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ELECTORAL LAW - THE GUARDIAN OF DEMOCRACY

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Abstract: Law rewards a certain attitude, a certain way of referring to institutions in ideal terms, in the case of an existence of common sense. However, Electoral Law plays a decisive role in the Republic, where its rules direct access to more accentuated power within a social group, through political power. The Constitution appears through a constituent act, the result of a will to produce an effective decision in relation to the manner and form of political existence of a State. However, democracy, a regime of popular will, distinguishes human rights, which can be summarized in the right to difference. As a result, the Electoral Jurisdiction, exercised by various bodies of the Judiciary, was designated to play the role of ascertaining the decision of civil society. This is its essential mission, a condition sine quan non of democracy.
Keywords: Right. Constitution. Democracy.

INTRODUCTION

Law is one of the most evident phenomena in human life. Understanding the Law does not constitute an undertaking that is naturally restricted to logical and rationally systematized conceptualizations. Communion with the legal phenomenon is intricate, sometimes conflicting and incoherent, sometimes linear and consequent. Studying the law is, therefore, a difficult activity, which determines not only acuity, intelligence, preparation, but also enchantment, intuition and spontaneity.

Thus, it is necessary to investigate the Electoral Law, emphasizing its concepts, purposes, objectives. Furthermore, it is necessary to shed light on the relevance of the Constitution, democracy and Electoral Justice, intertwined phenomena and precious instruments of citizenship.

LAW

Law, like any object that is intended to be conceptualized, can be evaluated under two fundamental criteria: nominal and real. The nominal seeks to say what the word or name constitutes, either indicating the origin of the word (etymology), or indicating the various meanings that the word acquired in its development (semantics). The real seeks to discover the essence of the object to be determined, to translate what thing or reality it is. Thus, a nominal definition and an effective definition of Law are configured (BETIOLI, 1995).

The study of words is not without value, since the word implies the expression of thought. Therefore, if it is true that the nominal definition, along with certain contributions it presents, cannot be named as a decisive factor in the conception of scientific knowledge, it helps to understand what reality is Law. According to Betioli (1995, p. 82), the word law, in Portuguese, appeared approximately in the 14th century, in the Middle Ages, born from Low Latin. It originates from the adjective directus which means quality of what is in accordance with the line; that which has no inclination, deviation or curvature; is the past participle of the verb direcre, equivalent to guide, lead, trace, align, straighten, order.

Law corresponds to a certain attitude, way of thinking, way of referring to human institutions in ideal terms. It is the existence of common sense, intensely deepened, in the sense that formations and their relationships represent a dream, an ideal projection, within whose limits certain principles work, independently of individuals (THURMAN apud FERRAZ JÚNIOR, 1994).

Lawyers are always careful to understand the universality of the legal phenomenon. Thus, there are numerous meanings that demand this scope. It is not the fact that texts are reproduced in series, surely incomplete,

that attempt this objective. Not only jurists, but also philosophers and social scientists show similar concerns. Furthermore, the word is born from a metaphor where the geometric figure obtained a moral and then a legal meaning. The right is the straight line, which opposes the curve and which is linked to the notion of straightness in anthropic relations.

The legal phenomenon is very complex, as it offers different aspects or elements. That is why the word law is considered an analogous term, that is, it has several meanings, which, although they are characterized, keep certain logics among themselves, share parameters (BETIOLI, 1995). This complexity of the legal reality makes its meaning complicated or favors the multiplicity of definitions. Therefore, the law, notwithstanding, or because of this complexity, can and must be defined in an analytical way and in a synthetic way.

Thus, the real analytic definition is the one that acquires an aspect, an element of the object to be determined. The synthetic real definition, on the other hand, is an integral definition, adequate to embrace the entire legal phenomenon, offering a unitary apprehension of legal reality. For Betioli, certain authors believe that it is not possible to constitute a synthetic, unique meaning of law. According to them, only the multiplicity of definitions is admissible: as many as are the meanings of the right word (BETIOLI, 1995).

