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From Fragmentation to Concentration of Claims in Brazilian Law

—Investigating the Limitation on the Fragmentation of the Substantive Legal Situation into Different Proceedings

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Abstract

The article investigates the so-called fragmentation of claims arising from the same substantive legal situation into multiple lawsuits. Based on the observation that the Brazilian civil procedural system does not define the minimum content of a claim nor impose the joinder of related claims, the paper proposes a dogmatic reconstruction of the duty of claim concentration. After demonstrating the impacts of fragmentation on the efficiency, legal certainty, and rationality of the proceedings, the study compares two possible solutions: the approach based on abuse of rights, deemed insufficient, and the definition of the subject matter of the proceedings based on the substantive legal situation. It concludes that there is a general rule of concentration, with justified exceptions, and that new lawsuits may be inadmissible when the fragmentation is unjustified.

Keywords

Civil Procedure, Fragmentation of Claims, Concentration of Requests, Res Judicata, Subject Matter of the Proceedings, Abuse of Rights

1. Introducing the Issue through Examples

Suppose a lawsuit in which the plaintiff seeks, from a financial institution, the double reimbursement of amounts paid for banking fees considered illegal. Once the claim is upheld, the illegality is recognized and reimbursement is ordered. After the final and unappealable judgment, a new lawsuit is filed, seeking the double

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reimbursement of the remunerative interest levied on the same fees.

Another example: a public servant, seeking the incorporation of accessory payments into his salary, does not file a lawsuit covering the entire non-prescribed period, but rather files several lawsuits, each referring to a specific year, with the same compensatory claim.

A third example: based on a single harmful event (car accident, surgical error, etc.), the victim files separate lawsuits, splitting the claims according to the nature of the damage—material, moral, and aesthetic.

These cases involve the fragmentation of the disputed substantive right into different proceedings—a phenomenon referred to in some judicial decisions as "fragmentation of claims." The issue has been intensely debated in the Brazilian Judiciary, with some of the above-mentioned examples derived from court decisions (Brasil, 2024; Brasil, 2017).

This fragmentation is not limited to condemnatory remedies, where it is more evident, but also encompasses declaratory and constitutive remedies. For instance, there may be a declaratory action of the inexistence of a legal relationship filed for distinct time periods, despite the identity of the cause of action. Or, successive lawsuits may be filed to annul different clauses of the same contract, based on the same grounds.

These examples aim to illustrate (Saks, 1992: p. 1159) the practical situations that this study seeks to investigate, assessing whether or not there are limits to these practices of fragmentation and multiplication of proceedings.

2. Defining the Concept: The Fragmentation of a Claim and the Fragmentation of Related Claims

The fragmentation of a claim is a contentious issue in various legal systems. In common law countries, such as the United States and England, the matter was addressed earlier, given the absence of the traditional conception of claim and the threefold identity for identifying a claim (Sinal, 2011: p. 358; Zuckerman, 2021: p. 1365; Volonte, 1982: p. 260). In civil law countries, such as Italy, France, and Spain, the issue has sparked intense debate, especially as these systems still generally rely on the identification of an action through the three classical elements (parties, request, and cause of action), as is the case in Brazil (art. 337, §2, CPC).

In this context, fragmentation may occur mainly in two scenarios: (i) division of a single request—such as the partial collection of a credit, or when the principal is claimed in one lawsuit and the accessories in another; (ii) separation of related requests into distinct proceedings, which could be joined for arising from the same cause of action—as in successive installments.

The difficulty in identifying a unit of substantive law that delimits a "minimum actionable unit" (Verde, 1989) of a request weakens the recognition of fragmentation as a conduct to be limited, and also hinders the identification of clear parameters, particularly for the litigant, to determine when fragmentation is permitted or not. Due to this absence, the analysis of fragmentation is often shifted to the

field of abuse of rights—a legal framework that, although applicable in some extreme situations, does not fully resolve the issue.

The matter gains special relevance in light of the crisis of the civil justice system (Theodoro Jr, 2021), particularly in Brazil. Technical studies from Court Intelligence Centers have pointed to the fragmentation of claims as a relevant factor contributing to judicial overload (Brasil, 2022; Brasil, 2025), though not the main cause of excessive litigation, which is more closely linked to repetitive and habitual litigation (Galanter, 1974: pp. 95-160; Asperti, Silva, & Gabbay, 2019).

Classifying fragmentation as an abuse of rights is problematic, as it generalizes the unlawfulness of behaviors that, in certain situations, are permitted by the legal system. A more appropriate approach requires rethinking the concept of the subject matter of the proceedings, with greater proximity to substantive law, especially regarding the notions of request and the very configuration of the procedural dispute.

Given the still incipient nature of the debate in Brazil, studies from Italian civil procedural law—a significant influence on Brazilian law—offer an important analytical framework.

3. The Treatment of Fragmentation under Italian Law

It is considered that the prohibition of the fragmentation of claims under Italian law was established by Judgment No. 23726/2007 of the Court of Cassation. Departing from a previously permissive understanding of fragmentation, the Court held that it was unlawful for a creditor of a certain amount, owed by virtue of a single obligational relationship, to divide the credit into multiple judicial claims, whether successively or staggered over time, under penalty of inadmissibility of the action (Constantino, 2019: p. 168).

