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FREE LEGAL ASSISTANCE IN CIVIL PROCEDURAL LAW

ORIGINAL ARTICLE

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ABSTRACT

This article sought to promote a systematic reflection on Free Legal Assistance and the gratuitousness of justice in Civil Procedure. In this context, the following guiding question was adopted: what hinders, facilitates or interferes with the granting of the benefits of Free Legal Assistance and Free Justice, in the broad sense and in the strict sense, in the systematic procedural conception, in the face of judicial decisions of deferral, denial and revocation of the granting of the benefit? Aiming to address the concepts, definitions, their procedural aspect and their application in the execution phase of the sentence. Therefore, the inductive method was used as a research tool for Doctrine and Jurisprudence, in order to identify what hinders, facilitates or interferes in the granting of the benefits of Legal Assistance. Thus, through this research, it was possible to observe that the guarantee of free justice

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involves only procedural expenses and attorney fees, being granted to the party as long as these prove the precariousness of resources. Therefore, the Civil Procedure Code promotes the application of procedural equality to reach justice for all those who are underprivileged and in social exclusion and who may need state jurisdictional support.

Keywords: Legal Assistance, Civil Procedure, Access to justice, Compliance with Sentence.

1. INTRODUCTION

This article aims to promote a systematic reflection on Free Legal Assistance in Civil Procedure, which regulates the institute of gratuitous justice, contained in the constitutional precept of “full and free legal assistance to those who prove insufficient resources” (art 5, LXXIV, of the CF). It limits the relevance of establishing the differences between free legal assistance and the gratuitousness of justice, provided for in the CPC[13]/2015 and in the Legal Assistance Law (Law n. 1.060/1950, amended by Law 7.510/1986), and addresses Its concepts and definitions brought by the doctrine, the legislative aspects about the hyposufficient person and its application in the sentence execution phase are analyzed.

It seeks to demonstrate free legal assistance to the poor as a useful and necessary instrument for the access of the natural or legal person, Brazilian or foreign, to justice, which, due to the few financial resources and the lack of conditions to pay the costs and expenses procedures, have this access difficult.

It is not too much to say that the movement of the Judiciary machine generates high costs for the State in providing services to its jurisdictions. Thus, to ensure jurisdictional effectiveness, the legislator established criteria for the granting of judicial gratuity.

Due to this context, this article sought to answer the following question: what makes it difficult, facilitates or interferes with the granting of the benefits of Free Legal Assistance and Free Justice, in the broad sense and in the strict sense, in the systematic procedural conception, in the face of decisions deferral, denial and revocation of the granting of the benefit? Therefore, the objective was to approach the concepts, definitions, their procedural aspect and their application in the sentence execution phase. Therefore, the main nuances of free legal assistance in the CPC/2015 will be analyzed, and what is the relationship between the fundamental precept of the constitutional guarantee of access to justice and the judicial effectiveness in the Civil procedural system through the inductive investigation of the Doctrine and Jurisprudence.

2. ACCESS TO JUSTICE

For Lara (2002), the expression “access to justice” is based on the articulation of elementary concepts of a political, religious, sociological and philosophical nature of humanity, so that our society went through several stages until the need to provide legal assistance to individuals who did not have the financial means to pay the sums and procedural expenses in the judiciary, to the extent that, nowadays, we can consider access to justice as a fundamental right, a component of the dignity of the person as a citizen is essential to enforce their human rights.

In the words of Cappelletti (1988), in recent years, barriers to access to justice have been broken with legislative measures, which were created as a means to improve the legal aid system. In this way, the poor are increasingly obtaining free legal assistance and free justice in the procedural sphere to obtain a judicial response, not only for family cases or criminal defense, but also to claim new rights, whether as plaintiffs or defendants.

Along these lines, the Federal Constitution of October 5, 1988, ensured free justice to needy citizens, as a duty of the State to provide legal assistance (Law 1060/1950

amended by Law 7510 of July 4, 1986), having the norm Infraconstitutional law was accepted by article 5, LXXIV, which defines as a fundamental precept: “full and free legal assistance to those who prove insufficient resources” by the State (BRASIL, 1988).

It is noted that the gratuitousness of justice provided for in the procedural system reveals a fundamental judicial public policy to guarantee to natural persons or legal entities governed by private law, who present hypo sufficiency and who prove this quality in the procedural legal relationship, access to justice, as a corollary of the democratic rule of law within a more just and egalitarian society.