Law is concerned, in a direct, immediate and prevailing way, with the good as a whole collective, that is, with the common good. But this means that the law neglects the problem of the individual, much less that it ignores the importance that the intentional and subjective element represents in the legal experience (BETIOLI, 1995). Law does not belong to the world of physical nature. It is an anthropic, cultural reality, relative to the world of culture. It is a component created by humans and endowed with a sense of axiological content.

In the light of the teaching of da lavra de Reale apud Betioli (1995, p. 32), "law is not a gift that man received at a given moment in history, but a mature fruit of his multi-millenary experience". However, if law is created by society to govern social life, law is an object or cultural asset of human nature, source of the great principles of natural law.

According to Mondin apud Betioli (1995, p. 15):

> We can say that man has two fundamental dimensions: sociability and politicality. The first is man's propensity to live together with others and communicate with them, to make them participants in their own experiences of their own desires, to live with them the same emotions and the same goods; the second is the set of relationships that the individual maintains with others, while being part of a social group.

Law, an instrument of social control, has its own range and attitude of operating, manifesting itself as an inescapable consequence of society. Therefore, it is necessary to observe that the Law is not the only one responsible for the harmony of life in society, since religion, morals, the rules of social behavior also contribute to the success of social relations. However, it is the primary guarantee of life in society. According to Nader apud Betioli (1995, p. 21):

> Law does not aim at the interior improvement of man; this goal belongs to morality. It does not intend to prepare the human being for a super-earthly life, linked to God, a purpose pursued by religion. Nor is it concerned with encouraging courtesy, chivalry or rules of etiquette, a specific field of rules of social dealing, which seek to improve the level of social relations.

In fact, the Law, within its own range, stimulates, through the precision of its rules and sanctions, a degree of certainty and

security in human conduct, which cannot be acquired through other types of social control.

Clarifica Pinto (2003, p. 15):

> The end of the law is to ensure peace in society. Its natural vocation is to be spontaneously observed by citizens. When there is an excess of rebellion in the social group, in relation to compliance with its norms, it is because, in its production, the will of the population has not been well captured or because society has become barbarized as a result of the permanent failure to apply the sanctions provided for lawbreakers. In this environment, no one else perceives the usefulness of the law due to the lack of scope to capture its purpose and motivation to fulfill it. The strong law thus regains its effectiveness in the social group, already irremediably dominated by chaos.

Thus, the Law is designed to constitute harmony, security and tranquility in the society where it has validity. It cannot cause embarrassment, indignation or perplexity or social group on the pretext of its application. He appeared to put an end to disputes between men, whose criterion of success was the physical preponderance of the litigants. The Law, equally, indicates norms of behavior, establishing of each one absolute observance of its statements. In the formulation of these norms, it needs to be sought by their creators, exceptionally, what suits the social struggle.

It can be assured that the Law, by separating the licit from the illicit, in the light of the values of coexistence that society itself selects, makes possible the nexus of cooperation and disciplines competition, constituting fundamental instruments for balance and justice in social relations. In contrast, in terms of conflict, the action of law militates in a double sense. First, it acts preventively, by preventing misunderstandings regarding the rights that each party considers to be the bearer, clearly determining itself in its rules. Second, in the face of the concrete conflict, the law offers solutions according to the nature of the case, whether to determine the holder of the right, define the restoration of the previous situation or apply penalties of different types. In epitome, the law seeks to respond to the needs of order and justice of coexistence in society.

ELECTORAL LAW

In the form of assessment by Ribeiro (2000, p. 04), "Electoral Law, precisely, is dedicated to the study of norms and procedures that organize and discipline the functioning of popular suffrage, in order to establish the precise equation between the will of the people and governmental activity.

Clarifica Neto (2000, page 19):

> Starting from the premise that there is no electoral law where popular participation does not work in the construction of the sovereignty of a given State, it is necessary to consider that Brazil, when adopting a rigid constitutional system, brings in the Magda letter guidelines of an ideological and pragmatic profile of the model democratic to follow.

