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Res judicata: meaning and limits Autoridade do caso julgado: sentido e limites

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ABSTRACT: In the judged case authority, sense and limits, we focus the judged case Authority's grounds of the authority investigated: scope, limits and effects; objective extension. If tried material and if tried formal. Elements to be considered in the resume. Identity of procedural subjects. Identity of the request. Identity of the cause of asking. The case tried and related figures alike. Prejuciality. The preclusion. The case tried against third parties. Legally indifferent third parties. Legally impaired third parties. Third parties on special schemes. The sense limits of judicial lawmaking. Moment of verification of the reasoning and its authority. Limits to the deducing judgment: notably, the exception of the extraordinary review appeal.
KEYWORDS: court case authority; sense; limits; exceptions.

RESUMO: investigamos a autoridade do caso julgado seus fundamentos e concernente autoridade: abrangência, limites e efeitos; extensão objetiva. Caso julgado material e caso julgado formal. Elementos a considerar no caso julgado: identidade de sujeitos processuais; identidade do pedido; identidade da causa de pedir. O caso julgado e figuras conexas afins: a prejucialidade; a preclusão. O caso julgado face a terceiros: terceiros juridicamente indiferentes; terceiros juridicamente prejudicados; terceiros em regimes especiais. O sentido da autoridade do caso julgado. Momento de verificação do caso julgado e respetiva autoridade. Limites ao caso julgado: em especial, a exceção do recurso extraordinário de revisão.
Palavras-chave: *autoridade de caso julgado; sentido; limites; exceções.*

I. INTRODUTION

This investigation aims to study the authority of the judged case. This is a complex purpose that cannot be disconnected from the formation of the judged case, integrated by two incindible components: in the sense of exception of the judged case and to prevent contradiction or repetition of actions, it has a aspect *negative*; in the sense of imposing the judicial decision carried out with the authority of the case judged, to prohibit contradictions, it benefits an aspect *positive*. These two poles or functions, *negative* of impeding meaning and *positive* with imposing meaning, they determine the effects of the sentence through the case judged, on a disputed material relationship for pacification of an interest in crisis.

Therefore, the process of interpretative capture of the authority of the judged case or positive vector of the effects of the sentence must be sought in partnership with its other side, the negative vector. And, in this combination, determine under what conditions the appearance of the *triple identity* of the subjects, the cause of asking and the request, or on the contrary in which terms such presence becomes unnecessary: if the design is *avoid* the repetition or contradiction of judicial decisions, pending or carried forward, by virtue of the dilatory exceptions of *lis pendens* or of *res judicata*[1]; or if the purpose is *impose* the binding force of the decision *harmfully* issued, preventing the paradox of contradicting the legal reality already transited, through a possible second decision.

On the other hand, to take off when the judged case is limited to covering only the decision on the *dispositive* of the action and when, to a more comprehensive extent, it captures the decision and its fundamentals logical and necessary. Although the judicial decision forming a *res judicata* is reduced in the precise limits and terms *in which it judges*, contained in the guidelines of the cause of action and the request, devices and contradicted.

Then, find out if the *sense and limits* of the authority of the judged case calls for understanding opportunities *precluded* and of the conditions under which another action may be proposed. As well as the possibility of appeal *e.g.* extraordinary review; or modification of the case judged due to a change in circumstances.

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[1] PCC: Portuguese Procedure Civil Code, art.º 577.º *wing* i), 580.º. The judged case was peremptory exceptions in PCC1961 (approved by DL no. 44129, of 28-12-1961), *in https://www.pgdlisboa.pt/leis/lei*.

1. Historical-doctrinal perspective on the judged case

As with a coin that has two sides is unitary, the case judged implies the existence of a *quaestio judicata* forged in the same crucible. Therefore, the study method should begin by asking what the case judged consists of in its effect *negative*, to after this research achieve the authority of the judged case integral to the effect *positive*.

In this vein, the exhibition of ANTUNES VARELA reveals that the binding force of the tried case was manifestly stilted by the ancient authors and gave way to two opposing doctrinal currents. On the one hand, the judged case would be an autonomous source of the relationship defined in the sentence, comprising "*a new title of incorporation*"[2]; in a different position the case judged would not have the slightest interference in the disputed material relationship or composition of an interest in crisis, only limited to "linking the judges to the decision handed down"[3]. Unfortunately, the efforts of the ancient indoctrinators, neither one nor the other of these positions configured the true characteristics of the judged case. Thus, if by vocation the sentence is merely *recognitive* and no creator of new reality; by *confirmation* the case judged aims to authenticate the "*no modifiability* of the decision carried forward and not the repetition of the judgment contained in the sentence"[4]. The sentence is oriented towards guaranteeing the case judged by structural limits.

Historical as it is, this doctrinal perspective could not escape the references of MANUEL DE ANDRADE, when consonant writes that the sentence would have the function of modelling or structuring the defined relationship; or, differently, it would be limited only to binding the court or any future court to decide in the same sense[5].

In turn, ANSELMO DE CASTRO focuses on the expression disputed material relationship claiming that the factual situation to be composed in the process may even be *not controversial* and argues not to operate the adjudicated case "only in favour of the winning party, but also of the losing party"[6], and may even extend its legal effects in relation to third parties. Thus, in voluntary jurisdiction processes, the decision-making result is required *erga omnes* without any opposition.

On the pragmatic side, CASTRO MENDES basically appeals to the limits of the material *res judicata* and to the *indisputability* of the true solution, realizing: "the plaintiff is the defendant's creditor; the plaintiff is not the defendant's creditor; the plaintiff is the owner of x; etc…"[7].

In a disparate way, ALBERTO DOS REIS states that the essence of the judged case is, not in the definition of a question, but in the recognition or denial of a good or asset[8].

Another view has REMÉDIO MARQUES for whom the *res judicata* effect is produced when judicial decisions are *not susceptible to ordinary appeal* and cannot be replaced or modified by any court, a guarantee that extends to the Constitutional Court, except in judged cases that "are *not destroyed* by the retroactive effectiveness of the declaration of *unconstitutionality* or *illegality*"[9] (PRC, art^{e} 282nd, no. 3).

2. Grounds for the judged case and the relevant authority

In fact, a court decision is considered to have become final when it is not subject to an ordinary appeal or complaint (CPC, art^{e} 628th, 614th, no. 1, 627th, no. 2).

Certain current *doctrinal* points out as justifications to give effectiveness to the case judged two decisive reasons: the *prestige of the courts*; a *legal certainty or security*[10]. Another current of doctrine *criticism* the relief given to the *prestige of the courts* warning of the *prestige of acquittal* to be respected in a new process[11] or appealing with preference to the force-ideas of certainty, *security* legal and *peace* social[12]. These two fundamental dimensions of the judged case bring together an optical objective which is embodied in the idea of stability of institutions, focused on the prestige of the courts or protection of trust in judicial acts; and a feature subjective, which is projected in the protection of the legal certainty of people or in the stability of the judicial definition of their legal situation, highlighted by *legal certainty or security*.

An *authority* of the case judged is in the *positive pole* or *function objective*, ensuring the stability of institutions and the *prestige of the courts*. Through the authority of the tried case, the disputed material relationship *imposes itself* on everyone the courts, including the one which gave the decision, and to other authorities, primarily, in examining the repetition of the cause, for a preliminary ruling in the question of *other effect* of the *legal relationship*. Ensuring, by that means, the prestige of the courts against legal instability, injustices and the paralysis of initiatives. And at the *pole subjective*,

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[2] *Vide* VARELA, Antunes/BEZERRA, J. Miguel/NORA. Sampaio. *Manual de Processo Civil, 2.ª Edição*. Coimbra Editora, Lda., Coimbra, 1985, pp. 705, 706, 707. *Underlined in the original*.

[3] *Ibidem*.

[4] *Ibidem*, pp. 707, 708. *Underlined in the original*.

[5] *Vide* ANDRADE, Manuel A. Domingues de. *Noções elementares de Processo Civil (atualização de Herculano Esteves)*. Coimbra Editora, Lda., Coimbra, 1979, p. 307.

[6] *Vide* CASTRO, Artur Anselmo de. *Direito processual civil declaratório, Volume III*. Almedina, Coimbra,1982, p. 386.

[7] *Vide* MENDES, João de Castro. *Direito Processual Civil, III Volume*. Associação Académica da Faculdade de Direito, Lisboa, 1980, p. 279.

[8] *Vide* REIS, Alberto dos. *Código de Processo Civil, anotado, Vol. III, 4.ª Edição, Reimpressão*. Coimbra Editora, Coimbra, 1985, p. 141.

[9] *Vide* MARQUES, J.P. Remédio. *A ação declarativa à luz do Código revisto*. Coimbra Editora, 3.ª Edição, Coimbra, 2011, pp. 670, 672. *Underlined in the original*.

[10] *Vide* ANDRADE, Manuel A. *Op. cit.*, pp. 304 to 336. REIS, Alberto. *Op. cit.*, pp. 94, 95.

[11] *Vide* CASTRO, Artur Anselmo de. *Op. cit.*, p. 384.

[12] *Vide* MARQUES, J.P. Remédio. *Op. cit.*, p. 672.

the case judged aims to *guarantee the value of legal certainty*[13], basing the protection of this trust, in relation to jurisdictional acts, in the principle of the rule of law (PRC, art^{e} 2nd)[14]. This is a constitutionally protected value of *legal certainty*[15], through the jurisdictional function and the reasoned decisions handed down by the courts (PRC, art^{e} 202nd, 205th).

