v. 3, n. 31, 2023

Scientific Journal of Applied Social and Clinical Science

JUDICIALIZATION OF POLITICS: CONTROVERSIES SURROUNDING CONSTITUTIONALITY CONTROL [1]

Rubens Carlos Ribeiro
Mestrando em direito pela UniCeub
Agente de Polícia Rodoviária Federal

1. Research funded by the researcher as the sole source of funding.

Abstract: The object of study of this article was the Judicialization of Politics, a topic on which we sought to explore different positions, given that there are different and controversial analyzes with regard to Constitutionality Control. The research problem that guided the research and preparation of this text can be better understood through the following question: Does the judicialization of politics insult democracy? It would be better for society if the Judiciary did not deal with political issues and these were strictly the responsibility of representatives elected by free and direct suffrage. The general objective of the research was 'Analyze opposing positions, having as its fundamental axis the Control of Constitutionality, highlighting that, if the current Brazilian scenario were not arbitrary and political corruption, the Judiciary would not be so frequently called upon, and would not enter into the merits of purely issues policies'. A bibliographical research was carried out and among the theorists studied, a special focus was given to Ronald Myles Dworkin. Regarding the results obtained, it is worth highlighting that, aware of the separation of powers, and the need to respect the limits of action, it is understood that judges must be cautious. It was clear that one cannot be radical, to the point of asking for the total exoneration of Judiciary actions in the political sphere, since the Brazilian citizen would be a hostage to the arbitrariness, ambition, mercantilism and corruption practiced by those who, elected from freely and directly must work for the good of the people.
Keywords: Judiciary. Policy. Democracy. Constitutionality.

INTRODUCTION

This article's object of study is the Judicialization of Politics, a topic on which we sought to explore different positions, as there are different and controversial analyzes with regard to Constitutional Control.

It is understood that the judicialization of politics: a modern phenomenon that has occurred recurrently in Brazil, in which the Judiciary has acted on political and social issues of the Legislative and Executive branches, under the argument of safeguarding the principle of representativeness and fundamental rights.

The research problem that guided the work and preparation of this text can be better understood through the following question: Does the judicialization of politics insult democracy? It would be better for society if the Judiciary did not deal with political issues and these were strictly the responsibility of representatives elected by free and direct suffrage.

Hypothetically, it can be stated that there are theorists who claim that, on the contrary, the action of the Judiciary in certain political issues contributes to guaranteeing democracy, defending and guaranteeing fundamental rights, against possible arbitrary and mercantilist actions by the other constituent powers of politics. Still hypothetically, one must start from the fact commonly reported in the national press, that political representatives elected by the right vote are acting in defense of private interests of themselves, family and peers, placing the defense of citizens' rights in the background, and transforming parliament and the executive often into a place for 'business', in the broadest sense of the word.

In view of the above, it is worth highlighting that the general objective of this article was not at any time to blindly defend the judicialization of politics, but rather to analyze opposing positions, having as its fundamental axis the

Control of Constitutionality, highlighting that, if the current Brazilian scenario were not stage of arbitrariness and political corruption, the Judiciary would not be so frequently called upon, and would not enter into the merits of purely political issues. However, taking the case of the Federal Supreme Court (STF), which is responsible for defending the Constitution: it is seen that its inaction on certain issues would contribute to corrupting democracy and opening up even more space for the establishment of a dictatorial regime with the undoing of fundamental rights and guarantees hard won over the years.

A qualitative bibliographical research was carried out by collecting information from books and scientific articles that deal with the topic.

JUDICIALIZATION OF POLITICS AND ITS APPROACHES

The analyzes carried out here raise questions about the possible offense to democracy by the action of the courts in deciding political issues, to the detriment of those elected by the council who assume this commitment to society. In this sense, there is also a questioning about the adequacy of granting the judiciary the power to decide on issues that concern central aspects of the nation, especially political issues. (PEREIRA, 2011, p. 9)

It is worth highlighting in advance that the Judiciary is a fundamental subject in the protection, respect and preservation of citizens' rights, and consequently, a necessary instrument for democracy. "The phenomenon of the judicialization of politics occurs whenever the courts, when performing their inherent functions, significantly affect the conditions of political action." (TONELLI, 2016, p. 13)