Electoral Law is not exclusive to political life, it also concerns private law and enters into the social will and all kinds of organizations, including legal entities. The great mission given to Electoral Law is to guarantee access to power without trauma, without fraud, preserving the free will of citizens in the appointment of their representatives. It plays an essential role in democracy, where it regulates the alternation of rulers in power, disciplining the exercise of popular sovereignty for the design of those responsible for directing the destiny of civil society.

For its part, Constitutional Law is developed in terms of the contingencies attributed to it, in what reveals compatible versatility, since responsibilities for the ends, associate the affectation of the appropriate means.

The field of investigation peculiar to electoral law is increasingly expanding and acquiring greater importance in the modern State. Following the principle of increasing complexity, electoral law also achieved autonomy within the scope of legal science, following the same process in its emergence. Thus, the development and complexity of the administrative arsenal of the State, as well as the improvement of jurisdictional activities, lead to the emergence, concomitantly, of administrative and judicial rights, which are separated into civil and moral fields. Electoral Law is responsible for disciplining measures aimed at distributing the electoral body. The electorate of the nation can present itself in a unitary format, appearing grouped in a single electoral constituency or disseminated in several constituencies, which can still be divided, with regard to the exercise of suffrage, in electoral districts.

It is incumbent upon electoral law to prescribe the norms that will allow the application of the majority system or the proportional system, then disciplining, in relation to the latter system, the measures that need to be followed in the distribution of leftover votes among competing organizations. Electoral Law has its own set of criminal typifications, also aspiring, it is truism, to basic concepts of criminal science, so that it can profitably use them in the specific electoral sphere, composing a category of extravagant or special crimes of electoral crimes.

In order for the Electoral Law to play its important role well, its enforcer needs to keep alive the awareness of the need for the prevalence of the nation's best interests to always have clear rules that certify confidence in the electoral process, aiming at the realization of clean elections, preserving equality between the candidates for the contested mandate. Finally, your operator needs to keep in mind that the collective interest must always hover above the particular and specific interest of any candidate.

From a taxonomic point of view, it is a branch of domestic public law, emanating from Constitutional Law, with which it maintains a filial relationship. The dimensions that it obtained led to its emancipation, starting to have, as a functional requirement, its own field of investigation, within the scope of the science of law.

The emergence of electoral law polarizes various activities that are implemented in the framework of other legal departments, as long as the matter achieves a singular connotation, compatible with this sphere of activity.

In terms of the teaching profession of Ribeiro (2000, p. 20):

> The relations of electoral law begin and are maintained with constitutional law. They are projected to the other legal disciplines. There is, by the way, an intimate relationship with administrative law, and a large part of its contents seek to obtain conceptual contributions in the sphere of administrative law, even because multiple activities concerning the electoral process take on an administrative nature, such as in the organization and distribution of the electorate by sections, in their transfers, in the application of police power to maintain order, in the prevention and investigation of crimes, in the control of political parties; and in the conceptualization of public or private entities that may cause impediments or ineligibility, as well as on the legal conditions of civil servants and civil servants.

Configured as a branch of public law, and disciplines the creation of parties, the entry of citizens into the electoral body for the enjoyment of political rights, the registration of candidacies, electoral propaganda, the process and the investiture in the elective mandate. Its influence on the functioning of the representative regime must be highlighted, due to the considerable implications that can occur in the political order according to the

electoral techniques used. Thus, it regulates all claims guided by the democratic principle. Authoritarian regimes dismiss it or give it an irrelevant role.

It is essential that its application provides confidence and tranquility to the citizen in power, responsible for delegating it through the vote. The current law needs to respond to all the aspirations of society. The preservation of fairness in elections must be its fundamental objective.

Electoral law needs to be improved in order to reconcile the procedural institute of estoppel, fundamental within its scope, with the need to repel from power those whose access is through illegal acts only discovered, in certain cases, after the conclusion of the investigation of ballots. The illegitimacy of the investiture in power is further added to the exercise of the mandate acquired in an irregular manner (PINTO, 2003).

Many still have not realized the fundamental role of electoral law for the very survival of democracy. In fact, it demarcates the path of access to political power, within which all deliberations are taken, intervening in the life of each citizen. Only through electoral law can someone legitimately exercise political power.