The pole *objective* and as doctrine and jurisprudence consider, it is characterized by authority of the case judged while indisputable and *immutable* with a link of non-contradiction by subsequent action and insusceptibility of challenging a decision because of the *definitive* nature arising from the *respective transit*, namely through any ordinary appeal. Indeed, if the judged case is placed in a situation of uncertainty, by the same parties, whether in different processes, or in the same process, then it will be possible to occur offense of the judged case formed in the decision previous. Situation of perplexity manifested either by exception of *lis pendens*, pending litigation or suit pending, when the cause repeats itself while the previous one is still ongoing, either by exception of *judged case*, when the repetition occurs after the first case has been decided by a sentence that no longer allows for an ordinary appeal or review (CPC, art^{e} 580th, no. 1; 627th, no. 2)[16].

In fact, the two sides of the same coin are incindible. On the one hand, the subjective judged case of negative function, which constitutes an obstacle to a new decision on the merits, repetition or ***convolation***, confirmatory or antagonistic; on the other, the authority of the case judged objective, which has rather the function and the positive effect to impose the *auctoritas res judicata* of the unmodifiable decision to all authorities, honouring the institutions.

With these grounds attributed to the case judged, understood in the two reasons *objective*: for the defence of the *prestige of the courts* stabilizing the legal community, ensuring legal stability, security of orientation and realization of the right; and *subjective* calling for the *certainty* or security of legal relationships, calculability and predictability of *individuals in relation* to the legal effects confirmed by judicial decisions; the aim is to prevent the court from being placed in the alternative of contradicting itself or reproducing a previous decision (CPC, art^{e} 580th, no. 2). By this means, preventing the issuance of concretely incompatible decisions or preventing practical contradiction of judicial decisions. Manifesting the sense of the judged case as corollary of *definitive* nature its irrevocability and *no modifiability of the respective transit*. Thus, the reason for the strength of the case being judged is the need to *certainty of the right* and of *security in legal* relations. This force and authority derive from the superior need for legal certainty and security, and no new decision can be admitted on the specific case decided by judgment without manifest disrepute by the courts[17].

In this way, it constitutes the basis of the case judged (CPC, art^{e} 628th) prevent the reversal of the rights conferred in the judgment: how *exception* is imbued with *effect negative* with mandatory compliance for procedural subjects; while *authority* of a *res judicata* manifests a *positive effect* of the coercibility of the legal system to be revered by the parties, the decision-making court and other courts[18].

3. Scope, limits and effects of the case being tried

The limits of the case judged are manifested in the device contained in the request and its adversarial system, the guideline that indicates that the court cannot condemn beyond the request or in a different object than what is requested, being able to condemn in less harmony with the proven matter of fact, based on the facts alleged by the parties (PCC, art^{e} 3rd, 609th, no. 1). However, if with regard to the matter of fact the court is bound by the principle of the application, the legal facts invoked by the parties and concentrated in the request or applications made in the action, as regards the right it benefits freedom to inquire, interpret and apply legal rules and even the legal qualification (PCC, art^{e} 5th, no. 3).

With regard to comprehensiveness or range, the objective dimension of the case being tried shall be affected by acceptance of the substantive rules relating to the nature of the situation which it defines, harmonised in the dispositive of the legal facts relied on by the parties and of the request or requests made in the action and within the precise limits and terms in which it judges (PCC, art^{e} 621st). And if for a current of doctrine, although the conclusion needs the foundations, only to that *conclusion* effectiveness of *judged case* (*e.g.* reduction)[19]; for another doctrinal current, certainly accompanied by jurisprudence, the

[13] On the meaning of legal certainty *Vide* MIRANDA, Jorge. *Manual de Direito Constitucional, Volume II, Tomo IV, 1.ª Edição*. Coimbra Editora, Coimbra, 2014, pp. 310 to 315.

[14] PRC: Portuguese Republican Constitution, *in https://www.parlamento.pt/sites/EN/Parliament/Documents/Constitution7th.pdf*.

[15] *Vide* CANOTILHO, Gomes. *Direito Constitucional e teoria da Constituição, 7.ª Edição, 14.ª Reimpressão*. Almedina, Coimbra, 2003, pág. 257. The author calls for "the principles of legal certainty and the trust protection to be considered from an early age as constitutive elements of the rule of law." And distinguishing it, it explains that "**legal certainty** is connected with objective elements of the legal order – guarantee of legal stability, security of orientation and realization of law - while the **trust protection** is more related to the subjective components of security, namely the calculability and predictability of individuals in relation to the legal effects of acts of public authorities." Bold in original.

[16] PCC, art.^{e} 627th, no. 2: the resources are *ordinary* or extraordinary, the resources of *appeal and review* and extraordinary the appeal for standardization of jurisprudence and the review. The precepts referred to the PCC and from now on, are part of the Procedure Civil Code of 2013.

[17] *Vide* REIS, Alberto. *Op. cit.*, pp. 94, 95.

[18] In this reasoning it cannot be forgotten that, following organized procedural acts, criminal conviction or acquittal decisions may take place in civil proceedings. However, the questions on which such decisions have been concerned are not acts whose opportunity to allege is foreclosed from a certain moment on, rather they constitute simple presumptions of the existence or non-existence of those prevailing facts, but are *disprove or rebut presumptions* (PCC, art^{e} 623rd, 624th).

[19] *Vide* MARQUES, J.P. Remédio. *Op. cit.*, p. 686, when he states that the effectiveness of the adjudicated case is limited to the decision and does not cover the grounds. Also, for VARELA, Antunes/BEZERRA, J. Miguel/ NORA, Sampaio. *Op. cit.*, p. 712, the force of the case judged covers only the claim formulated, not the logical

case judged *includes the grounds* that are presented as *logical antecedents* (*e.g.* exceptions) necessary to the operative part[20]. Since, in its own way, the judicial syllogism, it may affect the grounds for the decision, in preclusion of other dispositive claims. Thus, there is a restrictive position regarding the scope of the case being judged material and other expanded guidance regarding the scope of the sentence carried forward.

Such scope and effects will be studied next and separately for methodological reasons.

3.1. Objective extent of the case being tried

In the comprehensive field of determining the *limits of the case judged*, in the sense of asking what issues it understands, case law has understood that its effectiveness depends on the interpretation of the content of the sentence, namely, regarding its grounds that present themselves as logical antecedents necessary for the operative part of the judgment[21]. Which means that the objective length of the case tried is affected by the substantive rules relating to the nature of the disputed material situation that it defines, in the light of the legal facts invoked by the parties and the request or applications made in the action and concentratedly contradicted (PCC, art^{e} 573th), pay attention to the legal expression 'in the precise limits and terms in which it judges' contained in art^{e} 621st of the PCC.

In this way and with regard to the question of which part of the judgment acquires, with its respective transit, mandatory force within and outside the proceedings, the dominant jurisprudence has recognized that, considering the case judged restricted to the operative part (CPC, art^{e} 552nd ff; 5th , no. 1) of the judgment, its mandatory force must be extended to the resolution of the issues that the judgment had the need to resolve as a premise of the conclusion reached. Which covers within its circumference, in addition to the issues directly decided in the operative part of the judgment, those that are a logical antecedent necessary for the issuance of the operative part of the judgment. More measured, traditional doctrine states that the essence of the judged case is the decision and, therefore, the judged case is only formed on the decision contained in the sentence, not on its motivation. Logical judgment is merely instrumental in nature.

In fact, he writes ALBERTO DO REIS, the essence of the *case judged* is, therefore, not in the definition of a question, but in the recognition or denial of a good or asset. Since, in principle the case being judged is based on the decision, and not on the reasons for the sentence. Furthermore, the sentence is solely the affirmation or denial of a will of the State that guarantees someone, in the specific case, a good or asset in life; only to this point can the case under judgment extend. While accepting that an absolute rule cannot be established which holds for all cases[22]. And on the same line MANUEL DE ANDRADE, recalls that the *judged case* is only formed in principle on the decision contained in the sentence, not about the motivation for the sentence [PCC, art^{e} 621st]. Although he accepts the principle as not absolute[23].

So that, whether for the restrictive current or for the broader current, considering the problem of the objective limits of the judged case, the question once decided it was left to have mandatory force inside and outside the process, not being able to counteract the definitiveness of the judged case (PCC, art^{e} 619, no. 1). The sentence categorically establishes the legal normative framework and its inherent fundamental imperativeness for the petitioner and the defendant in a specific case. In this sense, the doctrine that "the *no modifiability* of the decision constitutes (...) the touchstone of judged case. The judgment becomes a res judicata when the courts *can no longer modify*"[24]. And for this reason, the most important effect that the sentence can lead to is the *res judicata*.

3.2. Material res judicata *and formal res judicata*

In the field of effects, the *res judicata* is usually understood by doctrine in two aspects: the res judicata formal; the case judged material[25]. The strength of *res judicata* material exists, when the decision on the disputed material relationship has become final, or when the definition given to the disputed relationship can be imposed "on all courts (and even on any other authorities). Everyone must abide by it, judging accordingly, without further discussion"[26]. It is the decisions that "deal with the substance of the case and, therefore, with the goods discussed in the process"[27]. Decisions that "define the relationship or legal situation deduced in court" and "state the Plaintiff's claim"[28]. Therefore, decisions on the substance of the case or merits are considered (PCC, art^{e} 619th, no. 1).

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reasoning of the sentence. And for FREITAS, José Lebre de/ALEXANDRE, Isabel. *Annotated Code of Civil Procedure*, Volume 1, 4th Edition, Almedina, Coimbra, 2018, p. 206 the understanding is that the case judged is formed only within the scope of the decision-making part.

