THE DEFENSE OF THE TRANSINDIVIDUAL INTERESTS: BRAZIL AND IBERO-AMERICA

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1 - The Brazilian legal system - Brazil is considered to have a legal system of "civil law", but one can also find many concepts of "common law" in it. Enrico Tullio Liebman, who deeply studied the Brazilian law during his stay in São Paulo, where he sheltered from the war, said that the Brazilian legal system blended the features of both systems.

In 1981, as from the Republic, the Brazilian federation was inspired by the North-Americans in order to create the Brazilian constitution and, therefore, some concepts of the procedural law have also been directly taken from the common law. In the same way, we do not have the administrative jurisdictions and, as it happens in the United States, the ordinary courts are competent for whichever type of lawsuit or of issue. Then, for us Brazilians, to talk about diffuse, collective and homogenous individual interests or rights is absolutely the same thing, since the legitimate interest and the individual right are both regulated by the judiciary. Also, we have learned from the United States that several writs can be regarded as instruments of constitutional guarantee: the "habeas corpus", for the protection of the personal freedom even as a preventive measure; the injunction, for the protection of the rights different from those

regarding freedom and even against the illegal or abusive jurisdictional act. As from the 1988 Constitution, the “habeas data” was created for the protection of the information data. The 1934 Constitution included the popular actions. In Brazil the popular actions are corrective, that is, the lawsuit is filed against the administration for the protection of the public goods and values. We have a constitutional control, like in the USA, either diffuse or concentrated; therefore, the judges may or may not apply the law if they consider it constitutionally legal or illegal. Similar is the direct action of constitutional legitimacy, which is the Federal Supreme Court’s competence and was based on the American Supreme Court’s actions.

2 - The powers of the Brazilian judge. The Brazilian judge holds strong powers. First of all, I would remember the legislative introduction of the so-called mandatory provisions - largely corresponding to the injunctions - initially in the field of the diffuse and collective rights or interests and, then, as a general rule of the procedural system, based on a new rule of 1996, which regulated the obligations to do or not to do. Those must be put into effect in a specific way, either by means of indirect constraint, like the *astreintes*, or by means of direct constraint imposed by the judge, who can change the provision of the sentence into another provision specifically meant to reach the results that would have been obtained if the obligation had been implemented. An example concerning the environment would be the obligation of a company to prevent pollution. The judge can apply the *astraintes* or, at the same time, he can transform the negative obligation of not polluting into a positive one of installing a filter. If this task is not accomplished, the judge can go beyond and determine that a third party installs the filter at the expenses of the party. In case this cannot be done either, the closing of the plant shall be determined.
Another example could be the anticipated protection as a general principle of the legal system with characteristics that differ from those of the provisional protection because it is a matter of anticipating effectively, partially or totally, the effects of the decision. Also in this matter the judge holds strong discretionary powers, although the law evidently establishes the conditions and the limits of the anticipated protection.

One can notice that the Brazilian judge, even without having the defining function of the North American judge, has been invested with large discretionary powers. The Brazilian legislator, influenced by the procedural law scholars that were in charge of the changes, invested the judge with confidence, maybe because the work can be very well controlled. The

Appellate Court can immediately suspend the anticipated protection determined by the judge of the trial court and an injunction against the jurisdictional act would be adequate to this situation.

That confidence is based on a political position since Brazil, like many countries in Latin America, is hostile and suspicious concerning the government - given to previous authoritarian governments. However, people have much confidence in the judge and in the administration of the justice. Naturally, there are controls and limits like those that refer to the application of the principle of reazonability, a not written constitutional principle and considered a principle of necessity and adequacy between the means and the goals.

3 – Introducing the protection of the transindividual interests in Brazil. Without a doubt the first source of inspiration for the protection of the transindividual interests was reached in Brazil by means of the Italian doctrine in the 70s: Cappelletti, Denti, Proto Pisani, Vigoriti, Taruffo have been the jurists of civil law who have examined in depth the issue of the collective actions both in terms of the analysis of the North American law and in terms of general proposals for a jurisdictional protection of the collective interests.