Having in mind an understanding of the problem presented previously, the analysis carried out in this text has at its core the conceptions of Ronald Dworkin, through which we seek a clear and effective understanding of the judicialization of politics, a theme that, in light of the democratic basis of the republic and of the separation of powers has proven controversial. And it is in light of this reality that an understanding is sought regarding the legitimacy of the judiciary's action in matters concerning other powers of the State. (TONELLI, 2016, p. 07)

In a formalistic legal perspective, the Executive and the Legislative are above the Judiciary in relation to the formation of public policies, in the execution of acts necessary for the functioning of the State, so that there is no legitimate and democratic space for the latter power to act directly in public decisions.

It must be considered, however, that the current world and the relationships established in it can be considered complex, so that to guarantee the protection of citizens' rights, it is often essential to have a more proactive and active Judiciary, with many It is sometimes necessary to act on issues of political bias. In a new scenario, a new paradigm emerges, in which the classic functions of judges are modified, attributing to these subjects a certain responsibility for political issues, which are directly related to the direction of society, and the safeguarding of citizens' rights and guarantees. In this context, it is necessary to emphasize the important role played by the Federal Supreme Court – STF, in protecting the Constitution of the Federative Republic of Brazil of 1988, and consequently the rights it protects. (CUNHA JÚNIOR, 2016, pp. 151-152)

Currently, we can observe the strengthening of what is called the judicialization of politics, which is, in short, the expansion of the powers of the Judiciary over legislative and executive policies. The fundamental of this phenomenon centers on the primacy of the

supremacy of the Constitution, so that when acting in politics, the Judiciary does not enter the sphere of other powers, limiting itself to ensuring respect for the 1988 constitution.

> In Brazil, this phenomenon is easily recognized, since, in recent years, the Federal Supreme Court has issued relevant and far-reaching decisions that have made it an easy target for criticism from doctrine, other powers and society itself. The crucial point of the criticisms launched against the Corte Maior is based on the fear that the growing importance that the institution has been acquiring as a result of such decisions interferes with the principle of separation of powers. (PEREIRA, 2011, p. 10)

In this scenario of greater action by the Judiciary, this power does not begin to exercise the function of legislating, not taking upon itself the attribution of the Legislative Power. It only promotes actions necessary to safeguard democratic principles and institutions. This is justified by the need to preserve certain core rights, especially fundamental ones. (NÚNES JUNIOR, 2016, p. 22)

Understood as a social phenomenon, characteristic of today's societies, the judicialization of politics produces a new perspective for social conflicts, as it passes on to the Judiciary the role of providing solutions to issues previously limited to institutional powers, which are democratically constituted for this purpose. It is within the scope of this remodeling of State powers that several discussions emerge about the role of the judiciary in today's democracies.

> In effect, what is observed today, especially in Brazil, is a situation that transcends the mere application of the Constitution and laws and the control of legislative acts by the Judiciary. It is not uncommon to find judges and courts making decisions on political issues that were previously decided by legislative houses or political parties, without judicial interference. This ascendancy of the Judiciary over our political system gave rise to the phenomenon of the judicialization of politics. (NÚNES JUNIOR, 2016, p. 15)

Thus, the emergence of a conflict can be seen along two specific analytical axes: on the one hand, there is a democratic policy that emphasizes the constitution of active citizenship, highlighting the role of majority instances of representation; on the other hand, there is a more proactive and participatory Judiciary that starts to act on political issues in the State.

THE ROLE OF THE JUDICIARY FROM A PROCEDURALIST AND SUBSTANTIALIST PERSPECTIVE

In relation to the object of study, two analytical axes were constituted. There is the proceduralist, based on the democratic processes of formation of political will.