Among its sources are the constitutional principles, the law, the resolutions of the Superior Electoral Court, doctrine and jurisprudence. The doctrine is the source of electoral law insofar as it clarifies the concept of the legal institutes employed by it, assisting in the interpretation of legal commands, finally suggesting a solution to the intricate situations that the generality and abstraction of the norm did not allow to detail in detail. its disciplining.

Likewise, it plays a decisive role in the republic. Its norms lead to access to the most relevant power in the social group, which is political power. It exclusively holds the force in society. The fate of the entire population depends on its performance. Its purpose is to discipline the choice by civil society of those who hold elective mandates. The occupants of these positions cannot be chosen at random, without a pre-established way. Nor can they be invested by force. It is therefore necessary to make the exercise of popular sovereignty viable, regulating the dispute over the conquest of the mandate to be exercised on behalf of the citizens.

CONSTITUTION

Constitutional Law is designed to study the constitution. It is a branch of public law, comprising, among other disciplines, Administrative Law, Tax Law, Financial Law, Procedural Law, etc. The existing stumbling block in the proper determination of the field of constitutional law appears from the circumstance that the word constitution is difficult to conceptualize. It is a misnomer that lends itself to several meanings. As its scope changes, in order to understand this or that field of reality, so will the area of study of Constitutional Law. This consists of the investigation necessarily aimed at the apprehension of the singular political-legal text called constitution.

For Ferraz Júnior (1994, p. 231):

> Thus, the constitution is like a set of fundamental norms, with an eminently technical content. The recognition of this set is, then, the source from which constitutional law proceeds. That is, on the one hand, there is a structural rule, on the other, an element of the system of the order.
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> In constitutional regimes, laws are drawn up on the basis of the constitution, which, in the general framework of legislation as a source, are of special importance. The constitutions themselves are wont to grant them a pre-eminence in the manner of a principle, where no one is compelled to do or refrain from doing anything except by virtue of law. It is the principle of legality.

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Most of the time, the constitutional rules remain in force and, under these conditions, this power is not exercised, leaving, as a consequence, in its normal seat, which is the people.

The constituent power is the one that puts in force, or even establishes legal norms of constitutional value. In fact, as they occupy the height of the legal order, their creation creates their own paths, since the norms of the conception of law, that is, those defined by the legal order itself, are not usable when it comes to preparing the constitution itself. (BASTOS, 1998).

Thus, the constituent power is the one that participates in the creation and distribution of the supreme aptitudes of the State and that each time there is a relocation or a reformulation of these competences, it is evidently another manifestation of the constituent power.

Constituent power is only exercised in exceptional moments. Very intense constitutional changes marked by social upheavals, very serious economic or political crises, or even on the occasion of the original formation of a State, are not absorbable by the current legal order.

The inexistence of a constitution or the uselessness of the current constitutional norms to sustain the situation under its regulation make this constituent power appear or emerge, which, from the state of virtuality or latency, passes to a moment of operationalization from which the new constitutional norms will appear.

The creation of a body of representatives needs a constitution, in which its organs, its manners, the functions assigned to it and the means to exercise them are determined. Constitutional laws regulate the organization and functions of the established powers (bodies), among which is the legislature. They are fundamental laws because they cannot be touched by the established powers, where only the nation has the right to make the constitution.

Constituent power is, therefore, a power of law, which does not find limits in previous positive law, but only and only in natural law, existing before the nation and above it. Furthermore, constituent power is inalienable, permanent and unconditioned. The nation cannot lose the right to aspire and change at will, as it is not subject to the constitution created by it or to constitutional forms, where its constituent power remains after its work is accomplished, being able to modify it.

Constituted powers, on the contrary, are constrained and conditioned, receiving their existence and competence from the constituent power, being constituted in the manner formed in the constitution and operating accordingly.

In the notion of constituent power, there are durable elements that maintain their full validity and others that require a more up-to-date aspect. Thus, the notion of constituent power appears as something absolutely necessary to be able to understand the issue of power distribution.

Analyzing that in the Constitutional, democratic, social, contemporary State, it is necessary to maintain the distribution of power, even with other scopes, with other characteristics, but maintain it, it is evident that it is also necessary to preserve the concept of constituent power, in such a way that, from its functioning, the division of power can be understood.