3. JUDICIAL ASSISTANCE AND FREE JUSTICE

In accordance with the thought of Master José Cretella Junior, Alvarez (2022) describes free legal assistance and gratuitous justice, as a whole of an administrative nature. Based on this premise, the author also elaborates the concept of the institute, in which:

> Denomina-se assistência judiciária o auxílio que o Estado oferece – agora, obrigatoriamente – ao que se encontra em situação de miserabilidade, dispensando-o das despesas, e providenciando-lhe defensor, em juízo. A lei de organização judiciária determina qual o juiz competente para a assistência judiciária; para deferir ou indeferir o benefício da justiça gratuita, competente é o próprio juiz da causa. A assistência judiciária gratuita abrange todos os atos que concorram, de qualquer modo, para o conhecimento da justiça – certidões do tabelião, por exemplo - ao passo que o benefício da justiça gratuita é circunscrito aos processos, incluída a preparação de provas. O requerente antes de entrar com a ação, em juízo, deverá solicitar a assistência judiciária (ALVAREZ, 2022)

Therefore, in the procedural legal system (article 98, CPC/2015), it defines as a beneficiary of the gratuitousness of justice the natural or legal person, Brazilian or foreign, with insufficient resources to pay the costs, procedural expenses and legal fees (BRAZIL, 2015).

For Assis (2015), public order establishes mechanisms to support the less favored, in order not to make the judicial guarantee useless to the majority of the population, or, at the very least, inaccessible to those lacking wealth or resources. And still believe that:

> Os esforços para colocar os vulneráveis em situação material de igualdade, no desenvolvimento do processo, não prescindem do prévio fornecimento dos meios mínimos para postular na justiça pública. Trata-se de elemento imprescindível para promover o equilíbrio concreto do processo, sem embargo da ulterior necessidade de recursos e armas técnicas. Neste sentido, a gratuidade revela-se essencial à garantia do acesso à justiça. (ASSIS, 2015, p. 334)

Santos (1991, p. 312) asserts in his lessons that free legal assistance "consists of the constitutional institute that assures the needy and considered the economically weakest, to obtain judicial services without any pecuniary burden".

In this context, it is noted that the differences between free legal assistance and free justice show that both propositions are present in the Brazilian legal system. Thus, Bueno (2017, p. 458) conceptualizes:

> A expressão assistência jurídica, contida no inciso LXXIV do art. 5º da Constituição Federal é subdividida na assistência judiciária, que consiste no dever do Estado de fornecer orientação jurídica a quem não tiver condições de buscá-la mediante retribuição financeira própria, na gratuidade de justiça, que consiste no dever do Estado dispensar quem não tem condições de antecipar as despesas do processo de fazê-lo.

Alongside the definitions and concepts proposed by the scholars visited, we have that free legal assistance is broader and corresponds to a fundamental precept, in which the State must facilitate for all persons, natural or legal, who prove insufficient resources, the obtaining the right to a broad and integral judicial service, which must be provided by bodies that are not part of the Judiciary, such as the Public Ministry (defender of society as a whole, in Diffuse and Collective Rights); the Public Defender's Office and the Attorney General's Office.

From the gratuitousness of justice, provided for in Law No. 1 3.105, of March 16, 2015, in its article 98, §§ 1 and 3, the beneficiary will be exempt from paying fees, costs and other procedural expenses and the demandability of procedural expenses for a period of 5 years, if still in a situation of insufficient resources, responsible for justifying the granting of free justice (BRASIL, 2015).

The State, through the bodies mentioned above, which are intended to perform the essential functions of justice in total resonance with the democratic regime of law, enables free legal assistance, which according to Assis (2015, p. 1241):

> E, por meio último, ao lado da advocacia privada, confiou-se à Defensoria Pública o patrocínio dos interesses individuais e coletivos dos necessitados. Essa atividade estatal assenta no princípio da igualdade, propiciando a criação de ordem jurídica justa.

Therefore, the state body of the Public Defender's Office, as an institution essential to the jurisdictional function of the State and those who come from it (Art. 134) (BRASIL, 1988), is in charge of legal guidance and defense, at all levels, of the needy. “Thus, it is up to the Public Defender's Office to provide full and free legal assistance to those who prove insufficient resources” (NASCIMENTO, 2002, p. 179).