In this context, there is a defense of a Judiciary with more limited powers, justifying that this way democratic processes are better respected, with the understanding that political channels are better able to decide on social conflicts than the Judiciary. This theoretical current understands that greater judicial control affronts the exercise of citizenship, generating social disintegration and individualism. (MOZETIC; SANTOS, 2017, p. 107)

"For Habermas, proceduralism would be an overcoming of the liberal and social state models, so that the proceduralist paradigm seeks to protect, above all, the conditions of democratic procedure" (SANTOS, 2018, p. 6)

In the light of proceduralist thinking: citizens do not depend on the mediation of the Judiciary, being understood as authors and not just as recipients. In this way, it is understood that it is enough to ensure the existence of means and procedures for subjects to create their own rights. In this approach, constitutionality control is only necessary when it comes to a democratic procedure,

and in the form in which a decision is made based on political will, and it is not up to the Judiciary to stipulate the object of the decision, but only the way in which it is decided, leaving the people themselves do it in whatever way is convenient.

In relation to proceduralism, it is necessary to highlight Habermas' position, who believes that:

> [...] proceduralism would be the conciliation between the legally institutionalized sovereignty of the people and the non-institutionalized one, reciprocally. From there, the author asserts: The procedural paradigm of law guides the legislator's gaze towards the conditions for mobilizing law. When social differentiation is great and there is a rupture between the level of knowledge and consciousness of virtually threatened groups, measures are imposed that can "enable individuals to form interests, to thematize them in the community and to introduce them into the process of State decision (SANTOS, 2018, p. 6)

A proceduralist aspect, which rejects the idea of judicialization of politics, is based on the engaged action of people, as subjects of the constitution of political will, would only be effective in the face of a solid culture of freedom, marked essentially by commitment, which is not yet a reality in today's society, especially in developing countries such as Brazil. (ISAIA; SELL, 2019, p. 122)

At the other extreme is the substantialist current, in light of which the Judiciary has to be more participatory in the political issues of the State. Besides, in defense of democracy, but from another perspective, supporters of this current defend a more active Judiciary, which is active in the search for the protection of citizens' rights and in guaranteeing the principles on which the Republic is built. In this approach, the Judiciary is understood as a protective entity of the fundamental principles and values of democracy, and consequently, as a means of social transformation. (LEAL JÚNIOR; SHIMAMURA, 2011, p. 15)

In light of the substantialist current, the emerging relationships between law and politics, considered to be unavoidable, are intended to promote an egalitarian agenda and do not allow freedom to be affected. In contemporary societies, the Judiciary in this approach constitutes an extension of the democratic tradition, and must act in a positive way to increase the incorporation capacity of the political system, in order to guarantee, in particular, those who are on the margins, the ability to express their opinions. needs and desires.

"Substantialism considers the decisions of the Judiciary regarding the promotion of public policies through jurisdictional acts to be legitimate due to the commitment to constitutional principles". (LEAL JÚNIOR; SHIMAMURA, 2011, p. 16)

Analyzing the issue in focus in this study from a substantialist perspective, greater power to control the Judiciary does not harm representative democracy, and on the contrary, it allows certain minorities, often lacking representation, a voice and access to the judicial process to fight against arbitrary actions by the Public Administration itself, and by those who must represent the needs and rights of the people.

THE JUDICIALIZATION OF POLITICS FROM THE PERSPECTIVE OF RONALD MYLES DWORKIN

This topic analyzes the perspective of the judicialization of politics in light of the ideas of Ronald Myles Dworkin, with a focus on the construction of democracy, with a view to solidifying and respecting the fundamental rights of citizens. According to Dworkin, "Law constitutes a sword, shield and threat, being our sovereign, abstract and ethereal" (COSTA, 2011, p. 93)

Dworkin's theories have their bases in liberal democracy, that is, based on a form of government in which the State is governed and limited by the constitutional text, which ensures the existence of checks and balances, and broad political rights and civil freedom, the namely: freedom of association, assembly, expression, suffrage, as well as respect for the dignity of the human being. In this approach, the protection of certain core rights stands out, in the face of interference from majority decision projects. Dworkin directs his work to "a critique of legal positivism, and the existence or not of judicial discretion" (COSTA, 2011, p. 94)

> Ronald Dworkin's doctrine is one of the most important in the area of Law since the second half of the 20th century, and his teachings, even if often indirectly, influence Brazilian doctrine and order. The judicial review of laws by Courts is one of the strengths of his theory and can be found, under certain aspects, in the Constitutionality Control system adopted by Brazil. (OMAY JÚNIOR; ARRUDA, 2017, p. 13)

In Dworkin's conception, fundamental rights must impose limits on the sovereignty of the people, with a view to ensuring individual rights and freedoms. In light of this theorist's ideas, the law based on the will of a hypothetical majority cannot always be considered fair, and may, in certain cases, disregard individual rights, potentially generating degradation of rights. In his opinion, democracy cannot be understood as mere obedience to majority rule.

