Credit Cost Indicator - CCI estimates the average cost, under the borrower's perspective, of credit operations still open in the national financial system, regardless the date of credit contracting (Bacen, 2017, p. 47). Thus, the CCI incorporates information from both newly signed and older contracts still in force.

When decomposing the CCI, it is possible to identify and measure the main factors that determine the cost of credit to borrowers, namely: funding cost; default; administrative costs; tributes; and the payment of financial institutions.

From the CCI, it is possible to calculate your *spread*. To do so, the portion corresponding to the funding cost is excluded from the CCI. *Spread* decomposition allows the factors that determine the cost of credit to borrowers to be identified, segregating the effects of market conditions related to the cost of raising funds.

Certainly, the *spread* banking is the difference, in percentage points, between the contracted interest rate on loans and financing, that is the rate paid by borrowers to financial institutions, and the

capture rate, that being the rate these institutions pay surplus agents to use their resources.

The most common way of raising funds from the market is through the Bank Certificate of Deposit (BCD), by which financial institutions raise funds by passing them on to customers in the form of loans (Fortuna, 2001, p. 153).

For example, if a financial institution raises funds from the market through BCD at a cost of 10% by year and provides loans at a rate of 30% by year, the result will be a banking *spread* of 20% by year.

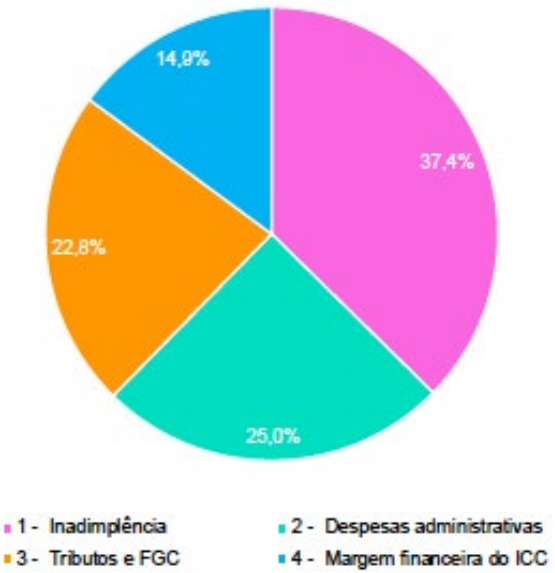
It is important to observe that the banking *spread* does not match the profit earned by the financial institution when granting the loan or financing, but to an amount resulting from the payment of its costs (administrative expenses, taxes, provision for default, amongst others), which, added to profit corresponds to the *spread*. Simplifying, the financial institution's profit is what remains after these expenses are paid off.

The *spread* composition *includes* administrative and operating cost factors. As for administrative costs, for example, the reserve requirements[5] stands out, established by BACEN, the taxes, resulting from the incidence of various taxes on the financial intermediation, and especially those related to default, these related to credit risk in the event of possible default by the borrower, which may be total or partial (Campello, 2008, p. 113).

Considering average values between 2015 and 2017, the default component accounts for 37.4% of the CCI spread, followed by Administrative expenses (25.0%), Taxes and FGC (22.8%) and, finally, financial margin of the CCI (14.9%), as shown in the following chart:

[5] The compulsory recoils are an instrument at the disposal of the Central Bank in order to influence the amount of money in the economy. They represent a portion of deposits collected by banks that must be kept compulsorily "sterilized" at the Central Bank (BACEN, 2018, n.p).

Figure 1. CCI *Spread* Decomposition - Average 2015-2017 (Bacen, 2017, p. 50).



The Judicial Reorganization of companies in Brazil is directly responsible for the composition of the banking *spread*, given the great impact it has on the default volume, which turns out to be the biggest factor composing it (Silva, 2005, p. 58; 77).

The center chore of the question is that the Judicial Reorganization, in terms of its objective, brings benefits only to the few ones who participate in it, that is, to the entrepreneur himself, his workers and creditors. On the other hand, it provides negative consequences for the whole society as it results in higher interest rates to obtain funds from the financial market, providing lower investments in all productive sectors, which, would certainly reflect on the generation of new jobs with greater sustainability. It is sustainable development that consolidates the balance of any system (Rosa, 2017, p. 101).

