

Agribusiness in Brazil's highest courts

BMA Review Special Edition: Agribusiness 27.11.2020 5 min read

Authors

André Macedo de Oliveira

Raquel Mansanaro

Topics

Superior Courts Dispute

Resolution Agribusiness André

Macedo Raquel Mansanaro

Recent years have seen significant changes in procedural law and legal proceedings in Brazil. The 2015 Code of Civil Procedure, which came into force in 2016, created mechanisms that allow Brazil's highest courts to issue decisions that will be binding on lower courts. The "repetitive appeal" mechanism, for example, is designed to streamline decision-making when the same issue is litigated in numerous cases. When such "repetitive appeals" occur, the Superior Court of Justice (STJ – *Superior Tribunal de Justiça*) can designate one appeal to be a representative case, and all cases (both at first instance and on appeal) that raise the same issue will be stayed until the STJ issues its decision in the representative case. Once issued, the STJ's decision will be binding in all the cases before the lower courts. The "general repercussion" mechanism in Brazil's highest court, the Supreme Federal Court (STF – *Supremo Tribunal Federal*), is somewhat similar. If the STF finds that a case raises issues that are of national importance and scope, it can designate it a case of "general repercussion". Decisions in general repercussion cases are binding not only on all lower courts, but also on the federal administrative authorities. In both repetitive appeal and general repercussion cases, the STJ and the STF have adopted the practice of establishing a "thesis", or brief statement of their interpretation of law on the issue in dispute.

A strategic, structured approach can contribute to the formation of important precedents in cases before Brazil's highest courts, including constitutional challenges before the STF. Even when they are not directly involved in the dispute, parties interested in the issues at stake have the opportunity to put forward their views and inform the court by participating in public hearings and acting as *amicus curiae*.

With the growth in Brazil's agricultural sector, despite a difficult economic scenario, and the recent adoption of the Agribusiness Law (Law 13.986/2020), this is an opportune time for companies in the agricultural industry to work toward consolidating the courts' position on issues that will bring greater legal certainty to the sector, especially when the STF and STJ establish legal theses that are binding on the state and federal courts.

As an example of the courts' work, recently the 4th Panel of the STJ (which has the constitutional role of ensuring uniformity in the interpretation of federal and state legislation) decided appeal REsp 1.800.032/MT (the Pupin case), which dealt with the legal nature of registration of rural producers in the Register of Mercantile Businesses (*Registro de Empresas Mercantis*). The question was whether registration was declaratory or constitutive – in other words, whether registration merely records a pre-existing state of fact, or whether it actually transforms a rural producer into a commercial business for the purposes of the law. The issue was important because the rural producer in the case had applied for judicial reorganization, and wanted the protections against enforcement and reorganization plan to cover pre-registration liabilities.

In a majority decision, the STJ held that registration was declaratory in nature, and that consequently, “no distinction can be made in the legal regime applicable to obligations arising prior to and after registration of rural business proprietors when they apply for judicial reorganization, and unpaid obligations and debts contracted prior [to registration] also fall within the reorganization proceeding.”

Another situation that merits attention is appeal REsp 1.834.932/MT (the Viana Group), in which the STJ will decide whether a rural business proprietor (i.e. a rural producer who is a natural person rather than a legal entity) who has been in business for more than two years can apply for judicial reorganization, even if the business has been registered in the Register of Commercial Business for less than two years. The STJ’s decision will establish an important precedent that is likely to be followed by lower courts in Brazil.

The Supreme Federal Court’s principal role is as interpreter of the country’s constitution, and it is expected to issue some significant judgments before the end of the year.

One case is of particular interest to employers in the agricultural sector. Appeal ARE 1121633/GO (Thesis 1046) deals with the validity of a provision in a collective bargaining agreement that limits or restricts an employment right that is not guaranteed in the Constitution. The collective bargaining agreement at issue in the case provides that the employer will provide transportation to workers, and that time spent in transit to work will not count as time worked.

Both the 18th Region Labor Appeals Court (Goiás) and the Superior Labor Appeals Court found that the place of work was not easily accessible and that the timetable for public transportation to the location was incompatible with working hours. They therefore held that the employees were entitled to be paid for their time in transit, despite the provisions of the collective bargaining agreement.

When the case reached the STF, Justice Gilmar Mendes issued an order staying all proceedings in lower courts that deal with the same issue. In his view, “there is a well-founded fear that workers will once again find themselves in circumstances of legal uncertainty, through the weakening of collective bargaining.” He also allowed the National Confederation of Industries to join the appeal as *amicus curiae*. A more detailed analysis of the legal questions at issue in this case can be found at p. 12 of this special edition of the BMA Review.

Interesting issues raised in other cases before the STF include renewed debate over the requirements for demarcation of indigenous lands (Appeal RE 1017365/DF – Thesis 1031, Justice Edson Fachin reporting), and the territorial scope of decisions issued in collective actions brought by the Public Prosecution Service (Appeal RE 1101937/SP – Thesis 1075, Justice Alexandre de Moraes). In the latter case, both the 3rd Region Federal Appeals Court and the STJ came to the conclusion that there was a national interest in the rights at issue, and that accordingly the effects of the decision should not have merely regional effect. The STF will now have to decide whether article 16 of Law 7347/1985 (which provides that decisions in such actions are binding within the territorial jurisdiction of the court that issued the decision) is consistent with the Federal Constitution.

The decisions in these cases will have a direct impact on agribusiness, because they deal with legal provisions that affect, either directly or indirectly, activities in the agricultural sector. Agribusinesses should therefore adopt a strategic attitude, and take advantage of opportunities to ensure that Brazil's highest courts are aware of sector interests and concerns.

Would you like to receive our newsletters direct to your inbox? [Sign up here.](#)

This content is part of BMA Review Special Edition: Agribusiness. [Click here](#) to access other articles or [here](#) to read the entire edition.

› PROFESSIONALS

Professionals who combine legal insight and market perspective



André Macedo de Oliveira



Raquel Mansanaro