Constitutional democracy from a liberal perspective absolutely needs to protect and ensure fundamental rights of the citizen, ensuring that respect for the Constitution is duly fulfilled, as well as the rights protected therein are duly guaranteed.

> Majority democracy is based on the idea that political decisions must comply with the will of the majority, that is, the decision-making process to be considered democratic must obey what the majority of individuals desire. The problem with this, from the author's point of view, is that the minorities – defeated votes – end up being massacred by the majority and yet the process continues to be considered democratic. (OMAY JÚNIOR; ARRUDA, 2017, p. 13)

Under the aegis of Dworkin's thought, it is the constitution that stands in the way of the possibility of political arbitrariness, defending the fundamental rights of citizens, having at its core the protection of individual rights and freedoms that guarantee people's moral autonomy. In this current of thought, the rights protected by the 1988 Constitution represent imposing commands, and not mere values, capable of being ignored among them.

It is evident within the scope of these considerations that constitutional democracy from Dworkin's perspective establishes that individual rights are instruments of action against the majority, since these must at least prevail over the public entity and massive representative groups. At the heart of this conception, the Constitution is the means that guarantees fundamental rights and simultaneously seeks to prevent undue interference of a political nature.

> Dworkin recognizes the completeness of the law, and, for him, it is up to judges to exercise jurisdictional activity in order to find the correct answer. Therefore, in his theory there is recognition of judicial protagonism, but it must not be seen as the enjoyment of freedom of choice, because, in Dworkin's conception, the discretion of judges brings serious harm to legitimate institutional decisions. (ESCOBAR, 2020, p. 8)

Dworkin attributes a sense of deontological validity to legal principles. Thus, political will, politicking or even a collective social objective can be placed above individual rights. In this way, there is an emphasis on individual rights in the face of collective rights. The theorist criticizes the discretion attributed to judges,

emphasizing that it does not act to protect fundamental rights.

The criticisms made by Dworkin generally revolve around:

> [...] positivism and any and all forms of utilitarianism: Legal positivism presupposes that law is created by social practices or explicit institutional decisions; rejects the more obscure and romantic idea that legislation can be the product of a general will or the will of a legal entity. Economic utilitarianism is equally individualistic, if only to a certain extent. (COSTA, 2011, p. 94)

According to Dworkin, in an aspect marked by the discretionary action of the judiciary, there is no effective protection of individual rights, which would only be possible if the judge's reasoning was based on the exercise of constructive interpretation, substantiating the right as integrity. In this approach, the fundamental goal of Law must be to promote integrity, so that a State guided by principles is established, with a view to political morality.

Regarding the role of the judiciary, in view of the guarantee of democratic principles, Dworkin highlights the role that Law plays in building democratization, which promotes and enshrines respect for individual rights, based on legal-political judicial activity. This theorist builds reflections regarding the role of the Judiciary in consolidating a democracy whose core is respect for individual rights.

Dworkin does not accept the passivity of the Judiciary in today's democratic contest. In his progressive position, this theorist understands it as a strategic power whose purpose is to affirm and protect democratic principles. "Dworkin's problem is not the figure of the legal operator (which assumes great importance, in pragmatism, for example) but rather what operators consider as Law". (APPIO, 2003, p. 84)

From Dworkin's perspective, judicial decisions have a prominent importance to the detriment of legislative decisions, with regard to the construction of democracy. According to this thinker, there is no reason to suggest that the transfer of decisions relating to law, from the legislatures to the courts, represents harm to the democracy inherent in the equality of political power. He indicates that the Legislature does not occupy a better position than the Judiciary in relation to decisions inherent to issues relating to rights.