[20] *Vide* SOUSA, Miguel Teixeira de. *Estudos sobre o Novo Processo Civil*, *2.ª edição*. Lex, Lisboa, 1997, pp. 578, 579 understands that "it is not the decision, as a conclusion of the judicial syllogism, that acquires the value of a *res judicata*, but the syllogism itself considered as a whole: the *res judicata* affects the decision as a conclusion of certain grounds and reaches these grounds as a presupposition of that decision".

[21] *Vide* in the doctrine MARQUES, J.P. Remédio. *Op. cit.*, pp. 688, 689. While conferring on the fundamentals *exceptional character*.

[22] *Vide* REIS, Alberto. *Op. cit.*, pp. 93, 139, 140, 141,142. *Ibidem*.

[23] *Vide* ANDRADE, Manuel A. Domingues de. *Op. cit.*, p. 318. In this line of thinking, *vide* MARQUES, J.P. Remedio. *Op. cit.*, pp. 686, 688, 689, with the understanding that the case under judgment covers only the decision-making part, not the grounds of fact, relegating it to the space of *exceptional* the acceptance of certain grounds while "logical and necessary assumption of the decision".

[24] *Vide* VARELA, Antunes/BEZERRA, J. Miguel/NORA, Sampaio. *Op. cit.*, pp. 701, 702.

[25] *Vide* MARQUES, J.P. Remédio. *Op. cit.*, pp. 670 a 675.

[26] *Vide* ANDRADE, Manuel A. Domingues de. *Op. cit.*, p. 305.

[27] *Ibidem*, p. 305.

[28] *Ibidem*, p. 305.

Already the effect of the formal judgment, does not prevent "the matter of the decision from being assessed differently in new proceedings, by the same or another court"[29]; given that in its "basis only one reason for discipline or order of development of the process intervenes"[30]. Therefore, the formal *res judicata* has intra-procedural value, that is, it is only binding in the very process in which the sentence or order was handed down (PCC, art^{e} 620, no. 1).

Also, the precepts of the law allow us to distinguish between the material case and the formal case, according to effectiveness the orders, judgments or judgments in question if extend or not a diverse processes of those in which were uttered these decisions (PCC, art^{e} 619th, no. 1, 620th, no. 1). However, subject to certain restrictions (PCC, art^{e} 619th, no. 2, 620th, no. 2)[31], judgments and orders that fall solely on the procedural relationship have mandatory force within the process, designating itself as formal judgment (PCC, art^{e} 620th, no. 1). When the judgment or remedial order deciding on the merits of the case, the decision on the disputed material relationship is given mandatory force within the process and outside it, being recognized by doctrine and jurisprudence as *res judicata* material (PCC, art^{e} 619th, no. 1). Although, they are required two limits and an exception: lis pendens and the case judged; the appeal for review (PCC, art^{e} 580th, 581st; 696th to 702nd *ex vi* art^{e} 619th, no. 1). The ground for final judgment has constitutional force, given that the decisions of the courts are mandatory for all public and private entities and prevail over those of any other entities (PRC, art^{e} 202nd, 205th, no. 2).

In turn, the requirement to comply with the limits - *lis pendens*, and *res judicata* - have to do with the filing of an action identical to another regarding the subjects, the request and the cause of action, in terms of the decision of the second cause implying the risk of the court contradicting or reproducing the decision of the first action.

As regards the exception called extraordinary appeal for review, although the res judicata material have mandatory force in the proceedings and outside them, preventing the same or another court, or any other authority, from defining in different terms the concrete law applicable to the disputed material relationship, there may be justification founded on particular demands for material justice which prevail over the reasons of security or certainty ensured by the institute of the judged case.

4. Elements to be considered in the case judged

The reference point indicating the knowledge and presence or absence of a judged case has subsisted through the existence or non-existence of the probability of two or more judicial decisions being contradicted or repeated in practice (PCC, art^{e} 580th, no. 2). What, apart from the repetition of a cause the previous one being still in progress or after the first to have been decided by a judgment which no longer allows an ordinary appeal, whether on appeal or review (PCC, art^{e} 627th, no. 2), is consumed in three fundamental elements: identity of the procedural subjects; an identity of the cause of action; an identity of the application (PCC, art^{e} 580th, 581st).

This guiding principle, upheld by doctrine and jurisprudence, which has made it possible to remove doubts as to whether determined action is identical to another s supported in the interpretation and literal application of art^{e} 497th, 498th, 671st of the 1961 PCC, as well as art^{e} 580th, 581st, 619th of the new Procedure Civil Code[32]. Both the precepts of the 1961 code and those of the 2013 diploma relate to the concepts and requirements of *lis pendens* and the *res judicata*, as well as the value of the final judgment.

Now, the repetition or contradiction of decisions being of a practical order, in such a manner that they cannot both be carried out, without detriment to one of them - the one that last occurred (PCC, art^{e} 625th, no. 1) - it becomes necessary to know the pertinent elements that tune into the presence of the judged case. And, furthermore, knowing whether the presence of this triad of elements is mandatory for the authority of the case under judgment to assert itself.

4.1. Identity of procedural subjects

It was discussed in traditional doctrine whether the identity of procedural subjects required to make the exceptions of lis pendens or res judicata act would be a physical or legal identity. The doctrine eventually considered the position or legal quality of the subjects, not their physical identity. And hence the previous and current laws have established that there is identity of subjects when the parties are the same from the point of view of their legal quality (PCC, art^{e} 581st, no. 2). Furthermore, this considered solution eliminates several confusions in which physically different subjects occupy the same procedural legal position. Just as ALBERTO DOS REIS evidences, in the case of the first action being proposed by a certain person, who then transmits to another, whether the mode is sale, exchange, donation, assignment, etc., the right, object of the action; and "if the acquirer or assignee later proposes the same action, there is identity of parties, since the authors are physically diverse, because they are in court in the same legal capacity"[33]. And he adds that, although it is not exact in absolute terms that the sentence does not take advantage of, nor harm third parties, what is certain is that the requirement of subjective identity (identity of plaintiff and defendant in the two actions) corresponds to the principle of relativity of the

[29] *Ibidem*, p. 304.
[30] *Ibidem*, p. 304.
[31] Corresponding to art^{e} 671st, no. 1, 672nd, of the 1961 Procedure Civil Code.
[32] Approved by Law No. 41/2013, of 26-06, with entry into force on 01-09-2013 (art. 8). Corresponding to art^{es} 497th, 498th, and 671st, all from CPC1961. On this issue in the field of CPC1939 with a wealth of solutions, *vide* REIS, Alberto. *Op. cit.*, pp. 95 a 137.
[33] *Vide* REIS, Alberto dos. *Op. cit.*, p. 98.

case judged. For, "the case judged only has the effectiveness that is peculiar to it, in relation to the people who appear as parties in the action in which it was formed"[34].

4.2. Identity of the order

Also in this matter, traditional doctrine has placed in ambiguity to know whether it was a material thing about which the action or the same legal effect which is intended to be obtained by the subsequent action. ALBERTO DOS REIS, summoning several authors, asserts that in any action "the author always intends to obtain a certain legal effect"[35] of some concrete, not abstract, character, which translates into the identity of the request. Advocating, "how the jurisdictional measure requested by the author must be understood not in abstract terms, but in the positive and concrete terms defined in the initial petition"[36]. And therefore, with reference to "the right that is intended to be enforced and the material incidence of that right"[37]. And, in this sense, "we can adopt this simplified form: identity of object means the identity of request; identity of request means identity of jurisdictional provision requested by the author"[38].

Equally here, the previous and the current laws have annulled that there is identity of application when in one cause and another it is intended to obtain the same legal effect (PCC, art[e] 581[st], no. 3). Which means that to produce identical legal effect, the identity of the request is affected by the identity of the practical-legal effect considered considering what is established in the normative framework applicable to the dispute in question, as pacification of an interest in crisis. And therefore, to the legal effect that must be withdrawn in court from the essential facts alleged by the parties (PCC, art[e] 5[th], no. 1).

4.3. Identity of the cause of action

With the help of the authors to which it appeals, ALBERTO DOS REIS considers that "the reason for requesting is the legal fact that constitutes the legal basis of the benefit or right, the object of the request; it is the principle that generates the right, its efficient cause"[39]. Recognizing that such a cause of action must be identified and individualized "by the elements of fact that converted the legal will into concrete", girded on the relevant legal facts, those "facts that may have an influence on the formation of the concrete will of the law"[40]. This doctrinal concept has passed into the laws of the past, is part of the law in force and is followed by jurisprudence. Therefore, there is an identity of cause of action when the claim deduced in the two actions proceeds from the same legal fact (PCC, art[e] 581[st], no. 4, I)[41].

In this way, case law understands that the cause of action taken in the essential facts basis of the legal claim deduced (PCC, art[e] 5[th], no. 1), is embodied in factuality alleged as ground for effect practical-legal targeted, with the meaning resulting from the normative framework applicable by the court as it is not subject to what is alleged by the parties with regard to the inquiry, interpretation and application of the rules of law (PCC, art[e] 5, no. 3). And it requires an adequate densification to individualize the disputed material relationship that offers a guarantee of basis for the contradictory (PCC, art[e] 3[rd]) and serve as an objective delimitation of the case judged. The factuality alleged as a cause of action must be relevant, in view of the normative framework applicable, in function of the species of legal protection intended, tending towards the case judged (PCC, art[e] 619[th], no. 1, 621[st]).

When this combination of the alleged concrete factuality with the applicable normative framework is likely to fill distinct normative frameworks with the establishment of different modes of legal protection, the differentiation will be made based on the normative vector of the cause of action. Since, in harmony with the so-called 'principle of exhaustion', the court must exhaust the possible qualifications of the alleged facts based on the intended practical-legal effect (PCC, art[e] 5[th], no. 3).