More pragmatic, the Brazilian system began with theoretical exercises from the Italian doctrine of the seventies in order to build a jurisdictional system that could be put into practice immediately and that protected the diffuse interests.

Since 1977 a revision of the constitutional popular action law of 1965 considered as “public asset” the goods and rights of artistic, esthetical, historical or tourist value.

Several popular actions to defend the diffuse interests related to the environment were brought to court. But the popular action could not cover the wide range of the protection of the diffuse interests, not even as far as the environment is concerned, since its practice is subordinated to the illegality that comes from the committed or omitted behavior of the government whereas the threat or the violation of the diffuse interests usually comes from private actions. On the other hand, the standing, exclusively conferred on the citizen, excluded the intermediate bodies, which were stronger and more prepared than the individual to fight against the environmental threat or harm.

In 1985 the law number 7347 came to light about the public civil action for the protection of the environment and of the consumer as far as indivisible assets and, consequently, diffuse interests were concerned. Later, the 1988 constitution pointed out in many provisions the relevance of the collective interests rising to a constitutional level the defense of all the diffuse and collective interests - without any limits to the matter - and making them an institutional task of the General Attorney, which is extremely autonomous and independent in Brazil (but

allowing the law to increase the standing (article 129, II first paragraph); mentioning afterwards, the judicial and extrajudicial representation of the associative entities for the defense of their members (article 5, XXI); creating the collective injunction with the standing to sue of the political parties, the unions and the associations legally constituted, created since at least one year (article 5, LXX); finally, pointing out the purpose of the unions for the defense of the collective and individual rights and interests of the corresponding class (article 8, III) and highlighting the standing regarding the Indians and their communities and the organizations for the defense of their interests and rights (article 232).

But it was still missing the collective jurisdictional protection for the personal rights of the members of the groups that had to resort exclusively to individual actions, which multiplied the claims, led to contradictory decisions, did not stimulate the access to the judicial proceedings and weakened the principle of making the suits less expensive. It was necessary to create procedural mechanisms that would permit the collective protection of individual rights that could be put together when they were homogeneous and had a common source (in fact and of right). It had to be created a tool similar to the class action for damages in the North-American law and expand it beyond the scope of the condemnatory action, respecting the principles inherent to the civil law systems.

It was in this context that in Brazil the Consumer Defense Code (Law number 8078/90) appeared to crown the legislative work and to extend the scope of the public civil action law by determining its applicability to all the diffuse and collective interests and creating a new category of rights and interests, individual in their nature and approached as personal but dealt with by the civil justice as collective due to their common source, which awarded them the denomination of homogeneous individual rights. It must be mentioned that the procedural protection of the Consumer Defense Code comprehends the diffuse, collective, individual and homogeneous rights of any nature, even those which are not included in the consumer's relation, in accordance to the law.

Nowadays it is usual to admit two kinds of collective rights (in a broad sense) in the legislation, doctrine and jurisprudence, which are: i) the diffuse rights, which are indivisible and entitled by indefinite classes of people; ii) the homogeneous individual rights (in the Brazilian and Iberian-American jargon), which are divisible and entitled by the members of specific classes. They may be taken to court in the form of personal suits, but may also be dealt with in a collective way.

That is why the sharp Brazilian legal scholar Barbosa Moreira remarked that the diffuse rights are ontologically collective whereas the homogeneous individual rights are collective just accidentally because, as far as the procedure is concerned, they may have a collective guidance.

One more remark shall be made: sometimes the diffuse rights belong to indeterminate and indeterminable people, since there is not any legal-binding relation that joins the members of the group. They are the rights concerning the quality of life like the environmental, the consumers, and the users of public services rights. But sometimes one cannot determine who is entitled to them, as the people are members of a group having some kind of legal connection - for instance, associations and legal entities – and they may be determinable. This legal relation can also be found between each member of the group and the adverse party, like a relation between the Treasury Department or a school and an individual person.
The first above mentioned rights, in Brazil and in several South-America countries, are diffuse, strictly speaking, whereas the latter are named collective, also *stricto sensu*. But the procedure for the diffuse and collective rights is alike. Anyway, it is important to point out that there are two kinds of transindividual rights that are subject to collective suits: one of them is the diffuse rights (in Brazil they are subdivided into diffuse and collective); the other kind is the ones we will call homogeneous individual rights, according to the Brazilian and Iberian-American terminology.

