

THE IMPEACHMENT PROCESS IN BRAZIL AND THE DEMOCRATIC STATE OF LAW

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The impeachment process of the President of the Republic is a legal and political process regulated by the Constitution, regulated by Law No. 1,079 / 1950 and by the Internal Rules of the Chamber of Deputies and the Federal Senate. The Federal Supreme Court (STF) also regulated the impeachment process (ADPF 378 MC / DF) and gave new interpretation to the provisions of Law No. 1,079 / 1950 and the Internal Rules of the Chamber of Deputies and the Federal Senate. However, the STF understood that it was not within its competence to express itself on the merits of the impeachment process as being an exclusive competence of the Parliament, which meant a veiled consent to a parliamentary coup perpetrated by the conservative forces of the Brazilian elites and by the mainstream media. The deposition of the President of the Republic through the process of impeachment was a legal fraud and an opportunist parliamentary coup.

Keywords: Impeachment process; Legal and Political Process; Federal Constitution; Law No. 1,079 / 1950; Federal Court of Justice; Merit of the Impeachment Process; Legal Fraud; Parliamentary coup.

INTRODUCTION

The purpose of this Article is to analyze the impeachment process under the perspective of the fundamentals of administrative and constitutional law as well as the fundamental principles of Rule of Law. It is public knowledge that Brazil is going through a severe economic and political crisis, and that there was an ideological clash among the parties, divided over whether there were valid legal grounds to merit the President's Removal from office. Maurice Duverger (1996, p. 582) claims that the absence of a majority consensus often results in a Congress composition that prevents the composition of a relatively consistent and disciplined majority, likely to endure an entire term. Thus, in the absence of a stable and homogeneous majority, congresses are apparently omnipotent and governments are fragile.

This article will not address the political situation in which the impeachment process occurred. It will provide, however, an analysis based on the Constitution, the Law No. 1.079/1950 and the Internal Regulations of

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the lower chamber of Congress and the Senate. In addition, it will offer a contextualized detail of the Supreme Court jurisprudence.

Although there are articles and law reports on the impeachment process, elaborated from the perspective of tax and financial law, this literature was not an obstacle to punctual references regarding these specific studies in the present Article.

First, this article must address a core problem. Although the Constitution, Statutory Law, and Internal Congress Regulations well regulate the President's Impeachment proceedings, congressmen have exclusive ruling authority, and are not bound by any legal justification. They decide exclusively according to their political and subjective convictions, and not rarely by non-republican interests. Therefore, although primary legal authorities regulate the entire impeachment process, the final ruling that convict or acquit the defendant rises from political and patrimonial backgrounds, in which personal and party interests prevail over legal austerity.

Three hypotheses can be temporarily answered about the impeachment. First is that the Brazilian legal system regulates the impeachment procedure despite the fact that the two Houses, composed of political judges (Congressmen and Senators), are the ones who have the final say.

Second is that the Supreme Court has the authority to control the formal rules as well as the materiality of the offenses foreseen in the impeachment process. In another words, the Supreme Court must control the merit of the impeachment process whenever there is a violation of the Law No 1.079/1950, of the constitutional provisions laws that regulate the matter, or of the Internal Regulations of Congress.

The third, related to the second, relies on the assumption that congressmen have no discretion in the application of the constitutional and statutory laws that regulate impeachment. That is because conducts that provide grounds for impeachment, also known as crimes of responsibility, are expressly described by normative acts and are consequently subject to judicial review by the Supreme Court.

The method used in this article will focus on the guiding principles of constitutional and administrative law, with remissions to financial and criminal-procedural law.

The sources used are exclusively bibliographic with an approach that privileges the administrative and constitutional law, as well as the jurisprudence of the Supreme Court.

Rule of Law, according to José Afonso da Silva (2000, p.14), is "the fulfillment of the values of equality, liberty, and human dignity. These are values that fundament human coexistence." This concept embraces the Rule of Law under a liberal view. The historical transformations and the overcoming of classic liberalism associated the Rule of Law with Democracy, source of legitimacy to all state powers and fundamental rights. Democracy, associated with the Rule of Law, must ensure substantial equality to establish rules that recognize social, cultural and economic differences, indispensable to social coexistence (PEIXINHO, 2010, p. 130).

CONCEPT OF IMPEACHMENT

The term impeachment comes from the French (*empêcher*) and literally means to prevent, difficult, charge, input some illicit or defect to someone. Impeachment means, also, to discredit rightness, conduct and credibility (BABCOCK GOVE, 1961, p. 765). The meaning of impeachment is also used to denote a procedure enforced against a public agent, initiated upon an indictment.

In England, impeachment proceedings are commenced in the House of Commons, but the House of Lords has the authority to trial (BABCOCK GOVE, 1961, p. 765). In the United States, the initiation of the impeachment procedure is in the House of Representatives, and it is the Senate's authority to try an impeachment brought by the House (BLACK, M. A, 1990, p. 989 e LEAL, 1925, p. 436). In Brazil, similarly to the countries mentioned, the impeachment process begins with an authorization from the lower house of Congress, and the trial is the Senate's responsibility.

