Constitutionality control & stabilization of the regulatory system

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It is said that the control of constitutionality is aimed at guaranteeing order, coherence, protection of fundamental rights and the stability of the normative system, conforming all legal acts and instruments to the foundation of validity of the 1988 Constitution (respecting in this process, *supremacy* – a fundamental norm at the top of the normative pyramid; *rigidity* –, constitutional norms receive greater protection in legislative processes, so that changes do not distance themselves from the interests of the Original Constituent that patents the interest of the people; and the *strength binding* – the constitutional norms bind to the interpretations of all the acts of the Public Power).

Jurisdictional control is dedicated to the surveillance of the law and constitutional and infraconstitutional normative acts of the Public Power for the existence and validity of the harmony of the instruments with the core of the 1988 Constitution (eg *constitutional* amendments, complementary laws, ordinary laws, delegated laws, provisional measures, legislative decrees, resolutions).

At the height of the debate, it is said that *constitutionality control* can be carried out by the following types: **a)** *diffuse* (exception, concrete or incidental control practiced by a judge or court

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with competence and capacity to declare *inter partes the unconstitutionality of* a law or normative act, a decision that will operate limited effects to those under jurisdiction *in concrete* . the controversy may reach the Supreme Court via Extraordinary Appeal – art. 102, III, CRFB/88); **B)** *abstract* (the competence of the jurisdiction of the Supreme Court is concentrated, to which the types of constitutional actions are appreciated: **b.1)** *Direct Action of Unconstitutionality – ADI* (intended to indirectly question and directly declare the unconstitutionality of a state or federal law or normative act); **b.2)** *Direct Action of Unconstitutionality by Omission – ADO* (intended to question the omission of state or federal public bodies regarding constitutional disciplines); **b.3)** *Declaratory Action of Constitutionality – ADC* (intended to indirectly question and directly declare the constitutionality of an exclusively federal law or normative act); and **b.4)** *Argument of Breach of Fundamental Precept - ADPF* (intended to question or challenge municipal, state or federal law or normative act).

Do writ Habeas Data

The *writ Habeas Data* , which emerged in the national legislation in 1988 and with disciplines located in art. 5, LXXII and LXXVII, with the complement of art. 105, I, *b* , art. 108, I, *c* , art. 109, VIII, art. 114, of CRFB/88, as well as adjective disciplines in Federal Ordinary Law 9.507/97, plays a unique role in the exercise of public-subjective rights through the complementary instrumentalization of the right to information, citizenship, political and civic participation and, reflexively, by shining light the defense of very personal rights (image, privacy, intimacy, *etc.*)

when you want access to elements that also lend themselves to defending them from unauthorized or unauthorized appropriations or simply to correct them.

Given the enclosed constitutional and infraconstitutional location, it is clear that *Habeas Data* etymologically means "bringing the data", thus achieving the right to information and prospering the operationalization of data (LENZA, 2015).

The guarantee of constitutional attire arises as a response to the significant difficulties faced by the citizen, with regard to access to data, especially those of a public nature in the nefarious laughs of the military dictatorship. Today, it is a magna action of a mandatory nature, free of charge and with a summary/special rite, subject to administrative and judicial proceedings, aimed at obtaining and rectifying personal information (private, intimate or general access) existing in public and private records of a public nature (except for some hypotheses motivated by a general and magna rule, involving the security of society and the State).

Popular Action

It stops, for the moment, in the disciplines to fall on *Popular Action* . Beforehand, the question is asked: what action is this? This is a constitutionally grounded action (art. art. 5, LXXIII, of CRFB/88) and infra-constitutional (Law 4.717/67), painstaking in popular sovereignty and civic-citizen contribution to the legality control of negative or harmful acts of public-subjective rights of a diffuse nature (the illegality and harmfulness of the act object of non-signation is assumed).

Popular Action , in the legal and juridical terms, lends itself to correcting or ending acts of injury to the public property and to

an entity that has the participation of the State; as well as administrative morality, the environment, historical and cultural heritage (goods and rights of economic, artistic, aesthetic, historical and tourist value) practiced by the following legal entities or entities: a) Federal Union, b **)** states **,** c **)** municipalities, **d)** Federal District, **e)** autarchic entities, **f)** public companies and autonomous social services, **g)** mixed economy and mutual insurance companies with representation of the Union, **h)** institutions or foundations that count or have contact with the participation or funding from the public treasury under certain quotas, **i)** companies incorporated into the Union, states, municipalities and the Federal District, and **j)** any legal entity or similar that directly or indirectly takes advantage of public coffers.

To remedy the act, any citizen may provoke the Judiciary (guardian of the constitution) for the annulment or declaration of nullity of the tainted act (incompetence, defect of form, illegality of the object, lack of determining reasons, misuse of purpose, etc.*) ,* with the consequent deconstitution of the damage and recomposition of the effects of the harmful act to the mantles of authorization of the norms of incidence (MEIRELLES, 2004).

It remains, however, clear, the appropriateness of the *Popular Action instrument* for the defense of all signaled goods, respecting the disciplines of the Constitutional-Positive Order. With the application of the mandatory action, which aims to annul an act harmful to those goods, any person of the people may question the act of government, state and entity qualified by law, to which the exercise of said instrument is confused with the very idea of democracy, through the which it is expected that people will monitor government and state action and charge for

the escape from good administration of public affairs. The instrument is therefore used to repair or satisfy rights of an individual, group or collective nature.

Public Civil Action

Located among the important constitutional actions or instruments of discursive initiation, the *Public Civil Action* has constitutional (art. 129, item III, CRFB/88) and infraconstitutional (Law 7.347/85, Law 8.078/90, Law 8.347/92 , Law 8.884/84, Law 11.448/07, Law 12.529/11, Law 12.966/14 and Law 13.004/14, among others that provide substantive and adjective rules that take advantage of the instrument), promoting the defense of transindividual, diffuse and collective.

Nevertheless, the study of the referenced constitutional procedural instrument requires the objective experimentation of non-constitutional norms, since the *Public Civil Action* receives greater discipline in the infra-constitutional level, deserving special attention from federal laws, which was not done in the instruments previously presented because they were already sufficient the constitutional provisions for the proper understanding and demonstration of proposition and applicability.

In this sense, Federal Law 7.347/85 provides for *Public Civil Action* and liability for any damages that incur against the environment, the consumer, goods and rights of artistic, aesthetic, historical, tourist and landscape value. The Law even admitted the possibility of precautionary action for the protection of finite assets and rights. The Public Prosecutor's Office, the Public Defender's Office, the Union, the States, the Federal District, the

municipalities, the autarchy, the public company, the foundation or society and associations can promote the action (LENZA, 2015).

With the advent of the Consumer Protection Code, *Public Civil Action* had new disciplines. Thus, art. 81, of Ordinary Federal Law 8.078/90, brought the definition of collective and transindividual rights , as well. In this regard, it should be noted that collective rights are those of a non-divisible nature and which have, as holders, a group, category or class of people who are bound by some factual circumstance. As for transindividual rights , they differ only with regard to the relationship that, differently, occurs due to factual circumstances that are based on a legal relationship (LENZA, 2015; ALMEIDA, 2005).

There was, opportunely, the presentation and elementary justification of the fundamental rights and guarantees of discursive value to the exploration of the prison space, therefore, applicable throughout the territory of incidence of the Brazilian norms, not being different to the situation of *deprivation* of *liberty* and to the persons disposed there (except for relativizations and suspensions of some legal assets on persons convicted with the final and unappealable decision and the effective stabilization of the effects of the sanctioning edict).

References

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