4 CONSIDERATIONS ON THE ECONOMIC ANALYSIS OF THE LAW: EXTERNALITIES RATIONALITY AND THE INFLUENCE ON CONDUCTS

The Judicial Reorganization of companies has introduced far-reaching modifications capable of reaching all economic agents that somehow relate to the company that benefits from it.

This institute gains special importance from the consequentialist[6] and pragmatic[7] perspectives in the current social conjuncture, considering that its use by entrepreneurs will result in numerous reflexes, not only for those who directly relate to them, but for the whole society, taking into account the solid foundations contextualized by EAL. According to Claudio Carneiro and André Nicolitt "the main goal of the Economic Analysis of the Law (EAL), as its name suggests, is to take into consideration economic concepts and using them in the field of the law" (Carneiro; Nicolitt, 2018, p. 11, our own translation). In this analysis, legal rules are conceived with an instrumental feature towards an efficient solution (Repsold; Tabak, 2018, p. 41), as it will be shown below.

Thus, through an analysis of the effects of the Judicial Reorganization of companies, a realistic view of the legal phenomena (legal realism) is shown, "departing from just a formal analysis" (Freire, 2010, p. 21-30, our own translation), considering that, to this meaning, the relationships between market *players* are also examined under an

[6] As one of the main characteristics of pragmatism, the consequentialism demands an exam of the probable effects of the decisions as a step in its elaboration and the anti-foundationalism consists in the rejection of metaphysical entities, perpetual principles, previous and universal criteria, unquestionable dogmas, to guide the decision making (POGREBINSCHI, 2005, p. 31-32).

[7] From the pragmatic optic, a justification for social acts is sought from practical reason, rather than from rigid formal models or theoretical justifications, such as the search for a pre-existing meaning of the norms of conduct.

economic perspective, as they result in direct impacts to be assessed by society, especially from this perspective.

In this context, the economic relations analysis may lead to the possibility of formation and application of the legal norms as to allow them to become more efficient in order to obtain a better economic performance of the nation, reflecting on a consequent social welfare.

The utility of the EAL is based on finding the rationality of any and every decision, regardless it being inside or outside of the market, considering that all human activity "[...] non intuitive embraces this concept and can, by that mean, be economically analyzed" (Schmidt, 2014, p. 206, our own translation). Gico Júnior (2010, p. 18), in his approaches, conceptualizes the EAL as:

> The application of analytical and empirical instruments of economics, especially microeconomics and social welfare economics, to try to understand, explain and predict the factual implications of the legal system, as well as the logic (rationality) of the legal system itself. In other words, EAL is the use of the economical approach to try to understand the law inside the world and the world inside the law. The EAL has as its characteristics the application of economical methodology on all fields of the law, from contracts to constitutional, from regulation to civil process, from environmental law to family law, and it is precisely this breadth of application that qualifies an EAL approach from simple application of economical knowledge in areas traditionally associated with the economy (our own translation).

According to Posner (2010, p. 14), the Law must be interpreted and thought through the principles of Economics. Starting with a pragmatic logic, defends a consequentialist interpretation method of the law, transforming it into an instrumental guided by the effects of legal decisions.

Furthermore, when it comes to the norms application by an institution, an essential point to highlight is the teaching of North

(1994, p. 362), which clarifies that "institutions have the inclination of inducing or restraining conducts from of an evaluative judgment".

Therefore, by taking economics as a science that is directly related to the study of human behavior, "[...] its instruments are shown to be powerful for prospecting the behavior of agents in the face of the various prescriptions of the legal system" (Nusdeo, 2015, pp. 43-44, our own translation).

It is from this perspective, considering the resulting externalities and rational choice, that the effects of the Judicial Recovery of companies to the economic and social development in the current national scenario are analyzed.