THE RITE OF THE IMPEACHMENT PROCESS

The formal procedure adopted in the impeachment of the President is set forth by the Constitution, regulated by the Law No 1.079/1950 and by the intern regulations of the Congress. However, the Supreme Court's jurisprudence (ADPF 378 MC/DF) changed the content of several sections of the Law No 1079/1950 and of the Intern Regulations of Congress.

THE ESTABLISHMENT OF THE IMPEACHMENT PROCESS IN THE LOWER CHAMBER OF CONGRESS

The impeachment process begins with a petition for impeachment addressed to the lower chamber of Congress, which can be filed by any citizen that has the knowledge of facts that could constitute a responsibility crime. The petition must have an exposition of facts and legal fundamentals that demonstrate how the conduct of the potential respondent fits in the framework of the criminal conducts that warrant impeachment, as prescribed by the Constitution, the Law No 1079/1950 and the Intern Regulations of the Congress.

THE COMPLAINT IN THE IMPEACHMENT PROCESS

The speaker of the lower house of Congress has the authority to do the preliminary analysis of the petition. The evaluation of the petition's preconditions must not result from a discretionary decision. It would be absurd to adopt full discretion in the analysis of the petition, because the laws that regulate the procedure of impeachment exhaustively enumerate the conducts that constitute crimes of responsibility.

The decision that accepts the petition, allowing a full investigation or not, is subject to judicial review by the Supreme Court, because the alleged misconduct must have discriminated definition in the law. If the speaker of the House accepts the petition, assuming that the normative preconditions are fulfilled, the accusations will be referred to a Special Committee that will investigate and decide if removal is warranted.

THE ADMISSIBILITY OF THE IMPEACHMENT AT THE SPECIAL COMMITTEE

Once the speaker of the House accepts the complaint, the investigation as to whether grounds exist to warrant removal starts in the special committee, formed exclusively for that purpose. The committee must assemble in the following 48 hours to elect its President and a Presiding Judge. A subpoena must be issued to allow the respondent to present its preliminary defense within the next ten sessions. The estimated time for the Committee to finish all its duties is ten days, with the elaboration of a conclusive report recommending the proceedings to move forward or not. The defense at this point must show that the petition lacks legal justification and substantial evidence to constitute grounds for impeachment. However, these preliminary proceedings do not allow proper defense regarding the materiality of the charges, nor any strict evidence analysis.

The defense can only argue and demonstrate that the alleged charges do not constitute sufficient grounds for removal. During the preliminary defense, evidence analysis has the sole purpose of demonstrating probable cause to avoid unlawful and unjustified trials. If the petition and the committee investigations fail to present substantial evidence that the alleged conduct consists in a responsibility crime, the committee must dismiss the case. However, the committee must conduct an in-depth analysis of admissibility, because consequences of an indictment will unfold during the next steps of the proceeding and could affect a political officer elected through the democratic process.

During the creation of the special committee, the principle of party proportionality must be respected, as it is substantially relevant to the representation of party minorities. Once the special committee concludes its final report, establishing specific allegations of misconduct, it shall read it to the lower house and publish it in its Official Diary. Congressmen will consider the committee's report and vote the impeachment by nominal voting.

THE IMPEACHMENT PROCESS IN THE FULL HOUSE

After the Special Committee presents its resolution, the full House will have the authority to dismiss or bound over the case to trial. If the charges are dismissed, the case is closed and filed. If bound over, the proceedings will continue and the Senate will try the case, ruling the merits of the charge. The procedure in the full House has the sole purpose of ratifying or rejecting the resolution presented by the committee. This procedural phase in the House admits only the diligences necessary to clarify specific points of the report. However, it is not admissible to

produce any evidence regarding the materiality of the charges. The trial must observe the content of the indictment, as foreseen in the report approved by the Special Commission.

A vote to impeach by the House requires two-thirds of the members by nominal vote. Once the House votes to impeach, a formal communication is referred to the Senate, responsible for another judgement of admissibility and materiality, later.

However, what occurs during the impeachment voting is congressmen, despite rare exceptions, voting according to their subjective beliefs and political interests. The decision disregards any juridical concern, significantly undermining the real purpose of impeaching the highest political agent elected by popular vote.

The hypothesis of neglecting the public interest that should orientate the impeachment process causes undeniable deviation from the main purpose of the legislative branch, violating constitutional and legal provisions. There is unconstitutionality in the deviation of purpose because the Constitution demands that congressmen deliberate whether to impeach considering constitutional provisions and not subjective and ideological criteria. There is also a violation of the legality principle because the procedure of impeachment is established by the law no 1079/1950 and not by personal convictions or alleged political or economic assumptions.