It is noted that the granting of free legal assistance, provided for in the Constitution in simultaneous application to infra-constitutional legislation[3], also supports the free choice of the party[4], and the preference for a private lawyer does not prevent the granting of the benefit.

However it may be, free legal assistance is not excluded when not funded by the State, it can also be provided by private entities and organizations, such as Unions, representing in favor of their associates or members of a certain category (Law No. 1970), or even by nuclei of legal practices for free legal assistance, subordinated to private and public law faculties (BRASIL, 1970).

While the free legal assistance of technical representation is more comprehensive and extensive (article 5, LXXIV) (BRAZIL, 1988), the gratuitousness of justice refers to the waiver of the payment of procedural expenses to the judicial service (art. 98, §1 and its items) (BRASIL, 2015), even if provided by a lawyer freely constituted by the party.

The scope of free justice, at the same time, aims to discipline the requirements for granting the benefit of free justice (BUENO, 2017, p. 458). Targino (apud ALVIM, 2017, p. 166) conceptualizes the gratuitousness of justice as a prerogative intended to enable access to the jurisdictional protection of the State for those who have difficulties in bearing the costs of the process, constituting a subjective public right recognized both to the person individual as to the legal entity governed by private law, regardless of whether or not it is for profit, consisting of the exemption from the obligation to advance procedural expenses (TARGINO apud ALVIM, 2017, p. 166).

The Legislator, then, regulated the Gratuity of Justice along the lines of articles 98 to 105 CPC/2015 (BRASIL, 2015), having access to justice under the fundamental constitutional guarantee (article 5 LXXIV) (BRASIL, 2015), therefore, perfectly inserted in the constitutional procedural legal system.

The requirements of free legal assistance and free justice, due to its essentiality to the hypo sufficient, cover all the acts necessary for the solution of the dispute, such as, for example, the expenses with carrying out a genetic code (DNA) exam and the adverse possession in the payment of fees to notaries or registrars, thus ensuring access to justice for all citizens before the Judiciary.

4. THE MOMENT OF POSTULATION OF THE BENEFIT OF FREE JUSTICE

Having made the previous premises, we move on to the moment of postulation of the concession to the benefit of gratuitousness of justice. As provided for in the civil

procedural system, there is no specific procedural moment for this purpose, and therefore it does not characterize the institute of estoppel. However, national jurisprudence has understood that the legal effects of free justice operate from the moment of granting onwards[5].

It should be added that the CPC/2015 expressly revoked articles 4 and 6 of Law 1060/50, which regulated the moment of application for the benefit (article 1072, III CPC/2015), with the request for free justice being made in the first manifestation of the party (BRASIL, 2015)[6].

Targino (apud ALVIM, 2017, p. 169) teaches that:

> A concessão da gravidade da manifestação da parte que poderá requerê-la na petição inicial, na contestação, na petição para ingresso de terceiro no processo ou em recurso. Não se exige que seja formulado no primeiro instante em que se vem ao processo, mas sua eficiência estará limitada aos atos posteriores ao seu deferimento.

Great progress was made in the civil process in 2015, as it provided that the request for free justice would be carried out in the case file itself (art. 99, §1) (BRAZIL, 2015), honoring the principle of procedural celerity. Thus, in the event of a supervening fact of the need for gratuitous justice, the request of the party will be made by simple petition, at any procedural moment, without suspension of the process for its approval.

On the other hand, the Judiciary gives the party the opportunity to prove the legal presuppositions for the granting of gratuitous justice, provided that it is configured to be hypo sufficient, not having the financial conditions to bear the procedural expenses without prejudice to its sustenance (ALVIM, 2017, p. 169).

The CPC/2015 does not preclude the consideration of the application for the benefit of gratuitous justice to the party that needs it, even in a higher court, and it may be requested by the parties to the competent judges, before the judging body, as soon

as the requirements to support the condition of beneficiary, with the State providing full legal assistance or free justice to the economically weak (BRASIL, 2015).

5. GRANTING, DENIAL AND REVOCATION OF THE BENEFIT

The evolution of the CPC/2015 (BRASIL, 2015) in the gratuitousness of justice followed the constitutional precept of free legal assistance (art. 5th LXXIV) (BRASIL, 1988), guaranteeing the application at any procedural stage, not being subject to the denial of the benefit (Article 99, §2) (BRASIL, 2015) without the State Judge analyzing the evidence of the assumptions for granting the benefit.