> Dworkin's analysis can in no way be overlooked – insofar as the way in which judges decide the cases submitted to them influences the fate of a given community – or underestimated – insofar as it manages to criticize the two main schools that are debated on the topic. (APPIO, 2003, p. 85)

In democracy, it is the people who theoretically hold the power, who depend on their representatives (judges and legislators) to exercise it. Unlike Judges, legislators are constantly under political pressure. In the Judiciary there is no need for political support for power to be maintained. In Dworkin's theoretical approach, citizens have the right to demand that there be a specific judgment in relation to their rights, which, when recognized by a court, cannot be exercised in spite of any.

> Dworkin understands that democracy can only work when we have a system in which judges interpret the legal scenario of a given community, in order to protect the greater principles that govern it, with special emphasis on freedom. (APPIO, 2003, p. 88)

It is pointed out that the transfer of decisions from the Legislature to the Judiciary in many cases can generate more benefits for sectors with little democratic integration, in general the economically underprivileged. It is not uncommon to observe that the economically more privileged exert pressure on the Legislature in order to obtain advantages. In this unfortunate reality, a less economically and culturally privileged group can be

considered victims of Legislative decisions, having their rights ignored or sacrificed to the detriment of the interests of the rich. and powerful.

Within the scope of the considerations made previously, the more active Judiciary guarantees less privileged groups the demand for their rights, as it is not uncommon for individual rights and freedoms to often be disrespected in the name of business, profit and political arbitrariness. Therefore, despite not being a perfect model for exercising democracy, judicial control over legislative acts has proven to be a viable instrument.

CONSTITUTIONALITY CONTROL – CONTROVERSIAL INSTRUMENT

It can be defined as constitutionality control, the verification of the conformity of a normative act or law in relation to the Federal Constitution, with a view to defending the protected person in the constitution, aiming to eliminate from the legal system any legal instrument that contradicts the greater law.

Constitutionality control finds its justification in theories as shown in the approaches of Luís Roberto Barroso (2015, p. 153), below:

> Mutations that contradict the Constitution can certainly occur, generating unconstitutional mutations. In a scenario of institutional normality, they must be rejected by the competent Powers and by society. If this does not happen, an anomalous situation is created, in which the fact overrides the Law. The persistence of such dysfunction will identify the lack of normativity of the Constitution, a usurpation of power or a revolutionary framework. Unconstitutionality will tend to be resolved, either by overcoming it or by converting it into current law.

There is talk of material and formal unconstitutionality, the first being that which occurs when the content of the bill or normative act does not comply with what is established by the Constitution and its values. Formal unconstitutionality, in turn, is that which manifests itself in the face of disobedience to the legislative procedure contemplated by the Constitution regarding a specific content.

> The Brazilian judiciary, especially after 1988, began to interact with the political system, in a complex process, in which the following participate: (a) the judicial courts, especially the STF; (b) government and political parties; (c) relevant professional associations, especially the Association of Brazilian Magistrates and the Association of Judges for Democracy, which have different orientations, values and conceptions regarding the institutional role of the judiciary; and (d) public opinion. (CASTRO, 1996, p. 4)

This is an important task of the Constitution and Justice Commissions (CCJ), which must exercise control, analyzing the compatibility of a bill or proposed amendment with the Constitution.

It is important to highlight that immutable clauses cannot be used to justify the thesis of unconstitutionality of constitutional norms, originating inferior to superior norms or principles.

Constitutionality control can occur in two ways, depending on the moment. Preventive constitutionality control is said to be that which is carried out within the scope of the bill and repressive that which is directed at the law that is already an integral part of the legal system. Masson (2015, p. 1093), highlights that the first action of abstract concentrated control established in Brazilian law, the direct action of unconstitutionality aims to protect the objective constitutional order through the establishment, in the Federal Supreme Court, of an abstract inspection process.

The State is not capable of solving the problems of postmodernity, with a balanced

and shared exercise in mind, since:

> [...] to the extent that countless issues of a strictly political nature, which until recently were discussed and resolved within the political sphere – or system – are now brought daily to the examination of the Judiciary, given the complexity of the activities carried out by the State and the collisions of such activities with the interests of millions of people in Brazil. (APPIO, 2003, p. 90)

In the Brazilian legal-constitutional scenario, repressive constitutionality control prevails, which is manifested by the action of the Judiciary in controlling the law or normative acts, already published, in view of the constitution, aiming to extirpate them from the legal system, as they contradict the Constitution.