4.1 Externalities through economic analysis of the law

Arthur Cecil Pigou, when approaching the disagreement[s] asserted that they are reflected on the "[...] imposed costs or the benefits given to others that are not taken into consideration by the person taking the action" and that their existence would be "[...] enough justification for a government intervention," imposing taxes on those who generate negative externalities and subsidies to those who generate positive externalities (The Library of Economics and Liberty, 2018, n.p).

The term externality was used by Ronald Coase as the result of the difference between the marginal social product and the marginal private liquid product. In spite of the fact that Ronald Coase based his discussions on externalities on Arthur Cecil Pigou's discussions on divergence[s] (Hovenkamp, 2008, p. 635), to him externalities could be solved if the people affected by them and the people who created them could easily come together and bargain, that being, externalities, positive or negative, could be resolved within a strictly private relationship, having no need of any state intervention.

The concept of externality proposed by EAL has as its origin Coase's (1960) work, who proposes to analyze it from the idea of

opportunity cost, a comparative analysis between the income obtained from a combination of factors and the possible revenue obtained by alternative arrangements. Hence, instead of treating the production factors as things, the author proposes to consider them as rights.

Therefore, the right to do something that produces damage to others can also be seen as a production factor, in other words, the cost to exercising that right (of using a production factor) is always a loss to those who suffer the effects from its exercise.

This way, Coase reversed the terms in which the question was traditionally considered, giving it a dual approach. Thus, the problem is not simply to avoid the damage, but yet avoid the greater damage. What must be assessed is whether it is viable from the society's point of view, to allow or inhibit an individual's action, and the answer is not obvious unless the value of the gains and losses involved in the matter are known.

This conjuncture leads to the conclusion that decision-making at the time of law application should take into account all of the values involved in the matter under consideration, directly and indirectly, taking into consideration all of the externalities.

4.2 Rational choice

Once approached the concept of externalities, to complement the understanding of the EAL and its application to the precepts introduced by the Judicial Reorganization of companies on the international scene, the assumption of the rationality of human conduct must be understood.

Starting from Coase's teachings, rationality consist on the possibility of the individual, whenever faced with a diversity of choices, assess which option would offer the biggest benefit, analyzing the damages and choosing the situation that suits him the best (Coase, 1988, [not paged]). In other words, the individual, facing different possibilities of choices on a day to day basis, will choose according

to what is best for him, always aiming at his goals, choosing the one that brings him bigger satisfaction.

In this regard, Pinheiro and Saddi (2005, p. 89) points out that "the human being always seeks what he believes to be best for himself, preferring more to less satisfaction. Formally, it is said that economic agents act rationally, seeking to maximize their utility".

Therefore, through an economic analysis, the individual makes decisions based on his individual interests, without questioning whether "this decision would the best to be made for society" (Forgioni, 2005, p. 248, our own translation).

In this context, taking into consideration the economic analysis, the choice of the human being will vary on the advantages and disadvantages related to compliance and non-compliance of the norm, always prevailing the one that presents the best benefit from the point of view of the individual who practices it.

4.3 Law as conduct inducer

As shown by rational choice, it is clear that the legal system can influence the conduct of individuals in society. This way, Forgioni (2005, p. 248) points out that:

> [...] legal norms are nothing more than incentives or no incentives for economic agents to act in a certain way. The sanction is simply a price that will be valued by the economic agent according to the logic of cost/benefit of its possible behaviors (our own translation).

Given this context, the idea is complemented by the teachings of North (1994, p. 361), by stating that the institutions, including the legal ones, form the game rules, which will serve as "[...] basis for the choices made on the day to day basis by the economic agents".

Pinheiro and Saddi (2005, p. 13) argue that the law "[...] exerts influence on human behavior, using both sanction and reward instruments for that meaning" (our own translation).

Thus, through rationality, taking into account the current legal system, the individual will analyze the single costs and benefits to make the best decision for himself.

In this scenario, the relationship between Law and Economics is not merely economical, but of rational choice implications, resulting in the effects of legislation over the individual's behavior, in a way that "this will take into account all externalities ascending from their conduct" (Friedman, 2000, p. 8).