Many arguments used by congressmen and some senators to fundament the impeachment relied on alleged unlawful conducts regarding the “bigger picture” of the President Dilma Rousseff’s term. By “bigger picture” congressmen and senators meant alleged political and administrative errors of the President. In another words, congressmen and senators were not concerned with the fulfilment of legal and constitutional grounds for impeachment.

The principles of constitutionality and legality are the foundation of Democracy, without which the dogma “*L’état c’est moi*”, attributed to an absolutist government model, would perpetuate itself including the usurpation of the legislative branch. According to Professor Luis Roberto Barroso, “no act contrary to the Constitution is valid. And the lack of validity brings consequently the annullability or the nullity. An unconstitutional act is a null act in essence”.

The legality principal, under the formal point of view, preserves the authority of the legislative branch as well as the normative hierarchy set forth by the Constitution in order to limit public authorities, protecting citizens from arbitrary actions (RIVERO; WALINE, 1996, p. 79). Any administrative decision not grounded by legal and constitutional principles results in “a pathological function of power (*demonia*) associated with a strong presumption of possible limit transgression” (QUEIROZ, 2009, p 258) or, as Jorge Miranda punctuates, “misuse of the legislative branch”.

THE IMPEACHMENT PROCESS IN SENATE

Once the House votes to impeach, Senate commences the trial, divided in two major procedural steps. The first step consists of referring the indictment to a Special Committee, the second one will be completed by the full Senate.

The composition of the Special Committee must respect the party proportionality principle, in accordance to what happens in the House. The Special Committee will have the authority to build the case, collecting necessary evidences, hearing witnesses and interest parties. However, evidence gathering at this point has the sole purpose of offering fundaments regarding the admissibility of the accusation.

At this procedural stage, there is still no ruling regarding materiality. However, in accordance to the principle of due process, the committee must provide the necessary resources to assure full defense to the respondent, even if in a summary way. Once all the initial formalities are fulfilled, the special committee will deliberate the acceptance of the charges by simple majority.

With the acceptance, the charges are bound over to trial at the full Senate, which will also deliberate by simple majority whether to allow the process to continue or dismiss the case. If the charges are dismissed, the case will be filed. If not, the President will be suspended from office for 180 days. During this time, the trial will occur, analyzing the entire evidence collected during the pre-trial investigations. If no decision is reached within 180 days, the suspension of the respondent term ends and the president will return to his or her office. The Supreme Court Chief Justice has the authority to rule conflicts that may arise during the impeachment process.

A conviction on a charge of impeachment, according to the single paragraph of the article 52 of the Federal Constitution and the article 378 of the internal regulations of the Senate, requires at least two-thirds of the votes of the full senate. Regarding the acceptance to initiate the impeachment process in the Senate, the Supreme Court held that a simple majority is sufficient, in accordance to the requirements for the impeachment trials of Supreme Court Justices and the Attorney General.

By construing an equal quorum to initiate the impeachment of the president, vice-president, Supreme Court Justices and the Attorney General, the Supreme Court caused a major setback to Democracy. The fact that the president is elected by popular vote should require a qualified quorum. It is much easier to guarantee the acceptance of the charges through a simple majority than with a qualified majority of two-thirds.

In that case, the Supreme Court construed in favor of the prosecution and not of the respondent, especially because the acceptance of the charges in the Senate results in an immediate suspension of the president from its office for up to 180 days. If the Constitution is silent about the minimal quorum to initiate the impeachment process of the president, the Supreme Court should apply, hermeneutically, the principle that favors the respondent.

The consequences of the Impeachment trial in senate

The impeachment process, ruled by Law No 1079/1950, establishes that after the fulfillment of all formalities inherent to the defense of the President and the observance of due process of law, the Senate shall render its decision. If the Senate votes to acquit, the respondent will resume his or her term and return to his or her office (Art. 32). If the vote is to convict the respondent on one or more charges against him or her, according to articles 33 and 34 of Law No 1079/1950, the presiding officer of the Senate will pronounce the vote to convict and remove. The respondent will not only be removed from office, but will also be disqualified from holding an office of public trust under the country.

The penalties of removal from office and disqualification from holding an office of public trust

At the impeachment trial of President Dilma Rousseff, on August 21st of 2016, the Senate, advised by the Chief Justice of the Supreme Court, decided to split the vote as requested by Senator Randolfe Rodrigues (AP). In the paradigmatic case, the Chief Justice of the Supreme Court, in an “in-chambers” decision, ruled that the voting should be divided in two penalties: (1) the removal from the office and (2) the disqualification from holding an office of public trust.