The decision concluded on the inadmissibility of the claim, overturning the Court's previous position issued in 2000, which had been favorable to the fragmentation of credit in separate lawsuits. It held that the fragmentation of the claim implied a breach of the canon of good faith that governs the performance of contracts (including in the event of breach), as well as a violation of the duty of reasonable duration of proceedings, established by Article 111 of the Italian Constitution, especially due to the multiplication of proceedings and its harmful effects on the justice system (Constantino, 2019: pp. 165-167; Mastrangelo, 2009: p. 5; Ronco, 2008: pp. 932-933).

In 2017, the prohibition of claim fragmentation was reiterated by the Court of Cassation, this time applied to amounts arising from an employment contract, which were of different legal natures and had been brought in separate proceedings. In that case, the Court found that the prohibition also applied when dealing with a plurality of different credits stemming from a complex relationship, though in a slightly different way (Constantino, 2019: p. 172; Theodoro Jr., Andrade, & Faria, 2023). Reconciling this view with the previous precedent, the Court stated that it is possible to fragment distinct unitary credits derived from the same constitutive fact or the same underlying legal relationship when the plaintiff seeks an

objectively assessable interest in the fragmentation, for example, expediting judicial relief for a smaller credit. In the presence of such objectively assessable interest, this "method" of exercising the right of action would be permissible (Ghirga, 2017: p. 1306; Constantino, 2019: p. 174).

Although the decision allows fragmentation in that specific case, it reflects the Court's general tendency to impose on litigants the duty to treat the dispute as a unified whole—a relevant premise whose application must be optimized, as already recognized by Brazilian legal scholarship when analyzing the case (Andrade, 2022).

The positions adopted by the Court of Cassation have sparked wide discussion in Italian doctrine. One point that deserves attention from the outset is that the term "fragmentation of claims," under Italian law, is strictly understood as the fragmentation of a condemnatory request. In the words of Asprella (2015: p. 24), the fragmentation of claims that gives rise to the entire discussion on procedural good faith stems strictly from a division of the mediate request of the action, creating two lawsuits derived from the same cause of action, with the same parties and the same immediate request (similarly, Di Biase, 2016: pp. 425-426). A similar understanding is presented by Dalla Massara (2008, pp. 345-363), who points out that only the division of a credit could raise the fragmentation issue as framed by the Court of Cassation, since an action with different causes of action would, in fact, be distinct actions—not fragmented ones. In Brazilian law, the same understanding is identified by Theodoro Jr., Andrade, and Faria (2023), and Guilherme Rangel de Oliveira Mattos (2023).

When addressing fragmentation, Caponi (2008: p. 11) emphasizes that the true basis of the ruling that introduced the prohibition of such conduct in 2007 is not necessarily objective good faith and procedural loyalty, but rather the crisis in the justice system. The problem of fragmentation is more closely related to procedural efficiency, especially in case law, which tends to connect the "structure of the instruments provided in a specific procedure with the management of the entire caseload" (Caponi, 2008: p. 11).

Indeed, the phenomenon of fragmentation becomes particularly relevant insofar as the partial filing of a dispute within the civil justice system, combined with the possibility of refiling issues or requests not previously raised, results in systemic harm to a public conflict resolution system that is already overwhelmed.

Understanding this context is, in fact, essential to properly interpret the phenomenon of fragmentation, preventing the occurrence of improper fragmentations and, on the other hand, allowing those practices that are possible within our legal system, thereby enriching a debate that has gained prominence within the Brazilian judiciary—especially considering the courts' attention to inefficient use of the justice system.

Another important point of discussion in Italian law stems from the different grounds that led to the prohibition of fragmentation. Analyzing the 2007 decision of the Court of Cassation, Dalla Massara (2008: p. 350) identifies and organizes three main foundations: i) the principles of good faith and fairness as guidelines for the

way the justice system is engaged; ii) the duty of procedural economy; and iii) the regulation of substantive law during the judicial discussion of the unfulfilled right.

These three elements are indeed relevant to the study of disputes in different proceedings, as the conduct may be seen either as an abusive exercise of the right of action or as a differentiated way of assessing the identity and content of the legal action. From the perspective of the third point, the interpretation of the claim as an element of the action must comply with the rules of the substantive law being invoked in the proceedings, in order to identify any possible disarticulation of the asserted subjective right. A similar line of reasoning has already been used, for instance, by the TJMG in a case concerning the fragmentation of claims deriving from the same legal relationship (Brasil, 2024).

Although the prohibition of claim fragmentation is considered a well-established rule in Italian case law (Di Biase, 2016: pp. 425-426; Asprella, 2015: p. 409), the topic is still marked by uncertainties. First, it is still unclear which specific substantive law situations forbid the fragmentation of claims, or what constitutes the "minimum structural unit" of the claim (Dalla Massara, 2008: p. 359; Verde, 1989).

Moreover, there are numerous debates concerning the most appropriate consequence for the fragmentation of a claim under Italian law. Although the Court of Cassation has indicated that fragmentation entails the inadmissibility of the action—thereby opening a fruitful debate about the current understanding of standing to sue in the context of fragmented claims—some scholars consider the denial of jurisdiction to be an inappropriate consequence. Alternatives suggested include shifting the litigation costs, imposing sanctions for bad-faith litigation, and even holding the lawyer responsible for the fragmentation liable (Dalla Massara, 2008: pp. 360-361).

Regardless of the consequences to be established, it is clear that the underlying objective of the discussions on claim fragmentation, both in Brazil and in Italy, is to promote responsible engagement with the justice system by litigants.