For that reason of divergent legal assessment, it is important to moderate this freedom of qualification in the sense of not allowing such a broad qualifying *conversion* or *commutation* that leads to a form of protection with essentially different content than that aimed at by the author, exceeding the limit of the conviction (PCC, art[e] 609[th], no. 1) and violating the principles of dispositive and adversarial proceedings, according to which the parties guided the configuration of the dispute and the discussion of the case (CPC, art[e] 3[rd], 5[th], no. 1).

5. The case tried and related figures

The judged case aims at the stability of the decision having as its purpose legal certainty and security, in the sense of making it impossible to reverse the effects of an unfavourable judgment, relevant, as a rule, through the dilatory

[34] *Ibidem*, p. 98.
[35] *Ibidem*, p. 98.
[36] *Ibidem*, pp. 105, 106, 107.
[37] *Ibidem*, pp. 105, 106, 107.
[38] *Ibidem*, págs. 105, 106, 107.
[39] *Ibidem*, pp. 105, 106, 107, 121.
[40] *Ibidem*, pp. 121.
[41] In real actions, the cause of action is the legal fact from which the real right derives; in constitutive and annulment actions, it is the fact or specific nullity that is invoked to obtain the intended effect (PCC, art[e] 581[st], no. 4, II). The cause of action in enforcement is not the enforceable title, but the facts constituting the obligation carried out reflected therein (fundamental relationship).

exception, in its negative effect. There are, however, figures close to it connected to it that urgently need to be appreciated, such as: prejudice; estoppel.

5.1. Harmfulness

The figure of the impairments manifests itself when a case depends elsewhere to continue in its normal procedural process. On the plaintiff's side, the court considers all issues related to the cause of action and the request; the defendant's invocation will assess the issues of interest for the decision of the case. As "technical prejudice"[42] it includes situations that require the recognition of a right to declare the existence of another; or to determine the non-existence or ineffectiveness of impeding, modifying or extinguishing facts, to judge a claim to be admissible. The second decision is conditioned by the first because its object depends on it and whose assessment may influence or modify it. That is, the provenance of the first decision, in proceedings pending or instituted in a different jurisdiction, may destroy the outcome of the second question. Harmfulness that may lead the court to *demurrages* the decision until the court *e.g.* criminal or administrative pronounce (PCC, art^{e} 92nd, no. 1). With the scare of the discussion of the second cause operates the prejudicial nexus of antecedent decision covering other jurisdictions with justificatory reason (PCC, art^{e} 272nd, no. 1)[43]. Also, an incidental claim may be a cause of prejudice placed in the main action, with restriction or scope of the case judged (PCC, art^{e} 91st, no. 1). Logical prejudice assumes two positions regarding the scope of the case being judged: restrictive and broad. Range studied in the field of comprehensiveness reaching only the conclusion decision-making or, also, of its background logical. In comparative terms, while the case judged prevents the implementation of the subsequent decision so that the court does not contradict or reproduce the previous decision, the prejudice fixed the previous decision conditioning the subsequent decision.

5.2. The estoppel

The figure of the estoppel, as an exclusion from the exercise of a right or procedural power within the prescribed period (PCC, art^{e} 139th, no. 3), constitutes a burden of concentration or exhaustiveness, forcing the parties to allege the facts that benefit them at the appropriate time. A more lenient or mitigated burden of claim for the plaintiff (PCC, art^{e} 279th, no. 1, 588th), more unrestricted for the defendant (PCC, art^{e} 573rd, no. 1, 588th). It can be intra-procedural and extra-procedural and independent of the case judged. The stability of the tried case comes due to the estoppel of facts known up until the sentence, not alleged when they should be, under penalty of estoppel (PCC, art^{e} 611th, no. 1)[44]. Comparing the concentration of the defence with the figure of estoppel, which is part of the authority of the case being judged, shows that estoppel predates the case being judged, although it operates through it. On the other hand, the authority of the case tried in the civil adversarial system resembles the principle *ne bis in idem* of criminal law, in the prohibition of double valuation (PRC, art^{e} 29th, no. 5). In this sense, it is important to emphasize that the entire defence must be deduced in the contestation under the terms of the normative that emanates from the principle of eventuality or estoppel (CPC, art^{e} 573rd, no. 1), making it operate, as part of the authority of the case being judged, within its own limits[45]. The grounds of defence must all be formulated at once at a certain time. The party will have to deduct some in the main and others in *eventu* – in the alternative, if those formulated in the first line are not met. This burden arises imposed for reasons of loyalty in the judicial struggle, which are also underlain by reasons of security and legal certainty that prevent a judgment from being made final and its effects from being postponed based on new arguments that were not invoked in such an action, but could have been[46]. Under the effect that all facts that could have been invoked as grounds for a challenge, whether or not connected with the defence presented, fall under the jurisdiction of preclusion, which is based on reasons relating to the proper administration of justice, the principle of procedural economy[47], the functionality of the courts and the safeguarding of social peace, being excluded the possibility of confronting the court with the whole situation contradictory or incompatible with the one that was defined in the decision carried forward.

Also the figure of the reconvening the (PCC, art^{e} 583rd) displays the preclusive effects inherent in the final judgment and its connection with the authority of the case under judgment remains pertinent, since: "the defendant who refrained from claiming rights ends up seeing the precluded possibility of obtaining a future decision that affects, in practice, the result previously achieved by the opponent"[48]. In this way, even if the reconvening be it optional, it will be convenient the *cross-defendant* or *counter-plaintiff* to get rid of a loss future and eventual, although not certain: the prejudice of the estoppel of his right, therefore being "inhibited from proposing an independent counter-action, based on previous facts deduced without

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[42] *Vide* MESQUITA Miguel. *Reconvenção e exceção no Processo Civil*, Coimbra, Almedina, 2009 pp. 58, 59: "the judge, to recognize a right (*e.g.* an indemnifying right), must declare another right existing (*e.g.* the right to property)".

[43] *Vide* GERALDES, António Santos Abrantes/PIMENTA, Paulo/SOUSA, Luís Filipe Pires de. *Código de Processo Civil anotado*, Volume I, Almedina, Coimbra, 2018, pp. 115 to 118.

[44] *Vide* SOUSA, Miguel Teixeira de. *Preclusão e caso julgado* (02.2016), *in* www.academia.edu/.../TEIXEIRA_DE_SOUSA_M._Preclusão_e_caso_julgado_02.20... pp. 2 to 7.

[45] *Vide* VARELA, Antunes/BEZERRA, J. Miguel/NORA, Sampaio. *Op. cit.*, p. 713, nota 2. FREITAS, José Lebre de/ALEXANDRE, Isabel. *Código de Processo Civil anotado, Volume 2.º, 3.ª Edição, Reimpressão*, Almedina, Coimbra, 2018, pp. 595,596.

[46] *Vide* ANDRADE, Manuel A. *Op. cit.*, p. 382.

[47] This is understood as a prohibition on the practice of useless acts, as stated in art^{e} 137th of the PCC.

[48] *Vide* MESQUITA, Miguel. *Op. cit.*, pp. 418 e ss, 441, 429, 453. The author begins by explaining other people's positions and then expressing his own. Warning of the benefits of the necessary counterclaim: reduction in the number of actions, procedural efficiency; and drawbacks: complexification of processes, procedural delays, pp. 476, 477. It ends by concluding "prevalence of the principle of freedom to recover", p. 478.

success or which may have been deduced in his defence, were not"[49]. For this reason, the reverse who has "always to play, at the moment he contests, with the possibility of a favourable sentence being handed down to the author"[50]. I post that, formed the case judged material on this sentence, "the defendant cannot, through an action, based on previous facts, affect the content of the sentence handed down in this case"[51]. Furthermore, the situation finds some parallel with what is configured for the opposition by means of embargoes (PCC, art^{e} 860th, no. 3), a norm in which another effect emerges preclusive at the level of the pretensioner the counter-conventional. For despite the admissibility of the counterclaim the (PCC, art^{e} 266th) the invocation of the possible substantive right is prevented, within the scope of opposition to the executive judgment, in cases where the defendant has refrained from invoking such right in the declarative action from which the judgment emerges the exequend. Therefore, even if a situation is not configured what should be appreciated from the perspective of the material judged case, paying attention to the lack of identity of the integral elements, it is important to highlight, this is *res judicata* authority inherent to sentencing a, an effect that aims to preserve the prestige of courts and legal certainty or security, avoiding instability in legal relations tips.

6. The case judged against third parties

As a rule, the case under judgment presupposes the repetition of the case with the identity of subjects, plaintiff and defendant, in both actions, producing no effects in relation to third parties. Sentences a concrete issue petitioned, contradicted and judged to produce effects *inter partes*. On the contrary, there are cases where, in denial of the relative effectiveness, the case judged produces an effectiveness doctrinally called reflex in relation to third party holders of relations related or dependents of the relationship defined in the judgment[52]. Situations in which the tried case exhibits a leading expansive force to overflow the relative limits and project effects on various legal relationships of unheard third parties, non-intervenors, nor with the opportunity to contradict. However, the principle of procedural economy overrides the contradictory in producing these effects. As regards the extent of the case being tried relatively to third parties, doctrine and jurisprudence usually distinguish: the *legally indifferent third parties*; the *legally harmed third parties*.

6.1. Legally indifferent third parties

The legally indifferent third parties are those legal entities against who the decision does not cause any legal harm, because, by its nature, it cannot be reached, does not interfere with the existence and validity of yours right, but may affect its practical or economic consistency. Therefore, they are covered by the effectiveness of the case judged. Such effects involve the *creditor* in the case of *decrease in asset guarantee* (CC, art^{e} 601st)[53] in which the judged case imposes itself or takes advantage of third parties[54].