Constitutionality control can occur in two different ways: open, more commonly known as diffuse, and reserved, also called concentrated. The diffuse presupposes the existence of a concrete case, as well as the incidental allegation of one of the parties, and can be carried out by any body of the judiciary.

Diffuse control is also called by way of exception, since any and all courts are permitted to analyze the compatibility of a given specific case with the legal system and more specifically with the Federal Constitution. In this case, the ruling on unconstitutionality focuses on the fundamental prior issue to the judgment on the merits, and not on the fundamental object of the dispute. In this type of control, the interested party is granted the opportunity to obtain a declaration of unconstitutionality with a view to mere exemption from compliance with the law or act, which is not in line with the higher law, despite remaining valid for others.

Such analyzes are supported by the concepts of the wise indoctrinator Pedro Lenza (2016, p. 461) who teaches:

> Diffuse, repressive, or subsequent control is also called control by way of exception or defense, or open control, being carried out by any court or tribunal of the Judiciary. When we say any court or tribunal, the rules of procedural jurisdiction, to be studied in civil proceedings, must of course be observed.
>
> Diffuse control occurs in a specific case, and the declaration of unconstitutionality occurs incidentally (*incidenter tantum*), detrimental to the examination of the merits.

From the diffuse perspective of unconstitutionality, the issue must be decided in two ways. Firstly, ex tunc effects must occur, which deals with the connection of the concrete fact with the law conceived as unconstitutional since its origin. This, however, remains effective and applicable, a situation that only changes from the moment the Senate declares the suspension of its enforceability, not revoking or annulling it, but merely withdrawing its effectiveness, with the effects being ex nunc, since throughout its existence it was applied and produced valid effects.

In the case in question, the effects of the declaratory sentence of unconstitutionality are limited to the parties to the process, thus there are no 'erga omnes' effects, and such legal diploma can be applied due to the fact that the judge or Court understands as constitutional, the which changes with a Senate Resolution declaring its suspension, based on the provisions established by article 52, X and 102, III of the Federal Constitution.

The guiding rule for concentrated control is interpartes effects, with exceptions being due to binding and erga omnes effects, limited to cases of great repercussion judged by the Federal Supreme Court. In the case of diffuse control, more specifically in relation to the law, it is worth highlighting that in the case of a declaration of unconstitutionality, the change in the norm does not transcend the legal relationship decided.

The concentrated system, as it is understood as reserved, is the responsibility of the Court of Justice and the Federal Supreme Court, according to the matter. In this way, it is clear that it institutes the concentration of the attribution of the judgment of unconstitutionality. These statements can be complemented by the reflection of Pedro Lenza (2016, p. 495) when he states that "the concentrated control of the constitutionality of a law or normative act receives such a name due to the fact that it is concentrated in a single court", at which point he emphasizes the attribution of the Federal Supreme Court, which is responsible for guarding the Constitution.

In contemporary Brazilian society, the courts:

> [...] they began to act in the institutional voids left by the Executive and Legislative branches. This change was driven by changes in the paradigms of legal schools in the face of the crisis of legal positivism, by the delegation or omission of the Executive and Legislative branches, by the improvement of judicial bodies, by the growing pressure from civil society for more justice and the constitutionalization of rights fundamental. (NÚNES JUNIOR, 2016, p. 26)

The scope of concentrated control is the law itself, and there is no immediate substantial right to be guaranteed. In this case, the purpose of the control is the repression of the unconstitutional law, and the end of its effectiveness, that is, to purge it from the legal system, without to the detriment of diffuse control, a specific case to be resolved, relating to personal interests or materials.

It is worth noting that there are cases in which the Federal Constitution makes an exception for the control of constitutionality to be carried out by the Legislature, which may remove rules from the legal system that are already in force, rendering their effects null and void, due to unconstitutionality.