4 - Diffuse and Collective Interests *"stricto sensu".* Both the diffuse rights or interests and the collective ones have transindividual and indivisible nature because they can only be dealt with in a combined way; therefore, they are essentially collective. Essentially collective due to their indivisibility: the satisfaction of the right or interest of a member of the group necessarily corresponds to the satisfaction of the interest or right of all the others, while the refusal of the interest or the right of a member of the group corresponds to a refusal for everyone.

5 - Law 1985 n. 7.347. Regarding the diffuse and collective interests or rights there was, at first, in Brazil, a specific law dated form 1985. We were perfectly aware that it was still missing the jurisdictional protection of the individual rights for a collective damage, that is, the mass tort cases or class actions for damages. That turned out to be particularly obvious towards the consumers who suffered any kind of consumption damages. The environment, for example, can be regarded in its indivisible dimension also for the compensation of the damages. The law of 1985 previewed decisions that demanded the reconstitution of the damaged environment. However, as far as the consumers' relationship is concerned, the maximum that the law could do was to deal with the inhibitory actions. Regarding indivisibility, for the condemnatory actions the only possibility was perhaps the condemnation deriving from misleading advertisement for the benefit of all the consumers. But to the personal damages

compensation by the consumer, in a collective way, it still had to be thought of. And then the consumer defense code was made.

However, intentionally, the 1985 law did not deal with that. Intentionally because the Brazilian legal system was already deeply innovating as a system of civil law in a segment that could receive a simpler procedural treatment, which was the field of the diffuse or collective rights or interests of indivisible nature. Which was the treatment of the law still in force after the modifications introduced by the consumer defense code?

The standing, which is attributed to public agencies and associations, is mixed. Firstly, it is attributed to the General Attorney, which is an institution of great autonomy regarding both the judiciary and the government. One dares to say that the General Attorney in Brazil is a fourth power and, effectively, it can be considered so. The Brazilian General Attorney had always performed some functions concerning the civil procedure, either as a plaintiff or as *custos legis*. With the law for the protection of the collective interests, broadly speaking, it has been strengthened in such a way that today 90% of the collective actions are started by the General Attorney. Together with this standing, as a concurrent and independent standing, there is the one attributed to governmental agencies working for the public interest, like those for the consumers defense, the environment, etc, even if they are not legal entities. In the private sector, the standing is attributed to the associations, which have been pre-constituted for at least one year and which have among their institutional goals the defense of those interests; however, the judge can exempt the association from the legal pre-constitution whenever there is the necessity of the performance of a group that is not organized yet. The standing is concurrent and independent. The Brazilian legal system does not confer standing to the citizens but they have the standing to the constitutional popular action.

In Brazil, at least in a first moment, the standing is *ope legis*, without the judge's control over the so-called representation adequacy. According to the civil procedure scholars, that is not a way of representation but a way of procedural substitution. I would remark that the doctrine supports that, in spite of not having a written statute regarding to the judge's representation control (the seriousness, the credibility, the coincidence between the plaintiff's claim in court and the group's true interests, etc), the Brazilian legal system is able to determine the judge's control in this matter.

6 - The constitutional popular action. On the other hand, it must be said that despite the Brazilian system of collective actions has not provided the citizens with the standing to the

collective action, one cannot consider it as a lack, because they have the standing to the constitutional popular action. And that is because, together with the collective actions from 1985 (named in Brazil as “public civil actions” - because institutionally the General Attorney is entitled and performs the various procedural controls and initiatives when the lawsuit is filed by an association or any other public agency), there is also in Brazil the popular action, which is a constitutional action against the Governmental Administration for the defense of the “public asset” including the goods and rights of artistic, esthetical, historical or tourist value.