Although the CPC/2015 (BRASIL, 2015), has revoked some provisions of the Law on Free Legal Assistance, such as: articles 2, 3, 4, 6. 7, 11, 12 and 17 of Law 1,060/50, there was no express revocation of article 5[7], there was an antinomy with article 99, §2[8] of the procedural law. It is evident that article 5 of the Law on Free Legal Assistance is in disarray with the constitutional text (article 5, item LXXIV) (BRAZIL, 1988) and with the principle of human dignity, thus, it is up to the judge to verify, if the In this case, the presuppositions for granting the benefit of free justice and applying the procedural rule in the decision to grant, reject or revoke the benefit of free justice.

Once the presuppositions for granting the gratuitousness of justice are present, based on the evidence that demonstrates the economic difficulties of the party, the latter will be exempt from advancing the procedural expenses. If the judge or court concludes that there is no evidence of the legal presuppositions of hypo sufficiency, the granting of the benefit will be rejected. This is because the denial of the benefit of procedural Free Justice must be based on concrete elements and based on the real situation of the applicant[9].

A point to highlight in the lack of financial resources of the parties is the relative presumption for the granting of the benevolence to the natural person (article 99, §3) (BRASIL, 2015),[10] without extension to private companies (legal entities).

Regarding the presumption, the indoctrinator Bueno (2017, p. 459), states that:

> A insuficiência de recursos é presumida quando alegada pela pessoa natural (art. 99, §3º), de modo que a concessão do benefício da gratuidade de justiça não se condiciona à indispensável prova do estado de necessidade financeira do requerente, mas, em princípio, tão somente à mera afirmação dessa condição. De outro lado, a insuficiência de recursos deve ser provada quando alegada por pessoa jurídica, conforme orientação do Enunciado 481 da Súmula da jurisprudência do STJ, que não foi desconstituída pelo CPC/2015.

Another point, the hiring of a private lawyer by the parties (plaintiff or defendant) was the scene of many doctrinal and jurisprudential discussions, and the procedural rule came to pacify the understanding, specifically in art. 99, §4 (BRAZIL, 2015).

The judicial act in deferring, denying or revoking the granting of gratuitous justice is concentrated in the interlocutory decision, and the party that feels harmed has the appeal of the interlocutory appeal, as it is the appropriate appeal to the species; unless the matter is decided in the judgment, when an appeal will be possible (art. 101) (BRASIL, 2015)[11].

The preliminary objection to free legal assistance, under the new procedural system, is formulated in the defense, in the reply and in the counter-arguments of appeal or, in the case of a third party request or supervening request, by means of a simple petition, in the process itself (art. 100) (BRAZIL, 2015). In turn, the revocation of the benefit of the gratuitousness of justice consists in the loss of the quality of necessity of the party, as it is transitory, that is, being needed at one time and not at another, and the change in the economic situation of the beneficiary may occur.

In the light of the jurisprudence, once the benefit is revoked, the party will bear the procedural expenses that it has failed to advance, and in case of bad faith, the party that has benefited will pay ten times the amount of the costs as a fine, reversed in favor of the Public Treasury or the Union (ALVIM *et al*., 2016)[12].

6. BENEFICIARIES

Access to justice is a constitutional guarantee that must be facilitated to all individuals, individuals or legal entities governed by private law, regardless of whether or not they have for-profit purposes, enshrined in article 5 *caput*, LXXIV, XXXV of the Federal Constitution of 1988 (BRAZIL , 1988), being essential to the Democratic State of Law, and provided for in the infraconstitucional law contained in article 98 *caput* of the Code of Civil Procedure (BRASIL, 2015), not making any distinction for the granting of gratuitousness of justice, simply demonstrating by evidence the lack of financial resources to ensure the party the right of action, being able to enjoy the benefit of free legal assistance, extended to guarantee a public defender and the exemption in the anticipation of the costs of the process, to overcome the financial obstacles of access to the right to guardianship jurisdictional.

The right to free justice has evolved by granting the benefit to legal entities governed by private law. The STJ (Superior Court of Justice) had been recognizing this right of legal entities to free access long before the advent of the CPC/2015 (BRASIL, 2015), but the Special Court considered it necessary, for access, to establish a distinction between legal entities with profit and non-profit, so that it could determine the proof of precariousness of the company's financial situation. Thus, he came to edit the precedent n°. 481, which provides that the gratuitousness of Justice is aimed at "profit or non-profit legal entity that demonstrates its inability to bear the procedural charges". Thus, the same understanding was also applied to the natural person (BRASIL, 2011). The STF (Federal Supreme Court) did not make this distinction for companies (legal entities governed by private law), whether for profit or not.