4.4 Transaction costs

Transaction cost analysis is also essential to verify the viability of Judicial Reorganization of companies in the current national scenario. These costs are those related to the realization of a business relationship that do not involve the manufacture of the traded object. These costs can be defined, for example, as costs to negotiate, draft and enforce the fulfillment of a contract. Williamson (1985, p. 18) explains that the transaction costs are the ones related to the movement of the economic system, differing from production costs, which are "related to other factors such as raw materials and labor".

Nevertheless, the regulatory factors of Law in the Economy, that is, the economic regulation by law can prove to be the transaction cost for the economy. Thus, both legal norms as for some actions, judicial and administrative decisions that regulate economic behaviors may prove to be transaction costs for the Economy, as they may act as induction factors able to reflect, in some level, on the economic agents choices, who are encouraged or discouraged to practice a certain social fact. For this reason, they must take into consideration the economic consequences from which they can result.[8].

[8] But as we have seen, the situation is quite different when market transactions are so costly as to make it difficult to change the arrangement of rights established by the law. In such cases, the courts directly influence economic activity. It would therefore seem

Cooter and Ulen (2010, p. 105) clarify that transaction costs are those related to "(i) seeking interested parties in the business; (ii) expenses for negotiation and formalization of transactions; and (iii) the costs to oversee and take appropriate action in the event of a breach of contract" (our own translation). Expenses for negotiation are intimately linked to the proceedings of the Judicial Reorganization of companies, since they embrace the resources intended for its processing and administration, which fall on all creditors, over the company and over the whole society.

That being, given the impossibility of eliminating transaction costs, individuals will always seek its reduction, taking into account the legal system to which they are subjected and the manner of action of legal institutions.

In this sense, the reduction of transaction costs is related to the search for greater efficiency in the economic sphere, as discussed before when it comes to externalities. Thus, in the present study, the scenario in which there is a reduction in transaction costs is considered efficient.

5 ECONOMIC ANALYSIS OF JUDICIAL REORGANIZATION OF COMPANIES

From the perspective of the theoretical framework adopted here, the Judicial Reorganization of companies, as implemented today in Brazil, finds no safeguard, since from the optic of consequentialism and pragmatism it would bring short-term benefits to a minority involved in the matter, to the detriment of the whole of society. This is because, if the social objective of the law is the maintenance of jobs, amongst other

desirable that the courts should understand the economic consequences of their decisions and should, insofar as this is possible without creating too much uncertainty about the legal position itself, take these consequences into account when making their decisions (COASE, 1960, p 19).

factors, the increase in the banking *spread* goes in the opposite direction, since it retracts investments in the most diverse productive sectors.

The most expensive money for entrepreneurs results in the consequent increase in business risk, as well as reflects in a minor stimuli to mobilize productive resources to entrepreneurial activities, as, guided by rationality, they will direct their resources towards safer investments and, many times, even abroad, which will result in a retraction of jobs.

One can also mention, from the point of view of EAL, social losses resulting from the high transaction costs generated by the Judicial Reorganization process. This is because it overloads the judiciary and its public workers, who need to devote daily working hours to its monitoring, reducing the efficiency of this institution, resulting in a minor celerity on the other processes, thus reflecting negatively to the rest of society that does not directly participate in it, even reaching on legal certainty, since the lack of speed prevents the process from reaching its social function.

In this sense, the analysis the data on the workforce of judges, new cases per judge and congestion rate on federal court basis[9], allowed the empirical verification of the real situation in which the provision of services by the Brazilian Federal Justice in the 1st degree.

To do so, it was analyzed data contained in the report entitled Justice in Numbers, published annually by the National Council of Justice - NCJ, and analyzed the data in the 2004 publication, whose base year was 2003 and the publication of 2019, with the base year was 2018, with the purpose of measuring the evolution of the factors that may have contributed to the subsequent slowness of the lawsuits in the Brazilian Federal Justice.

In 2003 the Brazilian Federal Justice had 1,162 judges in its staff (Brazil, 2003, p.183), and in 2018 this number was increased to

[9] Composed by Federal Regional Courts and Federal Judges, according to Articles 92 and 106 of the Federal Constitution.