6.2. Legally aggrieved third parties

The third parties legally harmed legal entities that may see their legal relationships extinguished, modified or impeded due to the opposability of the case being judged include. Therefore: **a**) They may be holders of an independent legal relationship and incompatible with the disputing parties and defined by the sentence, which are not affected by the case judged by others. There is a conflict of claims in a competition with both subjects (plaintiff and counter-plaintiff) in which a third party claims ownership of the right, absolute or credit, filed by the plaintiff, deducting the opposition of a third party (PCC, art^{e} 333rd, no. 1) *e.g.* a claim action, an unregistered preference action[55]. They are in this situation *e.g.* the right of ownership or usufruct that the author claims, "the right to a literary work that the author claims to have written"[56]. In a similar way and based on a "representation relationship, in assignment of credit or subrogation, the right to all or part of the provision that the plaintiff intends that the defendant be ordered to carry out"[57]; **b**) Holders of a legal relationship competitor, or with the existence of a single content for the positions in the competition, which include those situations generated when the judged case benefits everyone, even without intervention, no being them opposable *e.g.* a joint and several obligation (CC, art^{e} 522nd, 53rd, no. 1), indivisible (CC, art. 538th, no. 2) cases of co-ownership or *condominium* (CC, art. 1405th, no. 2), of hereditary communion (CC, art^{e} 2078th, no. 1), of joint ownership of a right of preference, of annulment of a decision of a commercial company (CSC, art^{e} 61st, no. 1)[58], by reflection of the *necessary joint litigation* (PCC, art^{e} 33rd); **c**) Or holders of a legal relationship parallel, in which there is a similarity in the content of the situations, but distinct, as is the case with debtors or creditors sets who have no intervention in the case to those who take advantage of the case judged in favour[59]; **d**) The third parties holding a dependent relationship

[49] *Ibidem.*
[50] *Ibidem.*
[51] *Ibidem.*
[52] *Vide* VARELA, Antunes/BEZERRA, J. Miguel/NORA, Sampaio. *Op. cit.*, pp. 724 to 733.
[53] CC: Portuguese Civil Code, *in https://www.pgdlisboa.pt/leis*.
[54] *Vide* MARQUES, J.P. Remédio. *Op. cit.*, p. 696.
[55] *Ibidem*, pp. 696, 698. defendant reconvinte [cross-defendant]
[56] *Vide* FREITAS, José Lebre de/ALEXANDRE, Isabel. *Op. cit.*, p. 661.
[57] *Ibidem.*
[58] *Vide* MARQUES, J.P. Remédio. *Op. cit.*, p. 698. CSC: Commercial Societies Code, *in https://www.pgdlisboa.pt/leis*.
[59] *Ibidem*, p. 698.

or position of the defined between the disputing parties by a decision carried forward, to whom the reflex effectiveness of the case judged has been recognized *e.g.* guarantor (CC, art[e] 635[th], no. 1), holder of encumbered assets to secure third party debt (CC, art[e] 717[th], no. 2)[60]. Other subordinate relationships such as sublease subcontracts (CC, art[e] 1089[th]) or underemployed that expire upon termination of the contract on which they depend. The right of pre-emption that is not constituted if the disposal is not verified (CC, art[e] 1410[th], no. 2, *a contrario*)[61].

6.3. Third parties in special schemes

In certain special regimes the final judgment not only binds the procedural subjects, but by its nature opposes third parties with a direct interest in contradicting (PCC, art[e] 30, no. 1), producing effects *erga omnes*. Examples include state actions *e.g.* for a declaration of nullity or annulment of marriage, divorce or separation of persons and property (PCC, art[e] 931[st], no. 1; CC, art[e] 1639[th], 1640[th], no. 1), or for this action to proceed against heirs (CC, art[e] 1785[th], no. 3)[62], challenge, recognition or denial of paternity or maternity (CC, art[e] 1807[th], 1840[th], no. 1). Another example of the opposability of the case under judgment are non-official registration actions[63]. The regime of popular action can also be framed here (LPA, art[e] 19[th])[64], based on the idea of representation, as it establishes an effectiveness erga omnes of the sentence. Although, reserved for third parties who do not self-exclude themselves in the process (PAL, art[e] 19, no. 1, *in fine*). This effectiveness, both in terms of acquittal and conviction, is brought for protection of homogeneous individual interest. It therefore constitutes exception to the rule of effect *inter partes*[65].

7. The sense of the authority of the case being tried

Accepting the faces of the same figure, with integration in the judged case of two vectors, it becomes mandatory to reveal their positive vector, positive function[66] or *positive effect*[67], in the aspect of *authority of the case judged*. Inquiring the *sense*, function, or effect, which is intended to mean the expression authority of the case being judged.

In this continuation, the doctrine assigns to the authority of the case being tried a positive function with "maximum expression in the principle of enforceability"[68] to serve as a basis for execution, being as an enforceable title that "unequivocally affirms its mandatory force". Securing itself as a means of evidence or positive effect of "impose the first decision, as an indisputable assumption of a second decision on the merits" with the constitutive result of impairments, "basis of the first decision" or "prohibition of contradiction" of the respective decision-making merit[69]. Driven by a positive effect, which results from the binding of the court that issued the decision and, possibly, of other courts to what was definitively defined or established therein.

Although, it is important to highlight that the understanding of the confirmation of the triple identity of subjects, request and cause of action established in art[e] 581[st] of the PCC is not unanimous, regarding the adjudicated case authority: while for some indoctrinators, the tried case authority requests verification of the triple identity of subjects, of cause of action and of request[70]; there are others who profess that the adjudicated authority may work no dependence of verification of this triple identity, which may extend to other subsequent cases. A line of doctrinal guidance that is supported by more recent case law.

Indeed, the thematic construction defended by traditional doctrine and jurisprudence regarding the case judged has recently[71] been controversial because it runs the risk of being reductive when pressured with the inconvenience of not supporting all the circumstances in which the triple condition required by art[e] 581[st] of the PCC is not met - the identity of the procedural subjects; the identity of the cause of action; the identity of the request – but, despite this non-attendance triple, there is case judged with effect positive, in the sense of imposition of the unmodifiable decision taken. That is, the authority of the case judged translated in the respective strand positive of no modifiability of the case judged, arising from the definitive nature of transit final judgment; with constitutional value of legal certainty and protection of stability of institutions; the protection of trust in judicial acts, their imposition on everyone the courts and other institutions, which is ultimately reflected in prestige of the courts.

Thus, as recent case law states, the *res judicata* has the power to produce two distinct effects: a negative effect exerted through the dilatory exception of the *res judicata*, which aims to avoid the repetition of identical causes, according to

[60] *Ibidem*, pp. 698, 699.
[61] *Vide* FREITAS, José Lebre de/ALEXANDRE, Isabel. *Op. cit.*, p. 760.
[62] *Ibidem*, p. 759.
[63] *Vide* MARQUES, J.P. Remédio. *Op. cit.*, pp. 698, 699, 670, 671, 672.
[64] LPA: Law of the Peoples Action, Law No. 83/95 of 31-08, *in https://www.pgdlisboa.pt/leis.*
[65] *Vide* FREITAS, José Lebre de/ALEXANDRE, Isabel. *Op. cit.*, p. 759.
[66] *Vide* REIS, Alberto. *Op. cit.*, p. 93.
[67] *Vide* FREITAS, José Lebre de/ALEXANDRE, Isabel. *Op. cit.*, pp. 599, 600, 749.
[68] *Vide* REIS, Alberto. *Op. cit.*, p. 93.
[69] *Vide* FREITAS, José Lebre de/ALEXANDRE, Isabel. *Op. cit.*, pp. 599, 749.
[70] *Vide* REIS, Alberto. *Op. cit.*, p. 93. Nas palavras do autor "são sempre necessárias as três identidades".
[71] Judgment of the Supreme Court of Justice of 25-03-2021, Case No. 12191/18.0T8LSB.L1.S1, 2[nd] Section, *in* STJ rulings, *www.dgsi.pt*; and Judgment of the Supreme Court of Justice of 13-09-2018, Case No. 687/17.5T8PNF.S1, 2[nd] Section, *in* STJ rulings, *www.dgsi.pt*.

the criterion of triple identity (subjects, cause of action, request); and a positive effect through the adjudicated case authority, imposing the binding force of the decision handed down on the decision-making court itself or on another court to which the previous decision is presented as a preliminary or prior issue in relation to the subject matter in the subsequent process, even if in the latter that triple identity does not occur. For, the scope and authority of the adjudicated case cannot be limited to the rigid contours defined in art[e] 580[th] and 581[st] of the PCC for the exception of the case judged, on the contrary, it must be extended to situations in which, despite the formal absence of the identity of subjects, request and cause of action, the basis and reason for being of that legal figure are, notoriously, present. Furthermore, the authority of the case under judgment involves the acceptance of a decision handed down in a previous action whose object is inscribed, as an indisputable assumption, in the object of a subsequent action, thus preventing the legal relationship defined there from being contemplated, again, in an unusual way.