In the understanding of Donizetti (2017, p. 92-93), we have to:

> O CPC/2015 não destoa do entendimento jurisprudencial, ao passo que presume como verdadeira alegação de insuficiência deduzida exclusivamente por pessoa natural. Em síntese, tratando-se de pedido requerido por pessoa física, descabe a exigência de comprovação da situação de insuficiência de recursos, salvo quando

> o Juiz evidenciar, por meio da análise dos autos, elementos que demonstrem a falta dos pressupostos legais para concessão da gratuidade de justiça. Nessa hipótese o juiz deverá oportunizar a manifestação da parte, a quem caberá comprovar a insuficiência. Tratando-se de pessoa jurídica, a insuficiência de recursos não se presume, de modo que esta deverá fazer prova da necessidade, tal como assentado na jurisprudência (Súmula 481 do STJ).

the art. 98 of CPC/2015 settled the controversy over the distinction that existed between legal entities governed by private law, for profit or not, and conceived the generic requirement of proof of financial difficulty, since many companies are in a precarious situation, mainly to individual companies and micro-enterprises, which do not have the financial conditions to pay their employees' salaries (BRASIL, 2015). Therefore, the procedural institute includes companies to obtain the gratuitousness of justice, that is, the judiciary opens the opportunity for them to be considered beneficiaries and, from the verification that they are in real business impoverishment, they will be guaranteed access to justice for legal persons.

More rigor is required for granting the benefit to large legal entities, when it is remembered that one of the basic principles of the definition is precisely the separation of the assets of the company and its partners, and that allows them to respond for acts of the person in express legal cases, especially when it is verified that the business entity was used or constituted to circumvent the law or offend rights considered unavailable, as in cases of disregard of the company's legal personality.

The scope of the benefits of full and free justice is personal, and will be granted to the party, on a case-by-case basis, not extending to the co-joint or successor of the beneficiaries, who may obtain the concession upon request (art. 99, §6) (BRAZIL , 2015), demonstrating that they meet the legal requirements of admissibility for express approval. Thus, "The right to the benefit of gratuity is very personal, concerning only the holders, from which it is not transferred by session or inheritance" (SANTOS, 1991, p. 313), which means that, if there is a joinder or succession, each must apply for the benefit in their own name.

Lucon (2022, p. 140) states that the right of the beneficiary of free justice does not extend to his private lawyer when in an eventual appeal brought exclusively on the value of the loss set in his favor, as this will be subject to the payment of the preparation , unless you are also entitled to the benefit of free justice.

And finally, CPC/2015 does not rule out the possibility of granting free justice to foreigners who reside here or who, perhaps, are here, and need the benefit of free justice to go to court by legal permissive (art. 5, CF/ 88 and art. 98 CPC/2015), regardless of whether they are domiciled in the country or not, once it is proven that they do not have the economic means to pay for the process (BRASIL, 2015).

7. GRATUITY OF JUSTICE IN THE PHASE OF COMPLIANCE WITH THE JUDGMENT

Starting the phase of compliance with the sentence, the party, once the beneficiary of the gratuitousness of justice and having won in the demand, is exempt from paying the procedural expenses and attorney's fees of the loss of suit, but this is still an obligation (art. 82, § 2, article 98, § 2, § 3 and 4) (BRAZIL, 2015), remaining enforceable for 5 (five) years subsequent to the final decision.

It should be noted that, in compliance with the sentence, the interpretation, specifically of §4, together with item VIII, of article 98 CPC/2015 (BRASIL, 2015), comprises the deposits provided for by law for the filing of an appeal, since the filing of action and the practice of other procedural acts, inherent to the exercise of full defense and adversarial proceedings, does not include fines, *v.g.*[14], bad faith litigation (art. 81) (BRAZIL, 2015), which implies that, in the end , the beneficiary party will pay the fine.

In this sense, Bueno (2017, p. 463) clarifies that:

> Assim, o beneficiário da gratuidade de justiça pode, ao final, em execução forçada, ser compelido a pagar a multa fixada por ato de

> má-fé, quer quando devida ao Estado, quer quando devida à parte contrária, independentemente da revogação do benefício da gratuidade da justiça.