In the *writ of mandamus* No. 21689/DF, presided by Justice Carlos Velloso, the Supreme Court held that “considering the system set forth by the Law No. 1079 of 1950, it is not possible to exclusively enforce the penalty of disqualification from holding an office of public trust, nor to judge it as an accessory penalty”. That is, according to the Supreme Court’s interpretation during the impeachment trial of the President Fernando Collor de Mello, the penalties of removal from office and disqualification from holding a public office are cumulative. From the case analysis, it is possible to interpret the Senate’s decision in the following ways: (1) the alleged responsibility crime was not a serious offense (manipulating the federal budget to conceal the nation’s economic problems and changing decrees without congressional authorization). Therefore, the enforcement of both penalties would be considered too stringent, authorizing the proportionality principle to repel cumulating the penalties. (2) Senate’s decision to judge the penalties separately consist in an *interna corporis* matter, immune from Supreme Court’s judicial review as it concerns materiality and not procedural matters, repelling Supreme Court’s control as held in the ADPF 378 MC/DF. (3) Senate’s decision to divide the penalties violate the sole paragraph of the Article 52 of the Constitution because the penalties must be enforced cumulatively, as already decided in the precedent MS 21689/DF already mentioned. This last hypothesis seems the most reasonable one.

THE DEFINITION OF RESPONSIBILITY CRIME IN THE CONSTITUTION OF 1988 AND THE LAW NO. 1.079/1950

Legal norms are categorical, cogent and binding rules of conduct, which determine the duties and rights. They are imperative, and their violation results in sanctions to the offender. The Constitution sets forth legal and political norms that depend on several factors to allow enforcement by political characters. The historical, social, economic and political conjuncture determine the effectiveness and legitimacy of such norms.

Paulo Brossard (1992, p. 75) left as a doctrinal legacy a definition that is now considered classic and reproduced by many scholars. The jurist says that under Brazilian and Argentinian law "impeachment has a political feature, it originates only from political causes, aims to accomplish political results, is brought under political considerations and judged according to political criteria - judgment that does not exclude but assumes, of course, the adoption of legal criteria". Thus, although the impeachment procedure reunites a set of norms with political features, the material and procedural norms are still subject to judicial review. Political judges (congressmen and senators) are responsible for judging the acceptance of charges and trying the impeachment, but the procedure and the material law are subjected to the strict control of the Judicial branch, such as the legality and constitutionality control conducted by the Chief Justice of the Supreme Court during the process.

Evandro Lins e Silva (1992) does a severely technical and lucid analysis of the role of the Senate in the impeachment trial, "during an impeachment proceeding, Senate's decision cannot be branded as a simple voting of a bill or a mere act of political power. Everything revolves around a constitutional rule, by a political power of the Union, converted into a Court".

In the same line of reasoning, Manoel Gonçalves Ferreira Filho (1992) argues that in the "presidential system, the president is not politically liable to Congress. This ultimately means that he or she cannot be removed from office for purely political reasons, such as those resulting from the disapproval of his or her way of governing". In the presidential system, the President enjoys an exclusive independence in national politics because he was elected by popular vote. MORRISON (2000, p. 42).

THE INTERPRETATION OF THE RESPONSIBILITY CRIMES

The examination of the hypotheses that constitute responsibility crimes should follow the guidance of strict legality prescribed by criminal science. According to Juarez Tavares (2002, p. 30), the principle of strict legality "is the one formally provided by the law as a necessary precondition to the enforcement of a penalty, according to the classic formula *Nullum crimen, nulla poena sine lege*. Thus, on a strict interpretation, "it is not possible to qualify as an offense all (or only) conducts that are considered immoral or, in any case, worthy of

sanction, but only (and all) the ones that, regardless of moral valuation, are designated by the law as conducts that require penalties”.

At last, Juarez Tavares (2002, p. 31) reasons that "the principle of strict legality is understood as a specific legislative technique, oriented to exclude, due to its arbitrary and discriminatory feature, criminal conventions regarding subjective features and not facts. Therefore, innovating and not only regularly applying legal provisions of sanction”.

In the always current lesson of the beloved Spanish Professor Eduardo García de Enterría (2001, p. 166-167), the inspiring principles that guide criminal law are applicable to the state law coercion, since one same legal good can be protected by both administrative and penal techniques. Therefore, in cases of legislative omission it is possible to enforce criminal laws. The explanation to a strict interpretation of the norms that regulate crimes of responsibility is pedagogic: responsibility crimes have extremely harmful consequences as they can remove a president elected by the popular vote from his or her office. Thus, the norms that outline conducts deemed unlawful, and consisting of responsibility crimes, do not allow an analogical, extensive or teleological interpretation or of any other hermeneutic method that expands the outline of the specific conduct. That is, conducts not specifically expressed in the normative list of crimes of responsibility cannot sustain an indictment.