4. The Treatment of the Issue under Brazilian Law

4.1. Excessive Reliance on the *Tria Eadem* Theory for Identifying the Claim

It is not new that the *tria eadem* theory, although largely accepted in civil law countries and legally recognized in Brazilian law (Article 337, §2 of the CPC/15), has a series of shortcomings that prevent its application in all circumstances. The limitations of this theory encourage the phenomenon of fragmentation of substantive rights within proceedings and, consequently, affect the treatment of litigation within the Brazilian justice system.

From the outset, it is essential to understand the boundaries imposed on the judge when adjudicating a dispute: as a rule, the judge cannot grant or deny something different from what was requested, cannot render judgment involving non-parties (in general, according to Article 502 CPC/15 and Marinoni (2016)), and cannot substitute the alleged constitutive fact. The issue, however, lies in determin-

ing whether these elements are capable of exclusively and indisputably defining the subject matter of the proceedings, or whether the subject matter is instead defined according to the substantive law at stake in the litigation (avoiding the fragmentation of obligational links or claims that are substantively unitary in nature).

In truth, rather than treating the application of these elements as an unequivocal presumption to identify identical or related claims, they should be understood as logical-legal tools that aid in the comprehension of such elements, but do not exhaust them. This understanding was reached by Tomas Pará Filho, who studied the phenomena of relatedness (connection) among claims that went beyond the connections characterized solely by the identification of these criteria (Pará Filho, 1964, pp. 37-38).

To some extent, the issue of fragmentation had already been anticipated by Pará Filho when he introduced a second insufficiency in the *tria eadem* theory to encompass the various possibilities of relatedness among claims. He states that the constitutive elements of an action, "with the exception of the personae, can be subdivided; and then, all inquiry into connection revolves around the identity of the fractions into which the fundamental elements of the action are broken down" (Pará Filho, 1964: p. 38).

Indeed, from the perspective of the elements of the action, it is known that the claim decomposes into an object sought, materialized by the mediate claim, and the judicial relief sought, referred to as the immediate claim. Based on this structure, Pará Filho points out that "it is possible to imagine multiple lawsuits revolving around the same immediate object (the same property, for instance), but whose immediate claims do not coincide." He further elaborates that "several actions may concern, for example, the rescission of a contract, with the plaintiff requesting: a) only the declaratory rescission; b) the return of the sold item; c) reinstatement of possession; d) a precautionary measure." The author even cites the example of a main compensatory claim followed by claims for interest and, later, for fruits, evidencing this decomposition of the substantive right across different lawsuits with "distinct" judicial claims (Pará Filho, 1964: p. 40).

So much so that, unable to dismiss the three elements when they do not serve as a "good working hypothesis," as previously stated by Cruz and Tucci (2001: p. 213), the doctrine has developed a variety of studies on the objective elements of *res judicata* in an attempt to clarify its scope. Similarly, efforts are made to understand the role and function of the preclusive effect of *res judicata*, an element that reflects the difficulty of understanding the complex relationship between *res judicata* and preclusion in the Brazilian civil procedure system (Cabral, 2018: pp. 189-190).

Pará Filho's criticisms become especially clear when considering the doctrine of *litispendência* (lis pendens), both in teaching and in practical application. The study of *litispendência* is so dependent on the exact identity of the three elements of the claim (as provided in Article 337, §2, which repeats what was stated in Article 301, §2 of the CPC/73) that the application of *litispendência* is rare in Brazilian law. Any legal practitioner will define *litispendência* by describing the identity

of the three elements, disregarding the fact that deviating from such identity is not only easy for the litigant who files a lawsuit, but almost inevitable, given the interpretation the litigant will make, for instance, of the legal grounds and the most relevant facts composing the *causa petendi*.

In legal doctrine, it is not possible to claim that the insufficiency of the *tria eadem* criterion is something new. The works of Lopes (2012), written during the validity of the CPC/73, already acknowledged the dependence on the triple identity due to the absence of another reliable criterion. Under the CPC/15, the studies of Cabral (2018: p. 132) recognized the incompleteness of the triple identity when considering that *res judicata* may encompass prejudicial issues and portions of the reasoning of the decision; Thiago Ferreira Siqueira (2020: p. 39) also maintains the triple identity as the general rule for identifying the claim; and Lino (2022: pp. 96-109) suggests the existence of other elements that may compensate for the insufficiency of the *tria eadem* in covering other claims.

With regard to *litispendência* (lis pendens), it is useful to illustrate its limited application and development through the case law of the STJ. When searching for judgments that refer to Article 337, §2 of the CPC/15 and mention the term "*litispendência*," 24 (twenty-four) judgments[1] are found. Among them, the one that most thoroughly develops the concept of *litispendência* beyond the *tria eadem* is the decision (STJ, 2016), which held that *litispendência* occurs when two actions pursue a similar outcome but follow different procedural paths (writ of mandamus and ordinary action). This understanding is reiterated by the court in other decisions (Brasil, 2023; Brasil, 2019a; Brasil, 2019b; Brasil, 2018).

Thus, the judgments do not advance toward a more in-depth understanding of *litispendência*, as they remain tied to a teleological concept of the action—similar to that developed by German scholars of the object of the process, as analyzed by Alexandre Sousa (2025, pp. 247-258), and aligned with the concept of international *litispendência* presented by the Court of Justice of the European Union (CJEU, 1987). This concept could help address the issue of fragmentation when a single obligational link under substantive law (principal and interest, different "types" of damages, etc.) is disassembled across different proceedings, fragmenting a single substantive claim.