As can be seen, apart, even being the winner of the demand, as described in article 515, (BRASIL, 2015), holder of a judicial enforcement title and having recognized its right to demand the obligation to pay a certain amount, to do, not to to do or to deliver something; is still responsible for the anticipation of procedural expenses.

In this context, Assis (2015, p. 343) points out that:

> Parece óbvio, que, nesses processos, a colaboração do executado sempre representará fato acidental, motivo por que o custo financeiro pela instauração e pelo desenvolvido da atividade processual recairá unicamente sobre o exequente, em cujo proveito realiza-se a execução. O objeto do dever de antecipar equivale ao objeto da responsabilidade pelo reembolso. Porém, impõe-se considerar as partes legalmente isentas do dever de antecipação.

It is the judge's duty to provide for the responsibility for reimbursement, which represents reparation for the loss of suit. The pronouncement of the judge must be explicit, without which there is no obligation on the part of the loser to reimburse the winner for procedural expenses. For the debtor to reimburse the winner of the demand, the obligation arises through a judicial provision, the sentence. In the execution of the sentence, the imputation to the loser is unequivocal. He will have to answer for all the cost of the process, being, however, exempt from the payment as long as his situation of misery persists.

If the benefit of the gratuitousness of justice is granted, it remains effective for all phases of the judicial process, including the execution phase, and the benefit can only be revoked by means of a reasoned judicial decision (98, § 3) (BRASIL, 2015) .

Bueno (2017, p. 463), when addressing the topic, lectures:

> O deferimento da gratuidade da justiça é *sui generis* decisão provisória sujeita a revogação sempre que houver alteração das condições da situação financeira de quem postular e obtiver seu

> deferimento. Significa, portanto, que o benefício é, em regra, *temporário e condicional*, já que pode ser revogado a qualquer tempo e está subordinado à manutenção da situação de hipossuficiência financeira.

It is noteworthy that the forced execution seeks the constriction of assets to satisfy the credit. Shimura (1997, p. 78) clarifies the patrimonial responsibility:

> Como o devedor não pode ser física e corporalmente coagido a cumprir a obrigação, é o seu patrimônio que responde, em última análise, pela satisfação do débito. Desdobra-se em dois elementos distintos, o caráter pessoal (dívida) e outro de caráter patrimonial, que é de responsabilidade, o que se traduz na sujeição do patrimônio a sofrer a sanção civil. Normalmente, esses dois elementos reúnem-se em uma só pessoa, o devedor, sendo certo que não pode existir dívida sem responsabilidade. Mas, o reverso é possível, ou seja, o patrimônio de uma pessoa pode responder pela obrigação sem ser devedor, nesse particular, o que há é sujeição, e não propriamente obrigação.

It is noted, from the teachings of Bueno (2017), that the insufficiency of resources is not to be confused with the circumstance of the party having or not having assets. The party, even if it does not have sufficient income to pay the costs and procedural expenses without prejudice to its own livelihood, may have assets In this way, you can still count on the right to exemption from expenses and legal fees, when duly proven insufficient monthly income, however, at the end of the process, you must answer for any legal fees set by the loss of suit (BUENO, 2017, p. 460)

In this case, if there is equity, which was granted the benefit of gratuitous justice, the exemption may be partial (art. 98, § 5) (BRASIL, 2015) for procedural expenses.

The party's patrimonial liability remains (art. 798) (BRASIL, 2015), and, by means of forced execution, the succumbent is liable with its assets for the default of the debt of attorney's fees, so that the assets can be pledged and disposed of in court to face the condemnation of the funds (BUENO, 2017, p. 460).

Following the line of the doctrinaires endorsed, the debtor beneficiary of the gratuitousness of justice, in the execution of the sentence, will answer with its

patrimony for the sums of the succumbence (article 82, §2º and article 98, §3º) (BRASIL, 2015) when it is condemned to pay the expenses and attorneys' fees, the payment being conditional on the revocation of the benefit and for the time foreseen in the procedural rule.