1,917 judges (Brazil, 2019, p. 46), revealing an increase of 64.97% in the staff of magistrates in the Brazilian Federal Justice, between the years 2003 and 2018.

Regarding the new cases distributed to the Brazilian Federal Justice in 2003 and 2018, the report indicates that 4,824,071 (Brazil, 2003, p.194-196) and 4,203,804 (Brazil, 2019, p. 48) new cases, that is, between the years of 2003 and 2018 there was a reduction of 12.85% in the number of new cases distributed to the Brazilian Federal Justice in the period evaluated.

By dividing the number of new cases by the number of judges, it appears that in 2003 federal judges received an average of 4,151 new cases each (Brazil, 2003, p. 183-196), in 2018 they received an average of 2,090 new cases each (Brazil, 2019, p. 49), having had a reduction of 49.65% in the average of new cases received by federal judges between the years of 2003 and 2018.

This reality reflected in the congestion rate of the lawsuits, which was 78.19% in 2003 (Brazil, 2003, p. 205-207) and in 2018 it was 69.6% (Brazil, 2019, p.49), registering a decrease of 8.59%.

The congestion charge of lawsuits is directly linked to the processing time. Regarding such data, the Justice in Numbers 2019 report recorded three types of measurements, that being the average processing time from the distribution of the lawsuit until the 1st degree judgment, the average processing time of the distribution processes until their termination ("discharged" lawsuits), and the average processing time of pending cases, the distribution until the end of the calculation, such measurement being performed on December 31, 2018.

The average time to process a lawsuit, measured from the moment of its distribution to the first degree judgment, was 1 year and 10 months, however, the average time to process a writ of execution, measured from the moment of its distribution until the sentence of the first degree was 7 years and 4 months (Brasil, 2019, p. 150).

The average time for processing a lawsuit, measured from the moment of its distribution until the moment of its discharge, was 3

years, however, the average time for processing a writ of execution, measured from the moment of its distribution until the moment of its discharge, was 7 years and 7 months (Brasil, 2019, p. 150).

The average processing time for a pending lawsuit, measured from the time of its distribution to December 31, 2018, was 3 years and 11 months, while the average processing time for a pending writ of execution, measured from the moment Its distribution until December 31, 2018 was 8 years and 1 month (Brazil, 2019, p. 150).

Although there has been an increase in the staff of federal magistrates followed by a reduction of judicialization in the Brazilian Federal Justice, it can be seen that the negative externality situation persists, that being the procedural slowness, and, with it, the untimely guarantee of rights illegally hindered or denied to citizens, who seek the Brazilian Federal Justice in search of a fair jurisdictional provision to resolve their conflicts.

The situation is no different in the Brazilian State Justice, because the analysis of data regarding the staff of judges, new cases, new cases by magistrate and congestion rate within the Brazilian State Justice [10], allowed the empirical verification of the real situation in which the provision of services by the Brazilian State Justice is.

Consequently, as in the empirical analysis carried out within the Brazilian Federal Justice, the data contained in the Justice in Numbers report, published annually by the National Council of Justice - NCJ, were analyzed, and the data contained in the 2004 publication, whose base year was 2003, were analyzed, and in the publication of 2019, whose base year was 2018, aiming to measure the evolution of factors that may have contributed to a possible state of chaos installed in the Brazilian State Justice.

In 2003 the Brazilian State Justice had, in its staff, 9,745 magistrates (Brazil, 2003, p. 13), while in 2018 this number was increased

[10] Consisting of the Judiciary Powers of each State as well as the Federal District.

to 12,472 magistrates (Brazil, 2019, p. 30), revealing an increase of 27.99% in the staff of magistrates in the Brazilian State Justice, between 2003 and 2018.

Regarding the new cases distributed to the Brazilian State Justice in 2003 and 2018, the report indicates that there were distributed, respectively, 14,778,226 (Brazil, 2003, pp. 33-37) and 19,579,314 (Brazil, 2019, p. 36) new cases, that is, between 2003 and 2018 there was a 32.48% increase in the number of new cases distributed to the Brazilian State Justice in the period evaluated.