Given such a limited concept of *litispendência*, the tendency of Brazilian legislation, supported by doctrine and case law, has been to enhance mechanisms that recognize the relatedness between proceedings, optimizing their processing and adjudication. Despite their value, these tools do not fully resolve the problem.

4.2. Insufficiency of the Mechanisms for Concentrating the Processing of Claims to Solve the Problem

It is also important to highlight the insufficiency of traditional mechanisms for addressing related claims in resolving the problem of conflict fragmentation across

[1]Search updated on March 25, 2025, according to the court's own online search tool. https://scon.stj.jus.br/SCON/

different proceedings.

From a traditional perspective, the fragmentation of objective elements of the *tria eadem* seems to be addressed through the element of relatedness, leading to the joint processing of cases that share the same cause of action and claims. Thus, the solution to the fragmentation problem would be the application of the rules on relatedness or joinder by absorption (Articles 55 and 56 of the CPC/2015), which mandate the joint processing of cases to avoid the risk of contradictory decisions.

However, these tools do not resolve all situations, and when they do, they can easily be circumvented by the parties' procedural strategies. For the relatedness mechanism (i.e., joint processing of claims) to apply, it is necessary that: i) the claims are not subject to different absolute jurisdictions; ii) they proceed under compatible procedures (or can be unified under the common procedure); iii) the joinder does not result in an unmanageable accumulation of claims; iv) none of the claims has already been ruled upon (Oliveira, 2015: p. 222).

Consider, for example, the filing of fragmented actions in different state courts—one in the defendant's domicile and one in the plaintiff's domicile, in cases where this is allowed—or waiting a year to file the second fragmented claim, which would prevent relatedness from being established. This issue has also been identified in Italy (Di Biase, 2016: p. 427).

Another mechanism for addressing related claims is the suspension of proceedings due to *prejudiciality* (Article 313, V, CPC/15), which, although it can help ensure coherence between claims that cannot proceed jointly, also proves insufficient and easily circumvented by litigants. Besides the fact that suspension has a time limit of one year (Article 313, §4), a period rarely sufficient for resolving one of the cases entirely, suspension is considered a discretionary power of the judge by the Superior Court of Justice (Brasil, 2021), meaning its application is not mandatory and, therefore, does not guarantee consistent rulings.

There is no doubt about the importance of these criteria as a way to organize and achieve some level of coherence in the adjudication of related claims. However, the problem with these approaches lies in their seemingly palliative nature—that is, reactive to the very proliferation of multiple related proceedings. They allow successive cases to proliferate and only then seek to manage these multiplied disputes to ensure legal certainty and consistency in conflict resolution.

Given the above, it should be recognized that the tools for linking claims are unlikely to solve the problem of conflict fragmentation across different proceedings. This is not only because these tools have limited applicability in light of their legal requirements and case law, but also because the very phenomenon of fragmentation presupposes, from the outset, that the litigant will seek to avoid triggering the mechanism of relatedness.

4.3. Trends toward Concentrating the Dispute in a Single Proceeding: Implicit General Rule?

Another foundation that justifies a restrictive stance toward the fragmentation of

disputes into multiple proceedings under Brazilian law can be observed through various reforms implemented in the structure of cognition procedures, all pointing toward the concentration of substantive rights within a single lawsuit.

In defending the prohibition of claim fragmentation in Brazilian law, Theodoro Jr., Andrade, and Faria (2023) highlight two provisions of the CPC/15 that reinforce the trend toward concentrating cognitive activity in a single proceeding, in favor of procedural effectiveness.

The first is Article 323 of the CPC/15, which provides for the automatic inclusion in the claim of obligations involving successive installments, "regardless of express declaration by the plaintiff, and they shall be included in the judgment, for as long as the obligation continues, if the debtor fails to pay or deposit them during the course of the proceedings." In fact, the objective of this provision (which already existed in similar wording in the CPC/73) was to "promote procedural economy and avoid contradictory decisions" (Rodrigues, 2021: p. 230), as well as to eliminate the need to file separate lawsuits for each unpaid installment derived from the same legal relationship (Caraciola, 2010: p. 182).

An additional foundation presented by the authors is the possibility of including prejudicial issues within the objective limits of *res judicata*, under Article 503, §1 of the CPC/15. According to Theodoro, Andrade, and Faria (2023), both cases represent "symptomatic rules pointing to the need to concentrate procedural rights in a single proceeding, avoiding the disarticulation of substantive rights through the unnecessary repetition or multiplication of lawsuits." In fact, the inclusion of these provisions was well received by scholars. Cabral (2018: p. 1291) emphasizes that the legislative change "marks an important advancement regarding the objective limits of *res judicata* by enhancing its systemic impact and reducing the re-litigation of matters already decided in other cases."

The authors also refer to doctrinal and case law interpretations where the fragmentation of enforcement proceedings was prohibited in the following situations: first, when a creditor initiated separate enforcement actions for the same unitary credit against different debtors, despite the possibility of filing a single enforcement action against all; and second, when the creditor held the same credit formalized in multiple judicial titles and could not use separate autonomous enforcement actions for each title, under penalty of violating the principle of the least burdensome execution for the debtor (Theodoro Jr, 2021: p. 319). The jurisprudence of the STJ has followed this line of reasoning for decades (Brasil, 1992; Brasil, 1994; Brasil, 1995; Brasil, 1997; Brasil, 1998; Brasil, 2001; Brasil, 2011).