Moreover, an indictment is only valid while the respondent is still in his or her presidency term. If by any reason the respondent permanently resigns from office, the indictment will lose its object. The persistence in alternatively applying criminal legislation to the impeachment process comes from the analysis of the article 38 of the Law 1079/50: “in the process and trial of the President and of the Secretaries of the State, the internal regulations of the Congress and the Code of Penal Procedure will be alternatively applied, in its pertinent matters”. By a logical and legal rationality, if the process of impeachment follows the formalities of criminal procedure in a subsidiary way, the norms that outline responsibility crimes are like material criminal laws: both rigid and inflexible, and do not authorize any imputation without an explicit provision in the catalog of conducts deemed unlawful.

THE DIFFERENCES BETWEEN UNLAWFUL ADMINISTRATIVE ACTS AND CRIMES OF RESPONSIBILITY

The Articles 85 of the Federal Constitution and 4 of the Law No. 1079/1950, as previously seen, exhaustively outline responsibility crimes. Thus, when it comes to a punishing procedure in which there are rights and guarantees restrictions, the interpretation of the outlines must be strict, like what happens with criminal and administrative law. The principle of criminal classification comes directly from the principle of legality, namely: “no one shall be obliged to do or not to do anything other than by the enforcement of law” (art. 5, II, CF).

Therefore, it would be unconstitutional and illegal to amplify conducts deemed unlawful and responsibility crimes outside the strict limits set forth by the laws that regulate the matter (OSÓRIO, 2000, p. 207-208).

The interpretation of the principle of legality must not be confused with a sick and distort allegiance to the literalness of laws. It means, instead, as in the lesson of Miguel Seabra Fagundes (2010, p. 116) that "all administrative acts are limited by the subordination to the legal order, that is, to legality ... Where there is positive law, there cannot be discretion. On the other hand, as the administrative function is essentially responsible to fulfill the law, and consists in the main object of the activities of the Public Administration, it cannot be exercised without an authorizing legal norm nor beyond its limits".

Therefore, the administrative function consists of and is defined by the subordination to the law (MALBERG, 2001, p.480). The resource of the principle of legality in its formal and substantive sense is indispensable to the legitimacy of administrative acts. One must observe both legal validity, that is, the linkage between administrative acts and the legislation, and substantial validity, which imposes to the public officers an administrative conduct that penetrates the exercise of power (CARINGELLA, 2010, p. 46).

Examining the conducts defined as responsibility crimes, the administrative act authorizing governmental expenses without the existence of enough resources is not classified by the law as a responsibility crime. The list provided by the Article 85 of the Constitution and in the list provided by the article 4 of Law No. 1079/1950, do not include the provision of an unlawful conduct related to "the authorization of unauthorized expenses in disregard of budgetary resources". The alleged "federal budget manipulation" with the purpose of masking public accounts and raise the primary deficit can be considered a reprehensive administrative conduct, but it cannot be classified as a responsibility crime.

PERSONAL LIABILITY OF THE PRESIDENT FOR RESPONSIBILITY CRIMES

One of the fundamental principles of administrative law is the principle of hierarchy or hierarchical power. The Public Administration is composed of government agencies and public officers who are distribute to various administrative instances to fulfill public interest. According to the lesson of the professor Hely Lopes Meirelles (2008: 123), "hierarchical power is the authority that the executive branch holds to distribute and organize the functions of its agencies, order and review the performance of its officers establishing the relationship of subordination between servers of its staff." However, hierarchical power must be brought into line with administrative dispersal, which aims to enable the various administrative agencies to be agile, prompt and efficient so that the state bureaucratic machine achieves the objectives of the government policies.

According to Professor Celso Antônio Bandeira de Mello's lesson (2015, p.154), administrative dispersal means "the internal distribution of decision-making plexuses, grouped into individualized units." Secondly,

according to the scholar, the dispersal "is realized in order of matter (for instance, Secretary of Justice, Health and Education), as well as degree (hierarchy), that is, the level of decision-making given to the different officers which hold different levels of authority (for instance, Department and Division directors, Head of Session or Sector)."

Regarding the organizing principles of the Executive Branch, Alexandre Santos Aragão (2012, p. 106), mentions the principle of speciality which "is inherent to the administrative dispersal, through which the state highlights some of its activities, referring them to determined entities or agencies". The principle of specialty is fundamental to the administrative organization structure because not only allows a more transparent distribution of competence but also allows a better efficiency in the performance of public services since the President cannot concentrate all the administrative duties.

The responsibilities of the President, according to Queiroga Lavié (1987, p.230), are exercised in an individual way, because its Secretaries do not constitute a collegiate body. That way, its resolutions are adopted in a decisional unity, ensuring efficiency and uniformity in the State conducts. In a Presidential system, President's assistants, as well as the President, are responsible for the acts within its authorities and there is a solidarity bond with other public agents in different spheres of competence (ZARINI, 1999, p.802). However, the solidarity does not imply a lack of autonomy of the administrative authorities nor the fragmentation of authorities. In this way, public agents assisting the President act with independence and according to rules of competence. According to this rule, as Klaus Stern (1987, p. 286) explained, authorities are conferred to certain agencies of the State or spheres of competence are determined among agencies of the State. The authorities of public agencies are attribution spheres that are not always detailed, nonetheless are open clauses to enable the Public Administration conduct to be dynamic.