In 2003 state judges received an average of 1.243 new cases each (Brazil, 2003, pp. 38-43), while in 2018 they received an average of 1,479 new cases each (Brazil, 2019, p. 36), with a 18.98% increase in the average of new cases received by state magistrates between 2003 and 2018.

This reality was reflected in the congestion rate of lawsuits, which in 2003 was 60.71% (Brazil, 2003, pp. 51-55) and in 2018 it was 74% (Brasil, 2019, p. 36), registering an increase of 13.29%.

The procedural congestion charge is directly linked to the processing time. Regarding such data, the Justice in Numbers 2019 report recorded three types of measurement, namely the average processing time of the distribution processes until the 1st degree judgment, the average processing time of the distribution processes until their termination ("discharged" lawsuits), and the average processing time of pending cases, from the distribution until the end of the calculation, such measurement being performed on December 31, 2018.

The average time for processing a lawsuit, measured from the moment of its distribution until the first-degree judgement, was 2 year and 4 months, however, the average time for processing a writ of execution, measured from the moment of its distribution to the first degree judgment was 6 years and 1 month (Brasil, 2019, p. 150).

The average time for processing a lawsuit, measured from the moment of its distribution until the moment of its discharge, was 3 years and 3 months, however the average time for processing an

execution process, measured by from the moment of its distribution until the moment of its discharge was 7 years and 6 months (Brazil, 2019, p. 150).

The average processing time for a pending case, measured from the time of its distribution to December 31, 2018, was 3 years and 11 months, while the average processing time for a pending writ of execution, measured from the moment of its distribution until December 31, 2018 was 6 years and 4 months (Brazil, 2019, p. 150).

The above data show that the expansion of the staff of Brazilian State Justice magistrates did not follow the increase in the number of new cases distributed, which caused, disproportionately, the increase in the average number of new cases distributed to each judge, thus resulting in in turn, in increasing the procedural congestion rate.

Although there is an increase in the staff of judges, this did not follow the increase in judicialization in the Brazilian State Justice, in order to generate a negative externality[11], that being the slowness of the lawsuits and, with it, the untimely guarantee of the fulfillment of rights illegally blocked or denied to the citizens, who sought the Brazilian State Justice in search of a fair jurisdictional settlement to resolve their conflicts.

That being said, the resulting negative externalities, such as the increase in the banking *spread* and the improper allocation of resources to judicial reorganization of companies that do not present satisfactory results, resulting in unnecessary efforts of the judiciary, and, in general, the loss of efficiency, should also be stressed, viewed from the perspective of rationality offered by the theoretical empirical instrument of economics.

[11] The side effects of the production of goods or the provision of third parties on services are called externalities, which are not directly involved with the activity. In this matter, the judicial provision in lawsuits, being an exclusive prerogative if the State, which seeks to surrender the right to the parties in dispute, proves to be a provision of public service, being the delay, one of its negative externalities.

6 CONCLUSION

The Judicial Reorganization of companies in Brazil has as its chore the overcoming of the economic and financial crisis of the company, in a way of allowing the maintenance of the source of production, employment of workers and the interests of creditors.

It was found that, in the current national scenario, this institute has the ability to increase the cost of credit in Brazil and consequent banking *spread*, since it reflects directly in the context of default, which is mainly responsible for the formation of its value.

Considering the theoretical framework adopted, one can conclude that the Judicial Reorganization of companies, by increasing the banking *spread* generates enormous social losses, having in consideration that incurs on great transaction costs generated by the process in diverse negative externalities and, overall, in the loss of efficiency from the perspective of rationality offered by the empirical theoretical instrument of economy.

At last, according to the consequentialist and pragmatic view of the Economic Analysis of the Law the studied subject finds no support, hence gives short-term benefits only to those who directly participate of its process, that is, the company, its workers and lenders, all at expenses of the losses provided to the rest of society.

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