These examples reflect a systematic interpretation of procedural rules, showing a tendency to consolidate substantive rights within a single procedural unit. This perspective aligns with legal certainty, reduces the risk of abusive conduct by the defendant (a typical justification found in foreign decisions that prohibit claim fragmentation), and is consistent with procedural efficiency and the sound administration of justice.

Additional provisions also support this same direction toward the concentra-

tion of substantive law in a single proceeding.

The first is the possibility of adopting procedural techniques from special proceedings within the ordinary procedure, when there is a cumulation of claims that correspond to different special procedures, provided they are not incompatible with the ordinary procedure (Article 327, §2, CPC/15).

The transfer of special procedures to procedural techniques incorporated into a single proceeding is seen as one of the means of improving procedural efficiency. In this regard, Didier Jr., Cabral, and Cunha (2018: p. 85) emphasize that the variety of special procedures "is not always sufficient to achieve optimal results for judicial protection," since "entire sets of rules, almost identical to the ordinary procedure, are often created just to introduce a minor formal change." Thus, the authors infer that "perhaps the best alternative is not the proliferation of countless special procedures, but rather the insertion of flexibility and adaptability mechanisms within a common procedure that serves as a procedural model" (Didier Jr., Cabral, & Cunha, 2018: p. 86).

This topic was already under discussion even before the enactment of the CPC/15, given that although the CPC/73 allowed for the objective joinder of claims admissible under different procedures, it did not address the possibility of incorporating techniques from special procedures into the ordinary procedure. Moreover, the joinder of procedural techniques could lead to delays in procedural celerity (Sica, 2012: pp. 61-89).

In any case, the position adopted by the CPC/15 in allowing the incorporation of techniques derived from special procedures into the ordinary procedure is accurate: it encourages the accumulation of claims and procedural adaptability (Cadiet, 2017: pp. 29-30), enabling litigants to ensure procedural economy and concentrate the substantive right within a single proceeding (Gajardoni, 2020: p. 153).

Another symptomatic manifestation of the Brazilian civil procedure's movement toward concentrating substantive rights in a single proceeding is the technique of fragmentation of cognition within the same case—notably characterized by the institution of *partial summary judgment* under Article 356 of the CPC/15, applicable when one of the claims is ripe for immediate judgment while another still requires evidentiary proceedings.

This judgment technique, therefore, reconciles the joinder of claims with guarantees of reasonable duration and procedural speed, such that a potential drawback to claim accumulation (the delay in adjudicating a more complex claim compared to a simpler one) ceases to be relevant, thus encouraging litigants to consolidate all claims in one proceeding (Magalhães, 2016). Similarly, Humberto Theodoro Júnior stresses that its application is a duty when the conditions under Article 356 are met, in order to avoid delaying the resolution of issues already ripe for judgment (Theodoro Jr., 2015).

Another sign of this concentration of substantive rights within the proceeding can also be observed in the longstanding debate on the *condemnatory effectiveness of declaratory judgments*. The topic has been the subject of extensive doc-

trinal discussion, particularly following the procedural reform introduced by Law No. 11.232/05, which brought about the *syncretic model* of civil procedure (Pereira, 2009: pp. 60-76). This issue was definitively settled with the enactment of the CPC/15, specifically in Article 515, I, which recognizes as an enforceable judicial title "the decisions rendered in civil proceedings that acknowledge the enforceability of an obligation to pay a sum of money, to do, not to do, or to deliver something."

As rightly noted by the Brasil (2004), in a ruling under the CPC/73: "there is no logical or legal reason to subject it, before enforcement, to a second certification judgment, especially since the new ruling could not reach a different outcome than the previous one."

Indeed, the enforceability of a declaratory judicial ruling arises in other situations derived from special procedures, either by legal provision or due to the practical consequences of the decision itself (take, for example, the cases provided in Articles 302, 545 §2, 551, and 552 of the CPC/15). In all such cases, a condemnatory relief is extracted from the judicial decision without an express request, but rather due to the substantive right under dispute.

This leads to the conclusion that Article 515, I of the CPC/15 consolidates the longstanding understanding that "to confer enforceable nature on a civil judgment, it is not necessary for it to be formally condemnatory, but rather that it contains the recognition of an obligation to be fulfilled by one party in favor of the other" (Theodoro Jr., 2021: p. 160).

From the perspective discussed here, the optimization of the substantive right within a single proceeding is evident, as enforceability does not require the initiation of a new process—it derives directly from the declaratory ruling, as long as the obligation is recognized. It is "about extracting from procedural acts the highest possible yield, always with the aim of maximizing the effectiveness of the process".

Everything suggests that all the points presented reflect a common thread: the pursuit of optimized judicial activity, ensuring that the relief granted in the initiated proceeding achieves the highest possible level of effectiveness. In this view, the maximization of the effectiveness of judicial relief results, in turn, from the concentration of the substantive right within the same proceeding (Dinamarco, 2022: p. 46).

It must also be clarified that the prohibition of fragmentation for the sake of improving efficiency is not a fictitious measure (resulting in fewer proceedings, but the same amount of litigation, and the risk of increasing the complexity of each case), as argued by Siqueira (2020: p. 76). The procedural system established by the CPC/2015 contains several internal tools for proper procedural management of disputes, such as provisional reliefs of urgency and evidentiary nature (Articles 294 to 311), modification of the procedure either by the judge or by the parties through procedural negotiation (including evidentiary phases) (Articles 139, VI; 191; 357, §2), partial summary judgment on the merits (Article 356), and the ex-

pedited application of precedents (Articles 932, 311, III, among others).