In the Brazilian legal scenario, from 1946 onwards the Federal Supreme Court began to have original jurisdiction in the scope of constitutionality control, thus exercising the concentrated modality of this control. In the context of the practice of constitutionality control, the Judiciary addresses issues that are generally fundamentally political, which meets the need to ensure the guarantee of fundamental rights, a requirement specific to the democratic regime.

> In the Brazilian case, the review of public policies by the Judiciary is subject to more intense criticism by society and by members of the other Powers, who, having been elected, feel betrayed by the fact that Brazilian legislation allows – more and more – the review of its acts through the mixed system of constitutionality control. (APPIO, 2003, p. 92)

Judicial review, promoted by constitutionality control, does not harm democratic ideals, even if in certain cases it acts against majority processes of political will formation. It is understood that the institute acts positively to ensure democracy, being fundamental in preserving the fundamental rights of the people themselves.

It cannot be said that the actions of the Judiciary in political matters are something offensive to democracy, but rather as something fundamental for it to be preserved, since without this judicial control, there is a risk that citizens' rights and guarantees will perish., in the face of the particular interests of politicians, who, driven by ambition, selfishness and egocentrism, forget who they were elected for and what their responsibilities are towards voters.

In the context of the distortion of the actions of representatives of the Legislative and Executive branches, the courts play an important role in the construction and guarantee of democracy, depending on the need to preserve and respect individual

rights. In Dworkin's perception, among the objectives of the Judiciary, the limitation of arbitrary, corrupt, illegal and immoral political action stands out, with a view to preserving individual rights, thus being an instrument for preserving democracy.

When acting in the political field, the Judiciary must be based on principles, basing decisions on rationality, using coherence, basing arguments on principles and not on arguments of a political nature. The judge must carry out an analysis of the rights of the parties to guide his decision, based on principles, which in many cases may be competing.

FINAL CONSIDERATIONS

The judicialization of politics is a striking political phenomenon in modern societies, which is analyzed from a double perspective, with those who defend it and those who condemn it, so that one cannot be extremist, to the point of concluding by saying which point of view is right or wrong, but rather that there are positive and negative aspects in each of the theoretical currents that address the topic.

This is the action of the Judiciary, going beyond the limits of its powers, especially when there is a violation of the principle of representativeness of fundamental rights. In this context, it is undeniable that this power among the three that make up the Federative Republic of Brazil is fundamental in guaranteeing respect and preservation of citizens' rights, as well as ensuring democracy.

There are two currents through which theorists analyze and discuss the performance of the judiciary, namely, proceduralism and substantialism. In the first case, there is the defense of a Judiciary with limited powers, under the argument that in this way there is greater respect for the democratic process, thus placing greater emphasis on political channels in the defense of social conflicts. In this current, citizens are conceived as authors and not as recipients, thus not depending on the Judiciary.

The substantialist current, in turn, advocates greater participation of the Judiciary, not only in the defense of democracy but also in political issues of the State, thus being a more active and active power, aimed at protecting the rights of citizens and guaranteeing principles of the Republic. For theorists who adhere to this current, the Judiciary's decisions regarding public policies are legitimate.

Among the theorists who deal with this topic, it is worth highlighting the contributions of Ronald Myles Dworkin, whose bases are based on liberal democracy, in light of which the State is governed, guided and even limited by the constitutional text, which guarantees the existence of checks and balances, as well as broad political rights and civil liberties. The constitution is the greatest instrument that stands in the way of possible political arbitrariness, constituting a privileged means for defending the fundamental rights of citizens.

At the heart of the Judiciary's actions is constitutionality control, an instrument whose legitimacy analysis is often questioned. It is an important instrument for verifying the conformity of an act (law, decree, etc.) in relation to the Constitution. Through it, we seek to reestablish a threatened unity, bearing in mind the supremacy of the constitutional text. The proper functioning of the legal system requires order and unity, and peers must act harmoniously.