In this sense, the necessary and preliminary conclusion is that there are two kinds of responsibilities which cannot be mistaken, namely: the subjective liability of the President and the objective liability of the public administration. Concerning the executive branch, it is always necessary to separate the responsibility of the President, head of the executive branch, and its subordinates, secretaries of state, and others. To construe a responsibility crime, it is necessary to inquiry who is liable, the president or the public agents of the executive branch.

In the petition addressed to the lower chamber of Congress, the petitioners request the acceptance of the complaints under the grounds established by the norms that underline responsibility crimes. That is: Article 85, items V, I and VII of the Federal Constitution; In Articles 4, Items V and VI; 9, numbers 3 and 7; 10 numbers 6, 7, 8 and 9; And 11, number 3, of Law 1,079 / 1950.

In a detailed examination of the various legal provisions mentioned, it is easy to realize that the petitioners did not prove that the President was personal liable for any violation regarding administrative ethics,

budgetary law nor any other legislation. A generic imputation of liability cannot be held against the President.

The constitutional and legal provisions that categorize responsibility crimes demand irrefutable proof of the president's criminal intent. The violations characterized by the criminal provisions only constitute criminal offences if they are practiced by the Head of the executive branch. It is possible to verify, as a historical evidence, that in the petition addressed to Congress against the former president Fernando Afonso Collor de Mello, the petitioners, Barbosa Lima Sobrinho and Marcello Lavenere Machado (1993, p. 39), assert that "since March 15, 1990 the respondent, as well as some of his relatives - the wife, the ex-wife, the mother - have wrongly received large sums of money, besides other assets, without indicating the lawful origin of these advantages". In the indictment, the president was accused of lying because there had been "deposits made to his account by issuers of checks using false identity – ghosts - projections of P.C. Farias" (1993, 97). As the historical precedent allows to infer, the imputation of a responsibility crime to the President must be personal, and there is no accusation when the offenses fall under the responsibility of third parties.

Regarding the accusation that Dilma had signed decrees that had not been authorized by Congress, it is necessary to discuss the nature of those decrees. According to the indictment, the President alleged signed 6 (six) supplementary credit decrees in the period from July 27 to August 20, 2015, in an alleged violation of the budgetary law. By signing the decrees, the president would have committed a responsibility crime.

Decrees are composed administrative acts that go through several stages of elaboration and legality and legitimacy verification until they are finally signed by the President. They are called composed administrative acts, according to José dos Santos Carvalho Filho (2016, p. 136), because unlike complex acts, "they are not composed of autonomous, although multiple, wills. There is, in fact, only one autonomous will, of own content. The rest of them are all merely instrumental since have the sole purpose of legitimising the act of own content". In the decree authorizing the opening of supplementary credits, several administrative authorities intervened from the conception of the act to the signing of the decree by the head of the executive branch.

In the governmental organization, it is impossible for the President to have full control of technical decisions because of the following reasons: Firstly, by signing the decree authorizing the opening of additional credits, the President has only ratified a decision that was already made by various administrative agencies in the economic area. Secondly, the enforceable decision to open supplementary credits does not constitute a responsibility crime because it is not a conduct characterized as unlawful in the normative description of presidential duties and obligations. Finally, the decision to open additional credit, as stipulated in the Article 167 (V) of the Constitution, is not unlawful because the supplementary credits were foreseen by 2015's budget.

The alleged supplementary credits of 2014 were not indicated in the petition received by the speaker of the house because of the constitutional provision of Article 86, which prevents the President of answering for acts

prior of his or her term.

It is also not possible to argue that the presidential decree violated Section VI of Article 85 of the Constitution, which provides that acts of the President that attempt against the budgetary law consist in responsibility crimes. Acts contrary to the budgetary law would be the ones in which the President does not observe all the legislative formalities provided by the article 165 of the Constitution. Moreover, the Constitution foresees that determined investments are budgetary linked. For instant, constitute in violations of the public budget, expenses with Union personnel that exceeds 50% of net revenue (Article 19, I of Complementary Law No. 101/2000). Thus, the provision of Article 8 is clear when prescribing that "resources legally linked to a specific purpose will be used, exclusively, to serve the purpose of its attachment, even in an exercise other than that in which it became available." In this way, non-compliance with these specific rules constitute a violation of budgetary law.