In any case, the repetition of the object, impediment of subsequent annoyance and without triple identity, manifests itself in an issue that has to do with the content and range of the material *res judicata*, in its function or positive aspect. Which is worth saying, with the effectiveness of authority of the case judged formed by the judgment given in the previous action, regarding its extension to further action or actions. For this reason, it is important to analyse it in accordance with art[e] 619[th], no. 1, of the PCC. This precept provides that 'once the judgment or remedial order deciding on the merits of the case has become final, the decision on the disputed material relationship shall have mandatory force within the proceedings and outside them within the limits set by art[es] 580[th] and 581[st], without prejudice to the provisions of art[es] 696[th] to 702[nd] [72]. Adding that, 'the judgment constitutes a case judged within the precise limits and terms in which its judges' (PCC, art[e] 621[st]).

Now, this mandatory force of the decision on the merits of the case in and out of the process within the limits and terms in which it judges reverence the *res judicata* material, while function or imperative positive effect assigned to first decision final judgment, affecting the substantial legal relationship, since 'if there are two contradictory decisions on the same claim, the one that became final in the first place is complied with' (PCC, art[e] 625[th], no. 1). And, if on the one hand, the case judged material shelters or welcomes the decision given on the merits of the case of the material or substantive relationship under discussion in the process; of the other band, the strength and the authority attributed to the final decision aims to avoid or prevent the matter decided by the court from being validly defined in a way different, by another court or by the court that issued the previous decision on the merits.

With the reception of a negative effect and imposition of a positive effect, as mentioned ANTUNES VARELA, "it is about safeguarding a vital need to legal certainty and of certainty of the right"[73]. Thus, "the case-judged exception based on the force and authority of the decision carried forward, is also intended to prevent the risk of one useless decision"[74], since, in compliance with the provisions of the law, if there are two contradictory decisions on the same claim, the one that became final in the first place will be complied with. Which means that the initiation of the second proceedings, or the re-argument of the matter in the same proceedings, "would represent an expense useless of time, effort and money, in addition to constituting a danger to the prestige of the administration of justice, which it is naturally necessary to prevent" [75].

However, as it sets out ALBERTO DOS REIS, the authority of the case judged and exception of *res judicata* "they are not two distinct figures; rather, they are two faces of the same figure"[76]. The legal fact *res judicata* consists after all in the existence of a "judgment, with final judgment, on a certain matter"[77]. This judgment may be used, in a subsequent action, either by the plaintiff or the defendant: the plaintiff invokes the judgment carried forward when he makes it the basis for his action; the defendant invokes the case under judgment when he uses it to deduce an exception. "Even when it functions as an exception, behind it is always the force and authority of the case judged"[78]. Therefore, the case judged is compatible with the exercise of two legally admissible functions, one positive and another negative: through the negative function creases the case-judged exception [PCC, art[e] 577[th], *wing* i); 580[th]]; through the positive function imposes its strength and authority, with maximum expression in the principle of enforceability, basis of execution [PCC, art[e] 10[th], no. 4, a 6; 55[th], 626[th], 703[rd], *wing* a), 704[th], no. 1], demonstrating the effectiveness of case-judged authority in the coercibility of the legal system.

For LEBRE DE FREITAS "an exception of *res judicata* is not to be confused with the authority of the res judicata"[79]. Effectively, "by the exception, the effect is aimed at negative of the inadmissibility of the second action, with the case being judged as an obstacle to a new decision on the merits", while "the authority of the judged case has rather the positive effect of imposing the first decision, as an indisputable assumption of a second decision on the merits"[80] Yet, that positive effect imposed by the first decision "is based on a relationship of impairments: the subject matter of the first decision constitutes a

[72] Este limite imposto pelos art.[os] 696.º a 702.º funda-se no recurso extraordinário de revisão (CPC, art.º 627.º, n.º 2).
[73] *Vide* VARELA, Antunes/BEZERRA, J. Miguel/NORA, Sampaio. *Op. cit.*, pp. 309, 310. Underline in the original.
[74] *Ibidem*, pp. 309, 310. Underline in the original.
[75] *Ibidem*, pp. 309, 310. Underline in the original.
[76] *Vide* REIS, Alberto dos. *Op. cit.*, p. 93. Embora exija sempre as três identidades.
[77] *Ibidem*.
[78] *Ibidem*.
[79] *Vide* FREITAS, José Lebre de/ALEXANDRE, Isabel. *Op. cit.*, p. 599. Sublinhados no original. Guidance accepted in the Judgment of the Supreme Court of Justice of 16-11-2021, case no. 155/07.3TBTVR.E1.S1, 1[st] Section, *in* STJ rulings, *www.dgsi.pt.*
[80] *Ibidem*.

preliminary question in the second action, as a necessary assumption of the decision on the merits that must be given in this action"[81] or as "the basis of the first decision, exceptionally covered by the case under judgment"[82].

Or, in the words of MIGUEL TEIXEIRA DE SOUSA, an exception of *res judicata* aims to prevent the court "contradicting in the subsequent decision the meaning of the previous decision or repeating in the subsequent decision the content of the previous decision"[83], duplicating decisions on the same procedural object. In a different sense, when it is in force as adjudicated case authority, "the material res judicata, manifests itself in its positive aspect of prohibiting contradiction of the decision carried forward"[84]. Expressively, that the *res judicata* authority manifests itself as a kind of imperative order: the "command of the action, the prohibition of omission regarding the subjective link to the repetition of the subsequent process of the content of the previous decision"[85]; and, consequently, to the "non-contradiction in the subsequent process of the content of the previous decision"[86].

In terms of objective identity, although the identity of object is not necessary in the two proceedings, it is required that the issue that was a decisive matter in the first proceedings be renewed in the subsequent proceedings in identical terms or that, taking on another appearance, it be fundamental to the resolution of the matter brought before the court.

Effectively, the judicial decision carried over becomes unmodifiable for everyone, preventing and harming your own contradiction discrediting: by imposition of the "case judged condemnatory preclude definitely all means of defence invocable against the claim deduced"[87], absorbing exceptions of non-official and non-invoked knowledge; and being "absolutory preclude all the reasons for supporting the claim made, which were not accepted in the decision issued"[88].

In this way, they integrate the existence of relationship of *procedural prejudice*[89] with adjudicated case authority the following components: a necessary imposition on all actions that may run between the same procedural subjects; same what falling on a miscellaneous object; whose appreciation depend on the object previously judged; there being a conditioning or harmful relationship of the disputed material relationship in the later action; which causes the uselessness of the subsequent decision.

In turn, case law considers that the adjudicated case authority is formed by the conjugation of four elements: a) one decision judicial handed down in proceedings previous; b) composed of an object that is inserts into the object of the second; c) determined that the material legal relationship or situation defined by the first decision may be upset for the second, with definition diverse da same relationship or situation, but; d) without requiring the triple identity (PCC, art^{e} 581st).

And consistent with the doctrine, it considers that the exception of a *res judicata* should not be confused with the authority of the case judged; by exception, the negative effect of the inadmissibility of the second action is aimed at, with the case being judged as an obstacle to a new decision on the merits; the authority of the case tried has rather the positive effect of imposing the first decision, as an indisputable assumption of a second decision on the merits. This positive effect is based on a relationship of detrimentally: the object of the first decision constitutes preliminary question in the second action, as a necessary assumption of the decision on the merits that must be given in this one. And, for reasons of procedural economy, in order to avoid a new useless decision, the authority of the case under judgment imports the acceptance of a decision handed down in a previous action, which is inserted, in terms of its object, into the object of the second, aiming to prevent the relationship or material legal situation defined by one judgment from being validly defined differently by another judgment.

The adjudicated case authority aims to the positive effect of imposing the binding force of the decision given before[90] to the decision-making court itself or to any other court[91], to which said earlier decision is presented as a preliminary or prior question in the face of the *thema decidendum* in the subsequent action. The adjudicated case authority has to do with the existence of relationships between actions no longer of legal identity[92], but of prejudice between actions, in such an order that, once a certain issue in an action that has been decided, in definitive terms, has been judged between certain parties, the decision on that issue or the object of the first case, is necessarily imposed in all actions that have been decided, even if they affect a different object, but whose assessment depends decisively on the previously judged object, perceived as *conditioning or prejudicial relationship of the disputed material relationship in the subsequent action*[93].

And why does case-judged authority matter to acceptance of a decision given in a previous action, which is inserted, in terms of its object, into the object of the second, aiming to prevent the relationship or material legal situation

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[81] *Ibidem*.
[82] *Ibidem*.
[83] *Vide* SOUSA, Miguel Teixeira de. *Op. cit.*, pp. 2 to 7.
[84] *Ibidem*.
[85] *Ibidem*.
[86] *Ibidem*.
[87] *Vide* FREITAS, José Lebre de/ALEXANDRE, Isabel. *Op. cit.*, p. 749. Underlined in the original.
[88] *Ibidem*.
[89] But not of legal identity (subjects, cause of action and request), as this constitutes only a presupposition or requirement of the case-judged exception (PCC, art^{e} 581st).
[90] And final and binding (PCC, art^{e} 628th).
[91] Or entity (PRC, art^{e} 205th, no. 2).
[92] Proper of the case-judged exception (PCC, art^{e} 581st).
[93] Judgment of the Supreme Court of Justice of 12-10-2022, Case No. 2337/19.6T8VRL.G1.S1-A, 4th Section, in STJ rulings *in www.dgis.pt*.

defined by one sentence from being validly defined differently by another sentence, dispensing with the coexistence of the triple identity (PCC, art^e 581^st). Therefore, it is by virtue of the authority of the judged case that the imposition of the first decision, given the central core of questions of law and fact appreciated in it and decided to be the same as what one wants to discuss and see appreciated. For this very reason, there is a necessary relationship of impairments. And the first decision would be called into question if it were again assessed and decided differently in the subsequent proceedings.