Therefore, multiple *causes of action* and claims could be resolved according to their level of complexity within the same proceeding, whether due to the need for evidentiary instruction or due to specific elements of substantive law (including the possibility of partial summary judgment regarding claims that permit such a tool).

From this perspective, denying the existence of a duty to concentrate claims on the grounds that doing so would make proceedings more complex is to renounce a tool available within our procedural system, based on the argument that its use would generate a problem that, in fact, already exists. Proceedings are already complex, already marked by a high degree of repetition of issues, and already burdened by slowness. Concentration may be a tool that not only optimizes judicial handling of such disputes but also demands more responsible engagement by litigants with the justice system—an engagement that should make broad and technical use of all tools available in the Brazilian procedural system.

Reflecting on the concentration of claims thus presents itself as an inevitable academic challenge, even as a means of reaffirming the importance of academic research in guiding legal practice toward the constitutional and legal purposes set forth in our system.

5. Possible Legal Frameworks and Their Consequences

5.1. The Problematic Classification as Abuse of Rights

As previously discussed, the phenomenon of conflict fragmentation into multiple proceedings is commonly approached from the perspective of procedural good faith and abuse of process. This approach is evident both in the Italian context—since the 2007 decision that initiated the debate in that country linked fragmentation to objective good faith in the default phase of an obligation—and in Brazilian law, which tends to treat fragmentation as a form of abusive litigation.

However, this framing raises several issues, which have already been pointed out in Italian legal scholarship. Maria Francesca Ghirga (2015: p. 446) notes how abuse of process has come to be characterized as a form of "living law," increasingly used by the Supreme Court and, even in the language of the legislator, as a principle inspiring reforms. The author also observes how abuse of process has exceeded its originally punitive function under Italian law, and has, through case law, acquired an educational role—aimed at dissuading certain behaviors and fostering "a legal culture more attentive to the use of the rules of the game and, therefore, of procedural tools in a way that better respects the justice system."

In a similar vein, Tommaso Dalla Massara (2003: p. 437) criticizes the use of abuse of rights and other overly generic concepts (such as conflicting interests or excess of power), as they tend to reflect a "dogmatic disorientation" regarding the issue of fragmentation and the most appropriate method for mitigating the multiplication of lawsuits.

From this standpoint, even though abuse of procedural rights may serve as an

inducement toward more responsible use of the justice system, prohibiting fragmentation on the grounds of abuse of rights makes oversight of the practice overly dependent on judicial evaluation on a case-by-case basis. This approach undermines the potential of precedents on the prohibition of fragmentation to serve as clear guidance for litigants and their lawyers in avoiding conduct deemed abusive, especially considering that the prohibition of fragmentation seeks to guide access to the justice system and therefore affects numerous substantive legal situations.

Another relevant point is that abuse of procedural rights constitutes a classification of illicit conduct, which makes it difficult to identify and validate situations in which the fragmentation of a conflict into multiple proceedings is legitimate and permissible, even under the legal system itself. This is the case, for instance, when a portion of the credit or claim is subject to an extrajudicial settlement process but does not preclude the filing of a lawsuit to pursue related claims; or when one of the claims qualifies for a *monitória* action or even enforcement proceedings, thereby avoiding the need to accumulate multiple condemnatory claims or concentrate the credit in a single proceeding.

In such situations, to deem the fragmentation improper would imply that the legal system is inherently contradictory, as it both promotes alternative dispute resolution methods and designs special procedures, while simultaneously denying the validity of those rules under an alleged unquestionable duty to concentrate claims.

Even while recognizing that the multiplication of proceedings is a negative outcome of claim fragmentation, Asprella (2015: pp. 109-110) points out the mistaken nature of classifying fragmentation as abuse of process under Italian law. She argues that defining fragmentation as abusive would mean labeling it as reprehensible, a procedural behavior that is clearly not so from the standpoint of procedural rules and general principles of procedural law.

Gozzi (2008: pp. 1442-1443) reinforces this view by showing that the legal framing of fragmentation as abuse of rights automatically favors the debtor's position—whose alleged harm from the fragmentation of lawsuits is presumed without analysis—and prevents proper consideration of the plaintiff's possible grounds for fragmenting the substantive right. In this sense, automatically defining fragmentation as abuse of rights precludes the evaluation of whether the fragmented relief is meritorious through the analysis of standing to sue.

Finally, it should be noted that abuse of rights is not, in itself, a ground for the inadmissibility of the claim, and does not, on its own, bar the merits from being adjudicated. It is not a basis for inadmissibility under Italian law (Gozzi, 2008: p. 1443), nor is there any clear legal foundation under Brazilian law to support the loss of standing to sue due to procedural abuse—although some scholars advocate for this view (Bovino, 2012: pp. 79-92). After all, the concept of procedural interest was never originally conceived as a tool for controlling procedural abuse, which suggests that its application in this context reflects convenience more than legal-historical accuracy.

It is important to emphasize that the disagreement is not necessarily about the inadmissibility of a fragmented claim per se. What is disputed is that such inadmissibility could stem from the notion of procedural abuse, since there is no clear legal basis to support this interpretation, and moreover, the broad and vague nature of the concept of abuse opens the door to an overly restrictive jurisprudence on fragmentation.

In this context, it becomes necessary to investigate the problem in light of the *object of the proceeding*, which appears to be the most appropriate legal framework for analyzing fragmentation and developing dogmatic mechanisms to limit it.