An important point that remains in force is the distribution between the constituent power and the constitution as a product or result of that power, that act. Constituent power is essentially a function, which gives reason to those who assure that, also at the stage of constitutional reform, there is a manifestation of constituent power.

Constituent power means power to make a constitution. As this is the first legal document of the State and the basis for the validity of all the others, normativists deny the legal nature of this power, recognizing its historical facticity, capable of being studied by other branches of knowledge, such as force or social energy (BASTOS, 1998).

According to Burdeau apud Bastos (1998, p. 25):

> There are three essential characteristics of the constituent power: it is initial, because no other power exists above it, neither in fact nor in law, expressing the idea of law prevailing in the collectivity; it is autonomous, because only the sovereign is responsible for deciding which idea of law prevails at the historical moment and which will shape the legal structure of the State; it is unconditioned, because it is not subject to any rule of form or substance.

The validity of a constitution is not based on the justice of its rules, but on the political decision that gives it its essence. The constitution does not comprise all the norms contained in the formal document that bears this name. In a positive sense, the constitution contains only the conscious determination of the concrete manner in which political unity is pronounced or determined.

The constitution appears through a constituent act, the result of a will to produce an effective decision on the way and form of political existence of a State. This will is that of the holder or subject of the constituent power.

Constituent power is not a legal power and, as a result, there is no problem of its entitlement within the science of law. The questioning in relation to entitlement, the subject of the constituent power, especially marks the plane of beliefs. It is a question whose answer is given by political philosophy.

Nowadays, with the spectrum of totalitarian phenomena, the issue of ownership of constituent power takes on new relevance, needing to be faced by consenting to the new positions that have appeared. Therefore, it can be said that there are two responses to the issue of ownership of constituent power: the autocratic response and the democratic response (BASTOS, 1998).

The autocratic response bases the ownership of constituent power on the minority principle. While the democratic response will place the ownership of constituent power in the majority principle.

For the new autocratic tendencies, the constituent power will always be carried out as a subject by a minority. As for the democratic conception, the constituent power always resides in the sovereignty of the people, which is expressed through an exactly majority principle, which is that of half plus one and that requires a verification of the process through the only possible mechanism, which is the of the elections.

Autocrats invoke the presence of the people, but do not suggest their consensus. Whereas in democracy, a concrete, objective, mathematical investigation is required of the consensus that can only be achieved through

free elections, as a means of absolute freedom of expression.

According to Bastos (1998, p. 29) "The doctrine usually distinguishes two kinds of constituent power: the original or the derivative. The first has an initial character, because it originally produces the legal system, while the second is instituted in the constitution for the purpose of reforming it".

The original production of the legal order takes place in the event of the formation of a new State, or in the case of a revolutionary modification of the legal order, in which there is a solution of continuity in relation to the previous order.

The original constituent power always invents a legal order, either from scratch, in the case of the emergence of the first constitution, or through the rupture of the previous order and the revolutionary implantation of a new order. The reforming power only modifies the constitution.

From the perspective of constitutional law, as a positive science of law, what exists is a constitution of bodies and competences established therein. The jurist has elements to analyze a legal system, give an opinion on whether a given reform is legally possible, who is competent to carry it out and even compete before the courts for the declaration of unconstitutionality of an amendment performed in disobedience to constitutional precepts.

Constituent power is a social and political force, subject to study in the social sciences and philosophy of law. Therefore, its ownership also goes beyond the field of legal studies.

As for the exercise of constituent power, this is no longer a problem of political philosophy but of constitutional technique. The different responses to the exercise of this power are provided by the various mechanisms that the constitutions contemplate for the purposes of the functioning of the constitutional revision or amendment procedures.

In democratic conceptions, the exercise of constituent power can be carried out through direct democracy or representative democracy, or through mixed formulas based on both forms.

DEMOCRACY

Democracy is the best of political regimes. All peoples and all governments call themselves democratic. There is not a people, there is not a single government that does not qualify as democratic.