Afterwards, it was incorporated in the constitution of 1988. It has happened that, between the enactment of the 1965 law and the 1985 law, the popular action was the only instrument for the defense of the diffuse and collective interests regarding the environment, broadly speaking. To this popular action the standing is awarded to the citizen who, by means of that legal remedy, may go to court to require the protection diffuse and collective interests, in the field of the environment.

7 - The collective defense of the divisible rights: homogenous individual interests. However, the 1985 law left the jurisdictional protection of the personal subjective rights uncovered but they could be judicially dealt with in a collective way. Those rights are individual, divisible and every holder could - and can - make them useful in court in the case of a personal litigation in an individual but traditional lawsuit. Nevertheless, those individual rights can be dealt with in a collective way, as long as some peculiarities are respected.

Then, in 1990 the consumer defense code was enacted, opening to the protection of the so-called homogenous individual rights: individual rights that, in court, may be dealt with in a collective way if they bear the characteristics of “common origin” and “homogeneity”. It must be remarked that the procedural provisions of the consumer defense code are not applied just to the consumption relations, but to all the segments in which the object of the procedure is the protection of the diffuse collective and homogenous individual interests. The law is very clear in this matter.

8 - The collective actions for the defense of the homogenous individual interests. We shall see now how this collective action is carried out when the matter is the compensation of the damages personally suffered by a group of people which roughly corresponds to the class actions for damages and to the mass tort cases in the North American system. But in Brazil it is not necessary to fund group litigation: the standing to sue to public and private entities allows to the party introducing the claim without any indication of the persons who form the

group. The first part of the action is a condemnatory action, without indication of the group's members, and it is brought by the ones who have the standing and which I have already talked about, in favor of an undetermined group (the consumers of a dangerous product, the inhabitants of a region, the participants of an enterprise). The generic decision that sustains the compensation of the endured damage, at this point by undetermined individuals, will replace the entitled party in court. Once the general damage is accepted and the responsible will have to pay for the compensation, the individual lawsuit begins. To the lawsuit it is entitled to the successive action the single person or the entity - here acting as representatives. During the lawsuit every member of the group will have to prove their personal damage, the link between their personal damage and the general damage sustained in the condemnatory decision and to quantify the damage. This is similar to the North American system with the difference that it does not establish a total compensation, what means that in Brazil the condemnatory decisions are for endured damages. It means that for every damaged individual, the personal compensation will have to be quantified according to the adversary system in an action known in Brazil as items liquidation because new facts will have to be proved. It is different from that realization that usually follows to the generic condemnatory decision in the Brazilian traditional lawsuits, since it will not be enough to prove the *quantum debeatur*, but it will have to be still discussed about the *an debeatur* (if the personal damage has a link with the general damage). So, in the payment of monetary damages the sum is not divided among claimants, but each of them receives the sum corresponding to the personal damage effectively suffered. There are cases in which the Brazilian system resorts to the North American idea of fluid recovery, and that happens when the personal damages are insignificant if they are compared to the total damage, as it usually happens to consumers relations. An example is when a consumer finds out that the weight printed on the label is slightly different from the real contents inside the container. And then, if the personal compensation is not proportional to the general damage, one can make use of the fluid recovery technique, and the total sum (corresponding to the damage provoked and not to that personally endured) will be deposited in a fund for the protection of the consumers and their relations.