In this way, the sense of the authority of the case being tried has been weighted by a majority orientation that dispense with the triple identity of subjects, cause of action and request. And accepts the authority of the case judged founded on the existence of object duplication of subsequent actions, adjusted unmodifiable of the decision carried over tending to prevent one contradiction composition of the material relationship or controversial position, with the purpose of preventing the discrediting of the courts. What can be summarized in a few words: repetition of causes and uselessness, prejudice and estoppel, impediment of contradiction and unnecessary triple. Now, as the figure of estoppel [94] is part of the positive function of the authority of the case being judged, preclusive limits must apply as the burden of exercising a right or procedural power within the prescribed period (PCC, art^e 139^th, no. 3). In other cases, harm is valid (PCC, art^e 92^nd).

In this understanding, the identity of subjects, cause of request and request is not necessary. What is at stake is the authority of the case judged, that is, the positive effect of the decision on the merits previously handed down. This positive effect imposes itself as indisputable assumption of the decision intended to be reached by subsequent action, in relation to impairments which precludes the decision on the merits to be given in this. The subject-matter of the first decision constitutes assumption or preliminary question in the second action. Without this prejudice the first decision would be called into question and its decided object of different mode. That is precisely what the authority of the case being tried is intended to prevent. Which leads to accepting the decision of substance given in the first case.

8. Time of verification of the case judged and its authority

Civil procedural law provides for and classifies as dilatory exceptions the lis pendens and the judged case [PCC, art^e 576^th, no. 1; 577^th, *wing* i)] attributing to them the consequence of preventing the court from hearing the merits of the case, giving rise to acquittal of the instance (PCC, art^e 576^th, no. 2). The knowledge of dilatory exceptions is unofficial therefore, lis pendens and the case judged do not depend on the invocation of an interested party (PCC, art^e 578^th). Previously, the initiative to remedy the irregularity belongs to the court competent to process the subsequent process. Regarding lis pendens, as a dilatory exception, such an exception must be deduced in the action brought in second place. That is, the action for which the defendant was later named. In doubt, the order of actions is determined by the entry order of the respective initial petitions (CPC, art^e 582^nd). And concerning the judged case, which became dilatory exception with the 1995/96 reform of CPC1961, leading its origin to acquittal of the instance, the argument according to which the proposed action is identical or constitutes a repetition of another already decided by a final judgment must be known unofficially in the action brought second. It is apodictic that, both exception of lis pendens as the exception of the tried case have useful purpose or effect avoid that the court be placed on the alternative of contradicting or reproducing a previous decision (CPC, art^e 580^th, no. 2). Consequently, the judge of the subsequent proceedings must refrain from hearing the application and acquit the defendant of the case when he or she finds a dilatory exception of lis pendens or a case judged admissible [PCC, 278^th, no. 1, *wing* e) 580^th, nos. 1, 2; 581^st][95]. Admittedly, the exception of the judged case on the slope or pole negative seeks to avoid the repetition of actions, assuming the identity of subjects, of request and of cause of request. While the authority of the case judged on the slope or pole positive, translates the non-contradiction[96] and imposition of the decision taken on all authorities, dispensing with the identity of subjects, request and cause of action. Therefore, as they are part of the same legal figure and as the negative and positive effects of the case under judgment are incindible, the official knowledge of the authority of the case under judgment has its moment of verification in the subsequent action[97].

9. Limits to the case tried: the exception of the extraordinary appeal for review

In fact, the judged case is characterized by the insusceptibility of challenging a judicial decision because of the definitive nature arising from the respective final judgment, through an ordinary appeal, whether of appeal or review (PCC, art^e 580^th, no. 1; 627^th, no. 2). And if the case judged is placed in a situation of uncertainty, as a rule by the same parties, identical

[94] Although with several limitations, when a certain procedural phase or cycle is "exceeded", while "a sequence of acts linked in a certain procedure", or any deadline is exceeded, "the right to perform that act" is extinguished by force of the "principle of estoppel". *Vide* MARQUES, J.P. Remédio. *Op. cit.*, pp. 208, 209.

[95] Like the precepts of art^e 288^th, no. 1, *wing* e), 493^rd, no. 2, 494^th, *wing* i), of PCC1961, in the wording of Decree-Law no. 329-A/95, of 12-12, art^e 1^st.

[96] *Vide* FREITAS, José Lebre de/ALEXANDRE, Isabel. *Op. cit.*, pp. 749, where it remains stated that the prohibition of contradiction is equivalent to the authority of *res judicata*, the positive effect of the judicial decision.

[97] Both effects of the same figure presuppose an action carried forward (PCC, art^e 628^th).However, a curious impasse can arise here: lis pendens and the case being judged are classified as exceptions *dilatory*, granting *acquittal of the instance* [PCC, art^e 576^th, no. 1, 578^th, 580^th, 581^st, 595^th, no. 1, *wing* a)]; while authority does not appear in the range of those, being difficult to consider as an exception *peremptory* leading to *acquittal of the application* [CPC, art^e 576^th, no. 3, 579^th, 580^th, 581^st, 595^th, no. 1, *wing* b)]. What is certain is that the effect goes in the same direction, since a fundamental core of fact and law of the first action absorbed in the object as a topic to be decided in the second action, cannot go beyond the moment of the remedial order [(PCC, art^e 595^th, no. 1, *wings* a), b)].

request and cause of action being present, whether in different proceedings or in the same proceedings, may occur offense of the judged case formed in the previous decision. There may be a change in circumstances such as related institute of the *extraordinary appeal for review*.

9.1. The exception of the extraordinary appeal for review

However, forensic practice presents concrete cases with evidence of demands for material justice that are understood must prevail on the reasons of security or certainty ensured by the institute of the case tried. Such situations in life are based on the preservation of material justice. The exception of an extraordinary appeal for review constitutes a remote possibility of changing the final decision that is not modifiable by complaint or ordinary appeal, as "*de facto* situations capable of serving as grounds" the extraordinary refusal of review are truly exceptional[98].

Despite this 'remote possibility', the objectionable exceptional means exists to guard against these cases of material justice prevailing over the case judged, in the category of extraordinary appeal for review, provided for in art[e] 627[th], no. 2 of the PCC; regulated and processed in accordance with the provisions of art[e] 696[th] to 702[th] of the PCC; brought before the court which gave the decision to be reviewed (CPC, art[e] 697[th], no. 1)[99].

Such an extraordinary appeal for review consists of an exceptional challenge procedure that aims to destruction of the case judged of a judicial decision already carried forward on the basis of any of the grounds taxativity configured in art[e] 696[th] of the PCC (judge's crime; falsity of document; document not known to the party; nullity or voidability of confession, withdrawal or transaction; action or execution *in absentia*; irreconcilability with decision of international instance; simulation of the parties). Given these exhaustive grounds, it is not possible to support any authority on a *res judicata* case, as its positive effect has failed to be fully proven. Hence the regime applies to both the negative and positive functions of the case being judged, since both aspects are overturned by more sublime values. It is a question of ascertaining whether any of those grounds justify revision or annulment of the decision and, if so, of redoing the contested decision. Thus, while they aim to determine whether any of the grounds are tax that justify the review or annulment of the decision, that is, regarding the so-called rescinding judgment (PCC, art[e] 696[th]), the extraordinary appeal for review is equivalent to any constitutive action [(PCC, art[e] 10[th], no. 2, *wing* c)] changing the existing legal order and the powers of the court in that assessment coincide with those recognized to it of the case tried and the respective decision, the call opens up rescission judgment (PCC, art[e] 701[st]) in which the court reconstitutes the annulled decision, due to the requirement of material justice.

Challenging judicial decisions satisfies the interests of the injured party, who can thus obtain the correction of a decision that is unfavourable to them. Challenging also corresponds to the general interests of the community, because eliminating erroneous or flawed decisions not only combats feelings of insecurity but also favours the prestige of the courts and the standardization of case law. This faculty of challenge is a consequence of the possibility of private individuals reacting against public acts that offend their interests and the knowledge of this challenge by the courts themselves is the imposition of their independence (PRC, art[e] 203[rd]; LOTJ, art[e] 4[th]). Furthermore, the challenge to the decision before a higher-ranking court assumes that that court is in a better position to hear the case sub iudice than the court appealed against.

However, for the operation of such an objectionable exceptionality, which imposes the reconciliation of clamorous demands for justice with the reasons of security and legal certainty, the law establishes time limits for lodging an appeal, except for the protection of personality rights (PCC, art[e] 697[th], no. 2). It is not lawful to exclude the application of such time limits to any category of appellants covered by art[e] 696[th] of the PCC.

9.2. The changing circumstances: the new law or new case law

Beyond the limits imposed on the case judged by the extraordinary appeal for review, other constellations may be configured to impose limits on it as is the case of the change of maintenance in lasting payments in which the case judged may be modified (CC, art[e] 2012[nd]). The case of compensation awarded based on the prospect of future production of predictable results that did not happen, which generate the fallibility of the prospect that will allow the case to be destabilized, giving rise to a modifying action[100]. And the change in circumstances that may lead to disregard the case judged by virtue of a new law or new case law[101].

In fact, the res judicata is not a value in itself; it does not impose the permanence of the regulations contained in the judicial decision; it yields to subsequent facts relevant to substantive law, as occurs with changing circumstances, due to the instrumentality of procedural law. And this does not amount to the denial of the *res judicata*.

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[98] *Vide* VARELA, Antunes/BEZERRA, J. Miguel/NORA, Sampaio. *Op. cit*., p. 702.

[99] For GERALDES, António Santos Abrantes/PIMENTA, Paulo/SOUSA, Luís Filipe Pires de. *Op. cit*., p. 744, the not modifiability of the material res judicata may also suffer the restrictions of the extraordinary appeal to standardization of sentencing (PCC, art[es] 688[th] to 695[th]).