5.2. Revisiting the Subject Matter of the Proceedings

It is important to emphasize, from the outset, that the concept of the subject matter of the proceedings arises not only from doctrinal construction, but from a convergence of factors and elements within positive law, which "reflect broader choices made by the procedural system, whether expressly enacted by the legislator or consolidated by tradition" (Siqueira, 2020: p. 29).

Under this reasoning, the conception of the subject matter of the proceedings in Brazilian civil procedure tends to restrict it to the claim, interpreted through the cause of action. Although well established in German law and adopted in various countries, this conception proves insufficient for assessing the fragmentation of disputes across multiple proceedings and for enabling the development of mechanisms to prohibit such fragmentation.

Despite the strong doctrinal grounding, the prevailing understandings of the subject matter of the proceedings—and of concepts that derive from it, particularly *litispendência* and the objective limits of *res judicata*—tend to cling to notions of justice that are "detached from many of the foundational pillars upon which modern procedure is built" (Cabral, 2018: p. 435). This view is well illustrated by Antonio do Passo Cabral, who highlights how the conception of *res judicata* limited to the dispositive part of the judgment "was a historically disconnected operation, out of step with today's understanding of the adversarial system, the diffuse and reflective influence that characterizes it, the idea of procedural justice, and the collaborative character of contemporary procedure" (Cabral, 2018: p. 435).

Although Cabral's focus is specifically on *res judicata*, the same phenomenon seems to affect the understanding of the subject matter of the proceedings. In addition to being a complex and controversial topic (with numerous theories and positions that often lack practical differentiation), its conception remains closely tied to a strict interpretation of the *claim*, sometimes guided by the *cause of action* (Didier Jr., 2022: pp. 575-576). Without disregarding the limitation imposed on the judge by the principle of demand, it is not difficult to observe that the prevailing theories on identifying the claim—whether through the subject matter of the proceedings or the theory of action—contribute to the proliferation of litigation

and a reduction in its efficiency, insofar as they grant litigants broad freedom to fragment a dispute across multiple lawsuits.

From this perspective, instead of viewing the subject matter of the proceedings as the procedural *claim* asserted by the party—the conception traditionally adopted in Brazilian doctrine (Carvalho, 1992: pp. 52-61; Dinamarco, 1984; Talamini, 2005: pp. 80-81; Alvim, Granado, & Ferreira, 2019; Sica, 2011: pp. 249-259; Siqueira, 2020: p. 41)—the issue of fragmentation seems to find a more appropriate solution by adopting the theory that the subject matter of the proceedings consists of the *subjective legal situation*.

In contrast to the German tradition (which conceives the subject matter as the procedural claim), Italy developed a doctrinal strand that identifies the subject matter of the proceedings (or the litigious object of the process) as what may now be defined as the "subjective legal situation which the plaintiff claims to hold (based on a hypothetical legal qualification) and for which protection is sought due to an alleged injury attributable to the defendant," as well explained by D'Alessandro (2016: p. 31). In a similar vein, Augusto Chizzini concludes that the adversarial principle does not grant the parties the right to fragment the subject matter of the proceedings, arguing that this claim allows the parties to redefine the boundaries of the subjective right itself. Thus, Chizzini concludes that it is more accurate to understand that it is the substantive legal rules—and not the parties—that define the limits of the subjective right and of the corresponding substantive legal situation (Chizzini 2018: pp.179-180). Because of this argument, the party that failed to expressly claim part of its demand in the first proceedings, due to an improper fragmentation of the claim, would be barred from bringing a new lawsuit for the omitted portion

It is important to emphasize that the theory of the *subjective legal situation* does not dispense with the traditional elements of a claim (parties, request, and cause of action) in understanding the subject matter of the proceedings. What differs is the perspective on these elements: rather than being considered in the abstract, they are interpreted in connection with the substantive law being debated in the lawsuit. As Siqueira (2020: p. 53) aptly explains, parties, requests, and cause of action "instead of being considered in isolation, are coordinated, to the extent necessary to identify the substantive right."

Although there is no unanimous position in the doctrine, it can be affirmed that the subjective legal situation is not, in fact, the prevailing understanding of the subject matter of the proceedings in Brazilian legal scholarship (Mesquista, 1962; Domit, 2016).

Nevertheless, more important than focusing on the exclusive adoption of one theory or another is reflecting on the practical effects that follow from choosing one theoretical framework over the other, since the uncritical adoption of either brings with it significant implications—particularly regarding the impact of each conception on the broader profile of civil litigation in the country.

As the theory of the subject matter as the procedural claim focuses on the *request* and the effects of the relief sought, the subject matter tends to be shaped by

procedural elements rather than by the substantive law that gives meaning to the process. This view tends to facilitate the fragmentation of the substantive right within litigation—a tendency that can be observed not only in the Brazilian experience (which still lacks substantial study and regulation on the matter), but also in other countries where the same premise is adopted. One such example is Germany, which has specific provisions for *partial claims* (Trommler, 2018; D'Alessandro, 2016).

In some ways, this appears to have been the path implicitly taken by the Italian Court of Cassation in the decisions cited earlier. According to D'Alessandro (2016), the Court recognized that understanding the subject matter of the proceedings as the *subjective legal situation* is more valuable in terms of procedural economy and judicial efficiency than an interpretation grounded in strictly procedural elements, such as the procedural claim.