9 - Requirements of the collective action to protect the homogenous individual interests. When the consumer defense code was made it included the category of the homogenous individual rights or interests. At that time we used to say that for the collective

protection to exist they had to be homogenous towards a common origin. But today one believes that this homogeneity must be emphasized and that, indeed, it must be one of the conditions of the collective action of compensation for the damages personally endured. In my point of view, two requirement of the North American legal system for this type of class action are also necessary in Brazil: the prevalence of the common interests over the individual interest and the superiority of the collective protection. In our civil law system, I will refer to the fact that the prevalence is an issue of the theory of procedural law (conditions of the action) because if there is not the prevalence of the common matters over the private matters, the rights are not homogenous, at least not to be dealt with collectively. The superiority of the collective protection can be translated in terms of usefulness of the provision, and, therefore, in terms of interest to sue because the collective decision that determines the generic condemnatory decision needs to be effective to the individual. Since the individual will have to prove all the facts again in the process of realization, if the collective decision is not for all practical purposes, it will be of no use. I remember, as an example, the damages caused by the asbestos or the tobacco in the United States, when the North American courts did not classify certificate the action as a class action because it lacked the requirements of the prevalence and the superiority. In this way, the Brazilian doctrine limits the wide field of the homogenous rights, which are sometimes successfully treated collectively and refer back to the North American concepts towards the conditions of the action in civil law, also because the moment of the certification corresponds to our condition of admissibility

10 - The suitable actions. The provision is clear in Brazil and in the Model Code of Collective suits for Iberian - America. Under the title “Effectiveness of the jurisdictional protection” it says: “For the defense of the rights and interests protected by this code, all kinds of actions that provide their adequate and effective protection shall be admitted” (article 4).

There is not any doubt, thus, that reality itself has already extended the collective jurisdictional protection to all kinds of litigations: so, the focus of the suit for the defense of individual homogeneous rights is not only the North-American class action for damages.

11- The regime of the *res judicata* in the actions to protect the indivisible interests. Concerning the *res judicata* we have followed a way which is different from the North American system. With regard to the diffuse and collective interests or rights, of indivisible nature, the procedural treatment is *erga omnes* (and it could not be different because that is in the same concept of indivisibility of the right) with a combination that came from the constitutional

popular action, in the sense that, when the judge rejects the request of the popular claimant for insufficiency of evidence there is no *res judicata* and a new suit can be brought by anyone who is entitled to, always based on new evidence. This solution, traditional in Brazil, was studied and described as a kind of acceptance of the decision *secundum eventum litis*, or considered as a case of *non liquet,* in which the judge was allowed to be exempt from making a decision. And this technique, devised as an instrument against the possible collusion of the popular party against their counterpart (in order to get a contrary decision with *erga omnes* effects), has been reproduced from the law of the public civil action and from the consumer defense code, with regard to the diffuse and collective interests or rights.

12 - The regime of the *res judicata* in the action to protect the divisible interests: the decision *"secundum eventum litis".* The treatment of the *res judicata* for the homogenous individual rights *secundum eventum litis*. It deliberately bears on the opt out and the opt in of the common law system, in which the member of the group will not be affected by the res judicata unless the class action was chosen (opt in) or the intention to be excluded from the action has been demonstrated (opt out). I must say that we have studied the system of the North American opt out a lot, and we have noticed that in the United States it often causes insoluble problems like when one intends to get the personal notification to all the members of the group so that they can opt. Just have in mind the famous Eisen case, in which the obligatory notification put an end to the class action. Nowadays, the notification is more parsimonious, but in this way one cannot tell that the knowledge has been brought to all the members of the class. And it could affect the constitutional rights to everyone have his day in court. Another way had to be chosen, also because in Brazil there would have been obstacles for the implementation of the opt-out or opt-in techniques, such as inadequate information, the social level of the population, the difficulty to reach the judiciary and so on.

So, for the homogeneous individual rights we have opted, frankly, for the *res judicata secundum eventum litis*, that is, a decision *erga omnes*, intended to favor and not to harm personal objectives. If the decision is unfavorable towards the collective action it will only be effective in a collective way, preventing a new collective action. However, the personal matters will not be affected and every individual will be able to make them useful during an ordinary proceeding. The former unfavorable collective decision may be equivalent to a simple precedent (and in Brazil one does not follow the *stare decisis*, the obligatory precedent). The *res judicata* will not hinder a new lawsuit.