8. CONCLUSION

Despite access to justice (Article 5, (BRASIL, 1988)) for those who need it, in social reality, there is the so-called “world of legal fiction”, or ontological plane. It should be noted that the application of the current rules (Law 1060/50 and Law 13,105/2015) in the procedural system is necessary to ensure to the parties, in an equitable way, the real judicial effectiveness in the implementation of fundamental principles, the dignity of the person human rights, equality and due process of law, enshrined in the Federal Constitution/1988, allowing all natural persons or legal entities governed by private law, access to the Judiciary, if demonstrably hypo sufficient and lacking free legal assistance and free justice for access to full and free justice in the resolution of their conflicts.

Returning to the research problem: what makes it difficult, facilitates or interferes with the granting of the benefits of Free Legal Assistance and Free Justice, in the broad sense and in the strict sense, in the systematic procedural conception, in the face of judicial decisions of approval, denial and revocation of the benefit grant? It was possible to conclude that the Civil Procedure Code passes the regulation of the concrete case in the application of procedural equality to reach justice to all those who are destitute and in social exclusion and who will need the state judicial support, that is, to enforce their rights threatened or harmed, echoing in the guarantees of rights of a social and democratic dimension.

The contemporary dogmatic construction has been in the sense that the image of justice reflects the aspirations of a more egalitarian, free and democratic society, using the constitutional instruments in the Brazilian procedural system.

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Hence the gratuitousness of justice instituted in doctrine and legislation as a universal right, which is based not only on legal reasons, but, above all, on social and political ones. Thus, it is essential that the granting of the benefit extends to the natural and legal person of private law and, for the granting of the granting of the benefit, it is guided by specific assumptions, because the judicial machine generates high costs that are borne by the State, in order to be consistent with the constitutional provision, but also with the judicial apparatus.

The hypo-sufficiency must guide the granting of the benefit and must be submitted to the appropriate evaluation of the current procedural system, so that the applicants prove their personal situations molded to the legal text. Consequently, once the presuppositions of the civil procedural rule are fulfilled, it is the duty of the State-Judge to grant it, and any subjective analysis that does not take into account the objective elements for the granting is prohibited. It was observed, then, that the postulation of gratuitousness of justice is done at any procedural moment, as long as there is a real need of the applicant for gratuitousness of justice, characterized by legal provision, as a very personal right for the natural and non-legal person.

It was demonstrated that the guarantee of free justice to legal entities governed by private law is granted as long as they prove the precariousness of resources, even when they cannot pay their employees, and it was concluded that the company's patrimony is not confused with that of the partners. .

It was also asserted that the granting of legal gratuity, according to the CPC/2015 system, is extremely exceptional and involves only procedural expenses and legal fees, not including the waiver of fines imposed in the course of the process, as the party beneficiary of free justice acted in bad faith, with the legislator seeking to preserve the procedural good faith of the parties.

Finally, to the conviction to succumbence in the execution of the execution of the sentence, the beneficiary party has the duty to pay the procedural expenses and

legal fees, being this obligation suspended and conditioned to the revocation of the gratuitousness of justice for a period of 5 (five) years (article 98, §2 and § 3) (BRAZIL, 2015). In this way, the procedural system and the Law of Free Judicial Assistance are related in accordance with the democratic regime of law, with all the support apparatus for broad access to justice, which, although not yet completely effective, has been an important instrument in the guarantee of fundamental rights for large portions of the population, previously excluded from participation in the social pact.

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APPENDIX - FOOTNOTE

3. Law 1060/50 establishes norms for the granting of legal assistance to the needy.

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Art. 14. Liberal professionals appointed to perform the role of defender or expert, as the case may be, except for just reason provided for by law or, in their omission, at the discretion of the competent judicial authority, are obliged to comply, under penalty of fine from Cr$ 1,000.00 (one thousand cruzeiros) to Cr$ 10,000.00 (ten thousand cruzeiros), subject to the readjustment established in Law No. 6,205, of April 29, 1975, without prejudice to the applicable disciplinary sanction. (Wording provided by Law No. 6,465 of 1977)

- **1º** In the absence of an indication by the assistance or by the party itself, the judge will request that of the respective class organ. (Included by Law No. 6,465 of 1977)
- **2º** The fine provided for in this article shall revert to the benefit of the professional who assumes the charge in the case. (Renumbered from the Sole Paragraph, with new wording, by Law No. 6,465, of 1977).

4. CPC/2015: "**Art. 99**. The request for gratuitousness of justice can be formulated in the initial petition, in the answer, in the petition for the entry of a third party in the process or on appeal.