[100] On the possibility of relativizing or disregarding the real and concrete effects that derive from the decision already harboured by the case being judged increases, *vide* COHN, Herbert de Souza. *O Princípio da Relatividade da Sentença Penal Transitada em Julgado*, Universidade Autónoma de Lisboa, 2018, pp. 227 to 261, *in https://repositorio.ual.pt.*

[101] *Vide* ALEXANDRE, Isabel. Modificação do caso julgado material civil por alteração das circunstâncias. Coimbra, Edições Almedina, S. A., Teses, 2018, pp. 108 to 112, 529 to 535, 593 to 596, 647, 648, 689, 780, 781, 817, 818. *Vide* SILVA, Paula Costa/REIS, Nuno Trigo do. *Revisitando a estabilidade e a modificação do caso julgado arbitral: quando o futuro desmente a prognose*, em Anotação ao Acórdão Processo nº 660/15.8YRLSB.L1.S1 do Supremo Tribunal de Justiça, *in* Revista da Ordem dos Advogado, ano 76, jan./dez, pp. 517 ss.

In this way, the cases of *e.g.* review of pensions for occupational diseases and updating of pensions for occupational diseases or work accidents may occur due to changes in the circumstances of the material case. And, if the paying entity does not resolve the case of motorcycle proprio or on request, justify the modifying action to break the res judicata, where binding. There being no preclusive time limit for bringing the amending action, in accordance with substantive law (CPC, art[e] 612[nd], no. 2)[102].

The validity of the case judged presupposes that the currently existing law remains the same, the subsequent amendment definitively terminates the relationship established in the sentence, which implies the disappearance of the assumption on which the sentence was based, because legislative development is not the subject of the judge's provision[103]. The change in circumstances relevant to the modification of the judgment is defined by substantive law: which means that the figure of the change in circumstances is integrated into the concept of a modifying or extinguishing fact of the obligation. The new law can both attribute relevance to a new fact for the purpose of modifying or terminating an obligation previously recognized by judgment and confer various relevance to the fact that would justify such obligation[104].

The modification of the civil res judicata due to a change in circumstances represents a institute related to the extraordinary appeal for review and the expiration of the case under judgment; is based on the cause of action of the previous action and presupposes the formulation of the same request, from a qualitative point of view; is based on a change in the law or subsequent declaration of unconstitutionality with general mandatory force[105]. Like the expiration of the case under judgment, the modification of the case under judgment due to a change in circumstances is not based on a change in the cause of action and, well, it determines the cessation of the effects of the previous res judicata; the modifying or extinguishing facts must be alleged; it poses similar questions and justifies similar solutions to the civil regime of the modification or resolution of the contract by change of circumstances.

It is the very nature of things which imposes the conclusion that the sentences with successive treatment are given on the assumption that the law remains the same, and must therefore lapse for the future, when the legal regime is modified. The judgment only defines the disputed material relationship as it existed at the time of the conclusion of the discussion, not precluding vicissitudes after the relationship itself as it was defined and the giving of new decisions accordingly[106].

Thus, any existing res judicata: it is not a value in itself, it does not impose the permanence of the regulation contained in the judicial decision; it yields to subsequent facts relevant to substantive law as occurs with the change in circumstances; due to the instrumentality of procedural law, which does not amount to the denial of the *res judicata*; the change in legal regime constitutes a change in circumstances because it implies the disappearance of the assumption on which the judgment was based, because legislative development is not the subject of the judge's provision; the new law can both attribute relevance to a new fact for the purpose of modifying an obligation previously recognized by judgment, and confer various relevance to the fact that founded such obligation; a new l hey what's available *e.g.* on the amount of durable obligations, it will attribute relevance to a new fact for the purpose of the subsequent modification of durable obligations[107]; *e.g.* cases of review of pensions for occupational diseases and updating of pensions for occupational diseases may occur due to changes in the circumstances of the material case. Changes in circumstances may occur, such as institute related to the extraordinary review appeal.

CONCLUSION

[102] When the paying entity does not resolve the case *by itself* or on application, the decision amending must be founded in circumstances other than those which founded the previous decision. Portuguese case law has considered circumstances different from those that founded the previous decision *vg* the supervening of the law establishing the updating of pensions; the supervening of the law providing for their amount or for the manner of fulfilling obligations, in proceedings referring to lasting, regular and periodic obligations in which time influences decisively in determining their object, especially their amount. *Vide* ALEXANDRE, Isabel. *Modificação do caso julgado material civil por alteração das circunstâncias*. Coimbra, Edições Almedina, S. A., Teses, 2018, pp. 689, 700.

[103] PCC, art[e] 621[st]. The amendment *of the law* must be made valid through a different route from the amending action because legislative development is not the subject of the judge's provision and the amending action is intended to correct errors in provision; however, when the change in the law *it does not matter that the obligation is definitively terminated* established in the judgment *it is not to be excluded that the mechanism is that of action modifying* . *Vide* ALEXANDRE, Isabel. *Op. cit.*, pp. 531 to 535.

[104] *Vide* ALEXANDRE, Isabel. *Op. cit.*, pp. 618 to 652.

[105] Unlike the expiration of the case under judgment, the modification of the case under judgment due to a change in circumstances does not express the temporal limits of the case under judgment, because it is subject to a forecast error and not the disappearance of the assumptions on which the decision was based; such as new scientific knowledge, constitutive actions, renewal of the extinct instance, solely *title adaptation function*. *Vide* ALEXANDRE, Isabel. *Op. cit.*, pp. 817, 818.

[106] *Vide* ALEXANDRE, Isabel. *Op. cit.*, pp. 529 to 535 (and relevant doctrine cited therein as well as in the note 1848).

[107] The lasting obligations (*e.g.* wages, salaries, pensions) are renewed successively, in the *e.g.* each month and are distinct from periodic instalments. In "lasting benefits, time decisively influences the determination of their object, especially their amount, while in fractional benefits the passage of time depends only on the method of implementing the benefit (e.g. instalment sales; fines), with time serving only to allow the settlement of a certain benefit, in a divided manner, dividing it into two or more benefits that are subsequently separated by a greater or lesser period of time. In durable benefits, all elements of remuneration or pension are renewed with each benefit. Within lasting benefits, continuous performance benefits are distinguished, that is, those in which their fulfilment is uninterrupted, from repeated benefits or those with successive treatment, which are renewed in successive singular benefits, which may, in turn, be periodic or non-periodic, depending on whether they are renewed in each certain period or not". *Vide* ALEXANDRE, Isabel. *Op. cit.*, pp. 233 to 407.

The question of the authority of the case judged it is inseparable from the matter concerning the judged case, observed that they are not distinct figures, they are incindable faces of the decision, not to be confused judged case with the authority of the judged case: the exception of the judged case ends its aspect negative, in order to avoid the repetition of actions; the authority of the judged case translates the aspect positive, in the sense of imposing the decision taken on all authorities. It constitutes grounds for the case under judgment to prevent the reversal of the rights conferred in the judgment: while exception is imbued with effect negative with mandatory compliance for procedural subjects; while authority of a *res judicata* manifests a positive effect of the coercibility of the legal system to be revered by the parties, the decision-making court and other courts.

The decision on the merits carried forward gains the effect of not modifiability, preventing, harming and precluding the contradiction itself in subsequent actions: on the one hand preclude the means of defence invocable against claim condemnation, absorbing exceptions of unofficial knowledge; from the other band preclude the reasons for supporting the claim absolutory. Patenting the irrevocability or immutability of the previous decision, the certainty and security of the law operate, in favour of the stability of the legal community, the judiciary and other powers in general, demonstrating the coercibility of the legal system. And because the certainty of law loses practical authority when the first decision is affected by the second, the positive function of the judged case must be accepted by the parties, the decision-making court and others. The authority of the case judged with a positive function it is self-sufficient, born with the final judgment and functions as an authority before manifesting itself as an exception, and the exception may be dismissed, but the authority of the judged case may be valid, so as not to render useless the legal force conferred on the rights established in the first action. And one necessary imposition on all actions that may run between the same procedural subjects; same what falling on a miscellaneous object ; whose appreciation depend on the object previously judged ; there being a conditioning or harmful relationship of the disputed material relationship in the later action; which causes the uselessness of the subsequent decision. Consisting of the existence of harmfulness in the relationship between actions: the question which was a decisive matter in the first proceedings is renewed in the subsequent proceedings in identical terms or, if it appears otherwise, is fundamental to the resolution of the matter brought before the court.

The authority of the case judged translates the positive effect, in the sense of imposition the of the decision-maker the taking in the cause, dismissal the triple identity laugh, without affecting the quality of the subjects to respect the adversarial principle. However, this understanding cannot lead to, if such identity of the subjects, the cause of action and the request is not verified, and if the exception is not applied o, if it really conflates to scan in the case judged, by virtue of its authority. Hence the need to, while maintaining the relevance of the exception o, delimit the figure of the authority of the judged case, making the figure of the preclusion the as a member of the authority of the case being tried, with the value of their own limits. That is, while oh naked from exercising a right or procedural faculty within the prescribed period. And if, a doctrinal current situates the judged case of feature the limitative in decision-maker them and another, the most comprehensive current, advances beyond the decisive o including the grounds or background of the syllogism judicia river when necessary and indispensable you see, the truth is that the sentence is fixed categorically rich for the petitioned and contradicted specific case the legal normative framework, its inherent fundamental imperativeness in the precise limits and terms in which it judges. However, the case under judgment involves boundary rivers, particularly the exception of the extraordinary appeal for the revision.

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