For Ribeiro (2001, page 08):

> The word democracy comes from the Greek (demos, people; kratos, power) and means power of the people. It does not mean government by the people. A single person or a group can be in government, and it can still be a democracy – as long as the power belongs to the people. The key is that the people choose the individual or group that governs, and that they control how they govern.

According to Dahl apud Velloso and Rocha (1996, p. 23) "Democracy is the political system in which the opportunity for participation and decision-making is widely shared by all citizens".

Democracy has presuppositions and conditions. The assumptions of the democratic regime are in the social and economic fields. Democracy implies that the people have acquired a cultural level that allows them to determine their destiny.

Mass information mechanisms play an important role. A certain cultural level, therefore, of the people is necessary, so that they can understand the information given to them by the mass media and, based on them, choose their rulers, even because the possible democracy is representative democracy, indirect democracy, which is performed by political parties (VELLOSO and ROCHA, 1996).

Thus, democracy is the government of the people, it is the government in which the people command, in which the people decide. It is a prerequisite of a good sentence that the judge is well informed, that he has read and heard the reasons of both parties. In a democratic regime, it is the people who define, the people are the sovereign judge of the affairs of the State. However, if the people do not know how to inform themselves, their decision will not be a good one. The social assumption is based, especially, on a certain degree of cultural development of the holder of power.

According to Ribeiro (2001, p. 23) "Ancient democracy has as its symbol the people in the park, deciding, and the modern one has human rights as its essence, which begin as the rights of the individual".

Democracy is not the decision that the people make, the result of popular votes. Not every majority decision is democratic. It will not be, if it infringes on human rights.

One of the most fundamental conditions of democracy is the existence of a mechanism capable of faithfully receiving and transmitting the will of the people, which above all causes an electoral process impervious to fraud and corruption. An electoral process that directs to the positions of command those that the people really want, those that, in fact, the people want to be determined in their name, is a condition of representative democracy.

Democracy has fundamental features where it is possible to consider certain elements that are essential in a democracy. There are eight elements that characterize the democratic regime, the first of which is the participation of the people and universal suffrage. Without the participation of the people in the government, through the action of their representatives, there is no democracy.

This first element of democracy is present in the Brazilian constitution, namely that all power comes from the people, who exercise it through elected representatives or directly, under the terms of the constitution and that popular sovereignty is performed by universal suffrage and direct vote. and secret, with equal value to all.

Freedom and equality are more than elements of democracy. Freedom and equality are essential values of the democratic regime. If there is no freedom and equality, there will be no democracy. Freedom is based on the rights declared and guaranteed in the rights that establish fundamental rights. Equality is essential to democracy and the republic.

The possible democracy, currently, is representative democracy, in which the people, holder of power, establish through representatives chosen by them. Representative democracy has political parties as an instrument for its realization, given that parliament will need to house the most significant political currents of the citizenry.

In democracy, voting is not a mere procedure, but the expression of equality and freedom.

The expression democracy mentions a political system based on the postulates of freedom and equality and all men and set back to guarantee that the government of society is the result of deliberations taken, directly or indirectly, by the group of its members, considered to be the ultimate holders. of sovereignty.

The Democratic State is what is structured in armed institutions in order to observe certain results. Without apprehension, it is essential to distinguish formally democratic States from substantially democratic States.

States that are only formally democratic, reproducing established formulas in force in culturally more developed countries, adopt in their constitutional regimes institutions theoretically capable of producing democratic results.

Democracy determines, for its functioning, a minimum of political culture. From this we can immediately remove that, in the case of a society with an incipient political culture, a State that can be configured as truly attached to democratic values needs not only to reproduce some classic traits of this model figure, but also to adapt its fundamental institutions to, on the one hand, to overcome those visceral limitations to their normal functioning and, on the other hand, to seek to transform social reality itself in the effort to actively compete to determine this minimum of political culture indispensable to an essential practice of democracy (VELLOSO and ROCHA, 1996).

If democracy announces the objective of recognizing popular sovereignty, it at least ensures that citizens not only have a clear, internalized and claimed awareness of this legal-political title that is guaranteed to them constitutionally recognized as an inalienable right, but that they have the conditions essential to actually take effect.