13 - The decision *"secundum eventum probationis"*. Nowadays new issues on the decision *secundum eventum litis* have been proposed in Brazil. For example: when the judge rejects the claim without asserting that he did so based on the insufficiency of evidence, what will happen if science later discovers that a certain product was effectively harmful, differently from was proved in court? This is new evidence that could not be made at the time of the judgment, and may be valid when an eventual suit of revocation ends. I support, therefore, in a recently published article in the Magazine of Procedural Law that the claim can be brought again even if the judge did not assert that his refusal was based on insufficiency of evidence. But how can one justify, as per the doctrine, a position that seems to represent an offense to the myth of the *res judicata*? Firstly, I need to say that in Brazil there is a recent remarkable tendency to the making the *res iudicata "*relative" when there are other constitutional interests at stake. One does not need to go too much further in this field but it is worth mentioning the existence of a sentence *secundum probationem*, which does not mean an innovation in Brazil. There are cases in Brazil whose decision became *res judicata*, but limitedly on the produced evidence. It is the case of the injunction and *the habeas corpus*, based only on documental evidence, for which the judge makes a decision according to the evidence produced. But in case the claim is rejected the part may bring another suit following the ordinary proceeding and based on the wider evidence.

Therefore, one should draw a parallel between the above-mentioned Brazilian solutions and the *res judicata* in the collective actions. This idea could then be extended to the classical procedure, in the lawsuits of new scientific evidence for the acknowledgment of paternity (DNA). The existence of a decision *secundum probationem* would naturally appear circumscribed to the cases of the new evidence that could not be produced at the time of the judgment. This way, the issue of the preclusion of the sentence would be gotten over.

I recognize that this is a daring position, and one must recognize that in Brazil we are free from prejudice. The new Brazilian civil procedure tried to review the principles, the concepts, the traditional institutes specially the most valuable one towards the civil procedure: effectiveness.

14 - The collective *res iudicata* to benefit the individual claims. The *res iudicata* that refers to a favorable decision in a class action may be transferred to the individual claims, and thus shortening the procedural steps through which one intends to have their individual rights recognized.

This is true not only towards the favorable decision that referred to the homogeneous individual rights. As a matter of fact, in this case, the transfer of the *res iudicata* is almost a truism. But it is also true towards the decision that favorably decided about the litigation on diffuse and collective rights.

For example: if in the decision it was admitted that there was environmental damage, indivisibly considered, and determined that the defendant should repair it, the people who individually suffered the personal damages may make use of the collective *res iudicata* to shorten the procedural steps whose aim is to obtain a personal compensation. It seemed to Liebman when he wrote about the Old Italian regime of the transfer of the penal *res iudicata* to the civil area to compensate an *ex delicto* damage, that in this case, there would be an extension of the penal res iudicata to the reasons, which would be "*abnorme*". The Brazilian doctrine chooses to explain this phenomenon - both concerning the effectiveness of the penal *res iudicata* in the field of civil compensation and concerning the effectiveness of the *res iudicata* in the collective suit for the defense of the diffuse and collective rights to benefit the individual claims of damages compensation - as an objective amplification of the litigation object. Therefore, when the judge declares "I condemn you to reconstitute the environment", he is implicitly declaring that he is also condemning to compensate the victims of the environmental damage.

15 - The defendant class action. The Brazilian law does not preview the passive class action - the North American defendant class action.

But today both doctrine and jurisprudence recognize that in Brazil even without an express provision, the combined analysis of several estatutes shows the possibility of a collective litigation not brought by the group, but against them. I realize that in this case the issue of the judicial control on the "legitimate representation" is still more subtle, so that the people who are members of the group can suffer the effects of the contrary decision.