THE SUPREME COURT JUDICIAL REVIEW OF THE IMPEACHMENT PROCESS

It is a current the affirmation - almost common sense - that the Supreme Court is distracted from examining the value of the impeachment process of the President because of its political nature. Therefore, the Supreme Court would be connected exclusively to the control of the instrumental procedure and not of the materiality of the impeachment because of its exclusive political nature. It is true that the Senate during the impeachment has the role of, in the words of Jose Afonso da Silva (2000, p. 132), "a court of political judgment." Regarding responsibility crimes, the lower chamber of Congress - as in criminal proceedings - and the Senate - which is the judge of facts - in the lesson of Miguel Seabra Fagundes (2010, p. 1680) "exercise a typically judicial activity." The illustrious administrative also says that "due to its eminent political nature, the impeachment trial does not allow a responsibility judgement to occur as a real trial, with due ascertaining of fact (delict), enforcement of law (punishment or acquittal) and double jeopardy (preclusion of the claim)".

Regarding the dominant hermeneutics of the 1988 Constitution and the construe of Article 5, XXXV, "the law shall not exclude from the appreciation of the Judge any injury or threat to the law." This constitutional fundament establishes the supremacy of the Rule of Law in any administrative, legislative or judicial acts which cannot have immunity when causing injury to a citizen. The so-called political acts, which distort judicial review, have a very well-defined dimension: "are those which, although administrative in form and substance, have a purely political purpose, circumscribed to the internal activity of the Public Administration and that, for this reason, does not reach, at least directly, the subjective rights of the administered" (TUCCI, 1988, p.)

In the lesson of Ruy Barbosa (1933, 41-42), political questions can be transformed into legal matters: "political outside the presence of justice, litigation may assume the judiciary character, taking the regular form of an

action. The effect of the interference of justice often consists only in transforming, through the aspect in which the case presents itself, a political question in a juridical matter. "More importantly, adduces Ruy Barbosa: "when the pendency touches on individual rights, justice cannot refrain from ruling, even if the hypothesis meets the highest political interests." Now as it can be concluded from the doctrinal lessons, it is inadmissible to comprehend, even if assuming impeachment as a political matter, that the Brazilian Supreme Court does not control the materiality of the responsibility crimes provided in the Constitution and Law No. 1,079 / 1950.

The responsibility crimes ruled in Article 85 of the 1988 Constitution, and Law No. 1079 /1950 are *numerus clausus* and are subject to judicial review by the Brazilian Supreme Court because they may affect the President's personal rights as well as of another political agents who are subject to the Senate's judgment. In the undeniable function of preserving the integrity of the Constitution, the Supreme Court has the last word, either on controlling the impeachment or on monitoring the legality and constitutionality of normative acts that set forth responsibility crimes. In the words of Minister Celso de Mello:

The constitutional interpretation that results from decisions held by the Supreme Court - which have the eminent function of "guarding the Constitution" (CF, Article 102, "caput") - assumes a fundamental role in the institutional organization of the Brazilian State, justifying the recognition that the current political-judicial model in our country conferred to the Supreme Court the unique prerogative of having the monopoly of the last word on the subject of exegesis of the norms ruled in the text of the Basic Law.

Thus, it is inconceivable that an impeachment trial, ruled by legal and constitutional norms that imply severe sanctions, which can result in the removal of the highest political agent of the country, cannot be subject to judicial review by the judiciary branch. Therefore, it is not reasonable to establish a precedent that construes responsibility crimes as a *interna corporis*, as it is outlined in the following precedent:

Impeachment. The right which can be demanded through a writ of mandamus refers to the compliance with the due process of the indictment. Matters regarding its convenience or materiality do not fall under the authority the judicial branch, by acting in such matters, the judiciary would usurp the authority of the legislative branch to rule the eminent political matters involved in that controversy.

The acceptance of the indictment and the materiality judgement, both conducted by the houses of Congress in the impeachment process, must be in perfect accordance with the principles of constitutionality and legality, fundamentals of the Rule of Law. The constitutional jurisdiction of the Supreme Court has a historical and indeclinable duty to review possible damages that might result from the trial for responsibility crimes conducted by the Senate.

Ronald Dworkin has an indispensable doctrinal lesson regarding usurpations of public authorities. The author claims that "the United States is a much just society than it would have been if its constitutional rights had

been entrusted to the consciousness of majoritarian institutions. In any case, Marshall decided that the courts in general, and the Supreme Court ultimately, have the power to construe constitutional provisions for the government and to declare the acts of another public agencies invalid whenever they exceed the authorities vested in them by the Constitution, correctly understood" (DWORKIN, 1999, pp. 426-427).

CONCLUSION

The impeachment proceedings of the President Dilma Rousseff had great national and international repercussions. There was not a consensus regarding the practice of a responsibility crime. The greatest Brazilian jurists stood against the impeachment. There has been great division in society. Many Brazilians went to the streets supporting the impeachment process, but there was also a reasonable amount of people standing for the maintenance of President Dilma Rousseff. All the conservative elites backed up by the mainstream media have made ostensible campaigns to destabilize the presidential term. The Vice-President Michel Temer, a decadent politician and representative of the country's most conservative blocs, articulated a parliamentary coup with allies in the House of Representatives and the Senate and took the presidency, what would not occur in case of institutional normality.