Democracy, as a regime of the power of the people, distinguishes human rights, which can be summarized in one word: the right to difference. But there are also the contradictions and difficulties of democracy.

Democracy has as its ideal unanimity on occasions of revolution. The democracy of difference, on the other hand, is respect for the other as different, in their way of being and in their choices.

The apprehension of the democratic profile needs to take into account certain concepts. Thus, democracy determines that two elementary principles must be present: popular sovereignty, where the people exclusively apprehend the source of power and the direct and indirect form of exercising power.

Direct democracy, in terms of constituent power, are referendums to approve the constitution. Representative democracy, on the other hand, is the systems of constitutional conventions, in which the people are summoned to select an assembly that specifically and solely will perform the constituent power.

Finally, the principle of popular sovereignty is when the people derives the source of political power, through which sovereignty is manifested, performed directly or according to the representative regime, where representatives are chosen through an elective process.

Unanimity works best in times of disruption. The fiction of unanimity helps to destroy the old and create the new. On certain occasions, the vast majority can even be united, cohesive. But the general consensus doesn't hang, it doesn't beat time. In duration, the difference works better. This is good for freedom and choice. In unanimity, there is a risk of having the freedom to choose swallowed up by the urgency of historical time. Therefore, it is wrong to think that democracy only exists when the people pulse together.

ELECTORAL JUSTICE

Electoral justice was created by the electoral code of 1932, based on the famous Czech electoral court of 1920, which was inspired by the legal genius of Hans Kelsen. The 1934 constitution constitutionalized electoral justice. The 1937 political charter understandably ignored it because the 1937 charter only gave legal form to the Estado Novo dictatorship. The constitution of 1946 and the others – the one of 1967, with or without the constitutional amendment n. 1/69, and 1988 – constitutionalized electoral justice (VELLOSO and ROCHA, 1996).

Brazil legalized, with the electoral code of 1932, the electoral process, with the creation of electoral justice. In other words, the body that enshrines the electoral process, that administers the elections, preparing them,

carrying them out and determining them, is electoral justice.

The electoral justice is a jurisdictional body designed with the purpose of taking care of the organization, performance and control of the processes for choosing candidates for elective mandates, as well as the plebiscite and referendum processes. Electoral justice is not implemented as an appendix of the executive power, nor is it submitted to the sphere of performance of the legislative power (COSTA, 2000).

For Michels (2002, p. 54) "Electoral justice has a range of functional reserves, much more elastic than in other branches of the judiciary".

Electoral justice, with the development of its functional emporium, in addition to the jurisdictional activity, also covers administrative, consultative and resolutive activities.

At first, the area of competence of electoral justice was developed from the electoral enlistment, being exhausted with the issuance of elective diplomas. Today, this apprehension no longer prevails due to the multiple burdens that have been added to it. In fact, electoral justice has become a safeguard against political conflicts.

Electoral justice was established for the purpose of carrying out electoral truth, the truth of the polls. This is its basic, fundamental mission as a condition of democracy.

According to Velloso and Rocha (1996, p. 15):

> Electoral truth is the raison d'être of electoral justice. This electoral truth has been pursued for sixty-two years by Brazilian electoral judges. A lot has been done in this area, undeniably. Elections are no longer held with pen ink and cases of corruption, abuse of economic or political power are punished exemplarily.

Electoral justice, in the execution of its constitutional role, reveals itself as an instrument for maintaining the democratic rule of law, as it is the guardian of the democratic primaries presented in the Magna Carta and responsible for the administration of the electoral process. This way, the importance of implementing the constant improvement of magistrates and electoral justice servants is meant, as well as the dissemination of notions about political rights among the people, with emphasis on responsibility in the exercise of these same rights (NETO, 2000).

It is incumbent upon the electoral justice to carry out the electoral enlistment, the elections, the counting of votes, the diplomacy of the elected, judging electoral crimes, actions aimed at canceling the registration, diploma or mandate of elected candidates or the declaration of ineligibility.