Finally, it is worth highlighting that, in Brazilian society, it is not uncommon to see arbitrary, narcissistic, mercantilistic, corrupt actions by political representatives elected by free and rightful voting, and it is these facts that allow us to emphasize the importance of a more active action by the Judiciary, as it does

through Constitutionality Control. In view of the above, a reduction in the performance of this power presupposes an effectively ethical performance by representatives of the Legislative and Executive, fundamentally focused on the interests of society, with due respect for individual rights and guarantees, protected by the Federal Constitution of 1988.

REFERENCES

APPIO, Eduardo. A judicialização da política em Dworkin. **Revista Sequência**, nº. 47, p. 81-97, dez. de 2003.

BARROSO, Luís Roberto. **Curso de Direito Constitucional Contemporâneo**. 5 ed. São Paulo – SP: Saraiva, 2015.

CASTRO, Marcos Faro de. **O Supremo Tribunal Federal e a judicialização da política**. Brasília: Instituto de Ciência Política e Relações Internacionais Universidade de Brasília, 1996.

COSTA, Carlos Henrique Generoso. A interpretação em Ronald Dworkin. **Revista CEJ**, Brasília, Ano XV, n. 55, p. 93-104, out/dez.2011.

CUNHA JÚNIOR, Dirley da. A judicialização da política, a política da justiça e o papel do juiz no estado constitucional social e democrático de direito. **Revista do Programa de Pós-Graduação em Direito da UFBA**, v. 26, n. 28, 2016. Disponível em: <https://periodicos.ufba.br/index.php/rppgd/article/view/18274>. Acesso em: 26 mai. 2023.

ESCOBAR, Amanda Greff. A integridade do direito em Ronald Dworkin: uma discussão em cima da judicialização da saúde. **Anais Educon 2020,** São Cristóvão/SE, v. 14, n. 18, p. 2-14, set. 2020**.** Disponível em: <https://www.coloquioeducon.com>. Acesso em: 26 mai. 2023.

ISAIA, Cristiano Becker; SELL, Cleiton Lixieski. Substancialismo ou procedimentalismo constitucional: o (des)velamento a partir da cultura dos modelos tradicionais racionalistas da jurisdição processual civil. **Direito, Estado e Sociedade**, n. 55, p. 113 a 145, jul./dez. 2019.

LEAL JÚNIOR, João Carlos; SHIMAMURA, Emilim. Sobre procedimentalismo e substancialismo na promoção de políticas na área da saúde. **Revista CEJ**, Brasília, ano XV, n. 52, p. 12-22, jan./mar. 2011.

LENZA, Pedro. **Direito constitucional esquematizado**. 20. São Paulo: Saraiva, 2016.

MASSON, Nathalia. **Manual de Direito Constitucional**. 3 ed. Salvador – BA: Editora JusPODIVM, 2015.

MOZETIC, Vinicius Almada; SANTOS, Paulo Junior Trindade dos. Procedimentalismo: superação da teoria e seus fatores. **Revista do Direito Público**, Londrina, v. 12, n. 2, p. 104-129, ago. 2017.

NÚNES JUNIOR, Amandino Teixeira. **A judicialização da política no Brasil: os casos das comissões parlamentares de inquérito e da fidelidade partidária**. Brasília: Centro de Documentação e Informação – Edições Câmara, 2016.

OMAY JÚNIOR, Luiz Carlos; ARRUDA, Rejane Alves de. A revisão judicial das leis em Ronald Dworkin e o controle de constitucionalidade brasileiro. **Interfaces Científicas**, Direito, Aracaju, v. 5, n. 3, p. 9-20, jun. 2017.

PEREIRA, Adriana Aparecida Coelho. A judicialização da política. **Caderno Virtual**, CEPES – Centro de Pesquisa. v. 1, n. 1 2011 Disponível em <https://www.portaldeperiodicos.idp.edu.br/cadernovirtual/article/view/642 >. Acesso em: 26 mai. 2023.

SANTOS, Larissa Maia Freitas Salerno Miguel; NETO, Zaiden Geraige. A oposição entre substancialismo e procedimentalismo ainda faz algum sentido? **Revista da Faculdade de Direito do Sul de Minas, Pouso Alegre**, v. 34, n. 1:1-15, jan./jun. 2018.

TONELLI, Maria Luiza Quaresma. **Judicialização da política**. São Paulo: Perseu Abramo, 2016.