16 – Notifications. The brazilian criterium of *res iudicata,* for the individual homogeneous rights (class actions for damages, among others), just for benefit and not for prejudice the individual claims – without the system of opt-out, does not make notifications so important as in other systems. But the law statues wide publicity of the class action to allow the members of the group to interview in the action, not as a form of opt-in, but for helping the party to a successful result. It is a form of joint-party, but the individuals can not prove and require their personal recovery in the first part of the proceeding

17 – Settlements. Great number of collective suits are proposed in Brazil by the General Attorney, the entity more active in this matter. Before the suit, the General Attorney proceeds to an administrative inquiry that many times leads to a settlement. Public Defenders obtain often settlements in the field of individual damages. Settlements are more infrequent during judicial proceeding. Settlements oblige the parties and form executive title. But we do not have statistics in Brazil.

18 – COSTS AND BENEFITS. THE ENTITY INTITLED TO THE COLLECTIVE ACTION DOES NOT PAY ANY JUDICIAL COSTS NOR, IN CASE OF DEFEAT, LAWYERS PARCEL OF THE OTHER PARTY, EXCEPT IF THE JUDGE REPUTES HIS ACTUATION RASH (*"IN MALA FIDE"*), WHEN HE MUST PAY THE DECUPLE OF THE JUDICIAL COSTS AND

the lawyer parcel (normally 10% of the value of the action) to the other party. In case of winning of the collective action, the defendant pays judicial costs and, if the actor is an association, her lawyer's parcel. We do not have in Brazil the north-american problems offered by the cost of the lawyers.

19 - The protection of the transindividual interests in Iberoamerica. Regarding the civil law systems, Brazil was the first country to introduce the protection of the diffuse and collective interests or rights in its legal system, and, later, the homogenous individual rights. This attitude was welcomed, little by little, by the other Latin American countries. The Model Code of Civil Procedure for Iberoamerica mentions the diffuse interests and a wider standing is awarded to the citizen, while the regime of the *res judicata* is identical to the Brazilian regime for the diffuse and collective interests. This code that is only a model inspired by the several legal systems, was totally adopted in Uruguay. In Argentina the jurisprudence had already determined some concepts and today the Constitution of 1994 determines a remedy for the protection of the collective rights, a kind of injunction, better than its predecessor. Portugal introduced the defense of the diffuse and collective interests by means of the law for the constitutional popular action of 1995, and, later, the jurisprudence recognized, with the same name used in Brazil, the category of the homogenous individual rights. Nowadays, almost all

the other countries in Latin America - like Peru, Colombia, Guatemala, Costa Rica, Paraguay and others - adopted in their systems, though sometimes with different names, the procedural protection for the diffuse or collective interests as well as for the homogenous individual rights. But the great boost for the improvement of the collective actions system was given by the Model Code of Collective Actions for Iberoamerica, promoted by the Iberoamerican Institute of Procedural Law, prepared by a commission coordinated by me and approved in 2004. The code is only a model, as its name says, but it contains principles and immediate operating rules and was taken as a source of inspiration by numerous South American countries for their own national laws. As the source of inspiration of the Model Code has been the Brazilian system, it was expanded to many Latin American legal systems. The same way were the mixed standing (which also included the citizens), the *res judicata secundum eventum litis* for the homogenous individual interests, the General Attorney's control over the actions and possibly being a party, the *res judicata secundum probationem*, etc.

19 - The practical application of collective actions in Brazil. It can be said that the existence of the collective actions has changed the face of the Brazilian Civil Justice, changing an individualist view into a collective and social view. Sometimes the associations and the General Attorney exaggerate in bringing the lawsuits but this was expected. It was also expected that once in a while the courts and the jurisprudence slow down, sometimes excessively. But it seems that in that process of come-and-go, of forward and backwards steps, of continuous reorganizations, Brazil found the way for the effective protection of the transindividual rights. To sum up, Brazil reviewed the tasks of the judge and the General Attorneyand also those of the associations. These, in fact, are exceptions in suiting and have not yet reacted to the appeals as expected. Although free from procedural expenses and from the burden of the defeat, they prefer to address to the General Attorney in order to bring the collective action.

We have in Brazil a big amount of collective actions and the anticipated provisions are frequent. Even though they are often reviewed by the Court of Appeal, there has been a clear cut between the individual and the collective actions, with all the difference that must exist and really exist between them. But unfortunately we do not have statistics.