Electoral justice is characterized by capturing, in the first place, jurisdictional competence and relation to all acts of the electoral process, in addition to that, in addition to this, it also has a range of attributions of an administrative nature, which is not summarized exclusively to the internal organization of its courts and secretariats, but which is also expressed in the control of the electoral body called to vote in the elections, as well as in relation to the political parties that participate in the elections (GOMES, 1998).

The electoral justice system does not have its own staff of magistrates. The investitures are periodic, thus prevailing the principle of temporality. No magistrate has a permanent relationship with her. Stay there is always limited.

According to Pinto (2003, p. 53):

> The competence of the electoral justice covers the execution of electoral enlistment, the registration of candidacies for elective mandate, control of electoral propaganda, organization and execution of electoral elections, availability of transport and food to voters in rural areas, proclamation of

> the results, diplomacy of those elected, judgment of electoral crimes, impugnation actions and investigation to investigate the practice of abuse of power during the electoral campaign.

It is up to the electoral justice to judge the challenge to the registration of the candidacy, the examination of requests for the right of reply for offense in the free electoral time programs, the analysis of the appeal against the diplomacy, judicial investigation and challenge of the mandate.

Electoral justice has undeniably brought more security to the elective dispute. However, it is necessary to distinguish, from an examination of the jurisprudence concretized in its various moments, a change in intensity in the reaction to the abuse of economic and political power.

For Ribeiro (2000, p. 184) "The electoral justice is competent to judge and prosecute electoral crimes. It is evident that electoral crimes must be examined from the perspective peculiar to electoral activity. For this reason, jus puniendi in electoral matters is integrated into electoral justice".

Electoral justice, in addition to being of a special nature, has in its field of competence not only characteristically jurisdictional attributions, whether of a civil or criminal nature, and even of voluntary jurisdiction, but, in addition, of an administrative, consultative nature. and normative.

According to Teixeira (2003, p. 73):

> It is common, within electoral justice, for a given issue to have a certain treatment at the beginning of the electoral process, and, with the development of the elections, such issue will receive different treatment, not because the fact that each process is different from the fact of the other process, but because jurisprudence is crystallizing and studies are deepening.

Electoral justice operates at the same time as the judiciary and as the executive power of elections, which draws from it that characteristic of inertia typical of other branches of the judiciary.

The enormous task of electoral justice, whose results and effectiveness are closely linked to the essential collaboration of all its instances and servants, decisively depends on the transparency in the conduct of the work and the legality of the results achieved.

Electoral justice is structured hierarchically, so that the higher instances have prevalence in relation to the lower ones, even under the administrative aspect. Given the hybrid aptitude of electoral justice, all acts of organization, supervision and achievement of elections are subordinated to Organs superior bodies, which supervise and supervise the inferior ones.

FINAL CONSIDERATIONS

Law is intended to constitute harmony, security and tranquility in the society where it is in force. It cannot cause embarrassment, indignation or perplexity to the social group on the pretext of its application. It emerged to put an end to the conflicts dealt with between men, whose criterion of success was the physical preponderance of the litigants. Electoral Law has an extensive scientific basis, not being restricted to practical rules for an election. It has ideas and foundations that need and are observed, studied and researched, because they serve as basic rules of a right that, scientifically seen, must be preserved over time. Democracy needs good leaders, there is no representative democracy without them, and these, then, are necessary. Good political agents make a profession of faith in democracy, are leaders, have a strategic vision and militate to serve civil society.

From another point of view, the aptitude of the Electoral Justice always gives rise to uproar, collimating the numerous doubts that arise, especially in the minds of legal

operators, in the opportunity to present itself with the task of establishing the boundary lines between the matters that associate the scope of knowledge and appreciation of this specialized justice and those that are granted to other judicial bodies. It is incumbent upon the Electoral Court to carry out the electoral enlistment, the elections, the counting of votes, the diplomacy of the elected, judging electoral crimes, actions aimed at canceling the registration, diploma or mandate of elected candidates or the declaration of ineligibility.

In epitome, without the Electoral Jurisdiction, carried out by judiciary bodies, representation will be a mistake and democracy an illusion.

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