The President was only removed from office because she lost the support in Congress, what transformed the presidential regime into a system of party coalition with exclusive objectives of seizing power. One could thus say that what happened in Brazil was a parliamentary coup with the endorsement of the Supreme Court, that refused to review the merits of the impeachment process under the argument, contestable to say the least, that the presidential impeachment must be guided by the political decisions of the House of Representatives and the Senate. That is a huge lie. There are several precedents in which the Supreme Court exercised a judicial review of typically political proceedings when it was deemed politically convenient. One of the most recent examples was the decision to suspend the term of the congressman Eduardo Cunha in the Preliminary Injunction N. 4,070 - DF through a ruling that lacked any constitutional fundament. It is true that the congressman Eduardo Cunha practiced a lot of arbitrary conducts in Congress, but only the house of representatives could have suspended his term and not a judicial ruling with no constitutional fundament. However, this article did not aim to examine the social and political aspects that underlie the impeachment process.

Through a judicial angle, from the perspective of constitutional and administrative law, which is the purpose of this work, after analyzing the main constitutional, legal, doctrinal and jurisprudence of the Supreme Court pertinent to the impeachment process, the following conclusions can be summarized:

1. The rules of procedure adopted in the impeachment of the President is set forth by the Constitution and regulated by Law No. 1,079 / 1950 and by the intern regulations of the House of Representatives and the

- Federal Senate, with the changes made by the STF in ADPF 378 MC / DF.
2. There is a violation of the principle of legality when the rules of procedure of the impeachment process, defined by Law No. 1.079 / 1950, are based on personal convictions or of presumed political or economic conjuncture.
 3. The admissibility and judgment of the impeachment process are both conducted by political judges (congressmen and Senators). However, the procedural and material law are subject to judicial review, as it can be analyzed from the control of legality and constitutionality made by the Head Justice of the Supreme Court in the proceedings that were in progress in the Senate.
 4. The President, in a presidential system, cannot be removed from office for purely political motives, such as those arising from the disapproval of his or her government policies, of the general orientation that is given to governmental action.
 5. In the subsidiary enforcement of the Brazilian Criminal Procedure Law to the process of impeachment, the interpretation of the hypotheses that constitute crimes of responsibilities must follow the strict legality of the criminal science.
 6. Using funds from state banks to cover budget shortfalls and using unauthorized decrees to open supplementary credits are not defined as responsibility crimes, prescribed by Article 85 (I to VII) of the Constitution and Article 4 (I to VIII) of Law No. 1079/1950.
 7. According to the principle of hierarchy and administrative dispersal, the liability for alleged irregular acts must be attributed to the public agents that held correlated administrative authorities, since the dispersed administrative instances authorize that public agents act with administrative autonomy within his or her authority.
 8. Acts classified as responsibility crimes must have intent with basis on the only possible construe provided in article 85 of the Constitution, since it is evident that the responsibility crimes that can be attributed to the President are acts that violate the Federal Constitution.
 9. The list of responsibility crimes provided by the Article 85 of the 1988 Constitution and by the Law No. 1.079 / 1950 are *numerus clausus* and subject to judicial review by the Supreme Court because they affect the subjective rights of the President and other political actors who are submitted to the judgment of the Senate.
 10. It is inconceivable that the Supreme Court refuses to rule over the materiality of the charges of impeachment, since these proceedings are regulated by legal and constitutional rules that can result in serious sanctions, which can result in the removal of the president from office. It is not reasonable to set a precedent construing responsibility crimes as normative acts.

O PROCESSO DE IMPEACHMENT NO BRASIL E O ESTADO DEMOCRÁTICO DE DIREITO

Resumo

O processo de impeachment do Presidente da República é um processo jurídico e político regulado pela Constituição, regulamentado pela Lei nº 1.079/1950 e pelos Regimentos Internos da Câmara dos Deputados e do Senado Federal. O Supremo Tribunal Federal-STF também regulamentou (ADPF 378 MC/DF) o processo de impeachment e deu nova interpretação aos dispositivos da Lei nº 1.079/1950 e dos Regimentos Internos da Câmara dos Deputados e do Senado Federal. Porém, o STF entendeu que não era de sua competência manifestar-se sobre o mérito do processo de impeachment por ser uma competência exclusiva do Parlamento, o que significou um consentimento velado a um golpe parlamentar perpetrado pelas forças conservadoras das elites brasileiras e pela grande mídia. A deposição da Presidenta da República por meio do processo de impeachment foi uma fraude jurídica e um golpe parlamentar oportunista.

Palavras-chaves: Processo de Impeachment; Processo Jurídico e Político; Constituição Federal; Lei nº 1.079/1950; Supremo Tribunal Federal; Mérito do Processo de Impeachment; Fraude Jurídica; Golpe Parlamentar.

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