- **4º** The assistance of the applicant by a private lawyer does not prevent the granting of free justice.

5. SUMMARY: "Condominium expenses Collection Compliance with judgment Legal assistance Legal entity Demonstrated financial precariousness Granting Effects of the concession that operate ex nunc, from the decision rendered, not applying to past acts Final costs due Appeal provided in part." (26th Chamber of Private Law of the Court of Justice of São Paulo, render the following decision: "The appeal was partially granted. V. U.", in accordance with the vote of the Rapporteur, which is part of this judgment. The judgment was attended by the Honorable Judges Felipe Ferreira (President) and Antonio Nascimento Interlocutory Appeal No. 2052450-90.2017.8.26.0000. Rapporteur: Vianna Cotrim. São Paulo, SP, October 26, 2021.

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6. Art. 99 CPC/2015 “The request for gratuitousness of justice can be formulated in the initial petition, in the answer, in the petition for the entry of a third party in the process or in appeal; and in its § 1º - If supervening to the first manifestation of the party in the instance, the request can be formulated by simple petition, in the records of the process itself, and will not suspend its course.

7. “the judge, if he does not have well-founded reasons to reject the request, must judge it from plan, motivating or not the granting within the period of seventy-two hours”

8: “The judge can only reject the request if there are elements in the case file that show the lack of the legal requirements for the granting of gratuity, and must, before rejecting the request, determine to the party the proof of fulfillment of the aforementioned assumptions.”

9. INTERLOCUTORY APPEAL - Free Justice - 1st Degree injunction dismissal - Impossibility - Intelligence of article 99, §2 of the CPC - The magistrate must faithfully comply with the legal order to provide the party with the opportunity to prove its financial insufficiency, before rejecting the benefits of the gratuitousness of justice - need for the party to prove the right - Recourse not known, with determination and observation". TJSP, Instrument -2093894-35.2019.8.26.0000.

10. "APPEAL OF INSTRUMENT - FREE LEGAL ASSISTANCE - REJECTION - Non-appropriate - Although article 99, paragraph 3, of the Code of Civil Procedure advocates the presumption of veracity of the claim of hypo sufficiency signed by the party, in case there are elements that rule out this presumption, the judge must provide the party who proves his financial insufficiency - denial of the benefit plan -

inadmissibility - Offense to the provisions of article 99, §2 of the Code of Civil Procedure - Return of the case to the source so that the magistrate summons the appellant to prove the fulfillment of the requirements for granting the benefit - APPEAL PROVIDED WITH DETERMINATION". Interlocutory Appeal No. 2089155-63.2021.8.26.0000. Rapporteur: Min. Luiz Fernando Nishi. São Paulo, SP, May 25, 2021.

11. New civil procedure code: main changes to the civil procedure system, coord. Luiz Antonio Giampauolo, 2014, p. 28.

12. "SOCIAL SECURITY. INSS APPEAL. REPEAL OF FREE JUSTICE. ARTICLES 98, 99 AND 100 OF THE CPC. DISMISSAL. - The INSS, on appeal, requested the revocation of free justice - The court of origin granted free justice to the applicant and determined the summons - Cited, the INSS filed a defense, but did not challenge the free justice under the terms recommended by article 100 of the CPC - The request for revocation of free justice can be made at any time in the course of the process. However, as can be seen from article 98, § 3, of the CPC, such a request presupposes the demonstration that there was a change in the situation that had given rise to the granting of gratuity - In the event, the elements pointed out by the defendant to support his request for revocation of justice are the same that were already included in the case file at the time of granting the bounty and on which there was no timely challenge by the municipality in the defense - The request for revocation of the gratuitous justice was rejected - Appeal known and lacking".

"REVOCATION OF FREE JUSTICE. Absence of evidence to demonstrate the non-existence of the requirements that gave rise to the granting of procedural gratuity. Signed declarations that have iuris tantum presumption. Any bad faith on the part of the creditor shall not be punished with the revocation of free legal aid. Sentence changed in this part. Resource provided".

"INSTRUMENT APPEAL. REQUEST FOR REVOCATION OF FREE JUSTICE. The author's perception of expressive income shown in financial statements constitutes a circumstance that authorizes the revocation of the JG previously granted. Precedents of this Class".

13. Code of Civil Procedure.

14. Succumbence fees.

Sent: December, 2021.

Approved: April, 2022.