By understanding that litigants do not have full discretion in composing the subject matter of the process, and that the *minimum structural unit* of the proceeding must, at least in principle, reflect the actual substantive law at issue, proposals to fragment that substantive right become less plausible. The issue, therefore, ceases to be treated through the (difficult and subjective) lens of procedural good faith and abuse of the right of action. Instead, it is redefined in terms of how far the plaintiff's discretion extends in shaping the *litigious subject matter* of the process.

According to the author, the Court of Cassation seems to have recognized that the *subjective legal situation*—although not the only theory of the object of the proceeding applicable under Italian law—proves to be the most appropriate for ensuring a *balance* between the proper use of condemnatory relief (which is meant to resolve a crisis of nonperformance of substantive rights, and not to impose additional burdens on the debtor) and the aim of procedural economy—a value that is not strictly tied to the interests of the parties, but to the interests of the justice system itself (D'Alessandro 2016: p. 141).

D'Alessandro's insight, which is both pertinent and applicable to Brazilian law, lies in the identification of the *subjective legal situation* as the element that defines the object of the proceeding *ex ante*, insofar as this interpretation ensures a balance between the right to access the justice system and the responsibility of litigants when exercising this right—since the dispute brought before the court should be resolved in its entirety. This view is more advantageous than addressing fragmentation through the lens of the identity of the object of the proceeding based on the procedural claim, as that approach does not require presenting the full extent of the subjective right and, consequently, leaves fragmentation to be addressed solely through the "delicate" theory of abuse of process (D'Alessandro, 2016: p. 143).

In a similar sense, Fornaciari highlights the duty to identify a *minimum actionable unit* that forms the basis of the litigious subject matter. As he states, "neither individual installments of a credit, nor isolated constitutive facts of a self-identified right, nor individual legal grounds for the right to a generic performance (…)

possess, in fact, autonomous and distinct relevance" (Fornaciari, 2015: pp. 838-839).

In Brazil, Theodoro Jr., Andrade, and Faria (2023) drawing on studies of claim fragmentation under Italian law, have already asserted that the prohibition of fragmentation is not only supported by Brazil's procedural framework but also that the concept of the object of the proceeding in Brazil should rest on the *subjective right* asserted in court and on the legal relationship in its entirety.

Based on the above, it is possible to conclude that the issue of fragmentation calls for a reconsideration of the object of the proceeding as a legal concept, not subject to the party's discretion, so that civil procedure may fulfill its public function. This means that, as a rule, the object of the proceeding should encompass the entire subjective legal situation alleged by the plaintiff, even if their requests do not include all the claims embedded within that legal situation.

Adopting this position does not mean that the fragmentation of substantive rights into separate proceedings is never permissible. Just as an unrestricted dispositive principle undermines the justice system by enabling the multiplication of lawsuits over a single conflict, an absolute prohibition on fragmentation would be excessive and risk violating the guarantee of access to justice.

From this perspective, the most reasonable conclusion—and the one hereby proposed—is a *reversal* in the prevailing stance on the fragmentation of disputes into multiple proceedings under Brazilian civil procedure.

It is thus proposed to recognize an *implicit rule of claim concentration*, which requires that the *requests* and *causes of action* arising from the same substantive legal situation be concentrated in a single proceeding as a general rule. This reflects a responsible engagement with the justice system and may be waived only in specific circumstances. In other words, the litigant, when accessing the justice system, must consider it a duty to concentrate all claims arising from the same *subjective legal situation* in the initial proceeding, so that the fragmentation of the substantive right into a second lawsuit occurs only as an exception, not the rule.

Accordingly, if fragmentation does occur, it will be the litigant's responsibility to justify it in the second lawsuit, taking into account the nature of the substantive right at issue and the procedural grounds that may permit such fragmentation (Sousa, 2025: pp. 295-305).

The legitimacy of this fragmentation may even be assessed based on an updated conception of *procedural interest* (Article 17 of the CPC/15). This thesis has also been developed in Italy, through the idea of *procedural interest* as it relates to the type of judicial relief—in this case, the *fragmented judicial relief*—as proposed by Maria Francesca Ghirga (2004: p. 217). According to the author, *procedural interest* increasingly functions as the defining boundary between, on the one hand, the right claimed by the party and their freedom in accessing justice, and, on the other hand, the process as a public instrument for conflict resolution.

6. Conclusion

This article analyzed the phenomenon of claim fragmentation in Brazilian law, un-

derstood as the splitting of a single substantive legal situation into multiple judicial proceedings, through the disarticulation of the substantive subjective right into multiple claims.

Based on the experience of Italian law, it was observed that the rigid identification of the action by the tripartite identity (parties, request, and cause of action) favors fragmentation and the multiplication of proceedings—whether through the division of a single credit (e.g., a compensation claim split across lawsuits by category of damage), the separation of naturally linked credits (such as a principal claim and its accessories), or the filing of distinct lawsuits based on a continuous legal relationship.

Despite the initially permissive stance of the Brazilian legal system, there is a normative and jurisprudential movement toward *claim concentration* as an *implicit general rule* for accessing the justice system, promoting greater efficiency and rationality in the use of jurisdiction. In this framework, fragmentation is treated as an exception, and it is the plaintiff's responsibility to objectively justify its use, grounded in a reinterpretation of *procedural interest*.

Finally, it was concluded that classifying fragmentation as abuse of rights may not be the most precise approach to addressing the issue. Instead, a conceptual revision of the *object of the proceeding* is required, based on a closer alignment between the substantive law in dispute and the structural elements of the action.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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