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Line of research: Public sphere, legitimacy and control

The identity between the public sphere and the state cannot be conceived at the same time. The public sphere "is composed of movements, organizations and associations, which capture the echoes of social problems that resonate in the private spheres, condense them and transmit them, then, to the public political sphere. Its institutional nucleus is made up of free, non-state and non-economic associations and organizations, which anchor the communication structures of the public sphere in the social components of the world of life ". (HABERMAS, Jürgen. Law and democracy: between fatality and validity. Rio de Janeiro: Tempo Brasileiro, 1999. v. 2, p. 99 et seq.).

The center of the public political sphere, in turn, is also composed of other functional "subsystems", each representing its role within the political system, such as the administrative system, the parliamentary complex, the judicial system and the democratic opinion formed by elections and political parties. In the contemporary moment, spaces in the public sphere gain more breadth and dynamism in the search for collective means of building plural identities. It is no longer between state powers or because of belonging to historically situated communities, but between different sources of social integration, that a new balance must be sought.

The object of study in this line aims to reconstruct the classic academic approaches to public law, centered on the perspective of the State and Public Administration, based on two instruments of the social integration process: legitimacy and control.

Start date: 01/01/2010

http://ppg.fumec.br/direito/linhas-de-pesquisa/

THE ILLEGIBILITY OF TERRITORIAL LIMITATION OF THE EFFECTS OF SENTENCES IN COLLECTIVE ACTIONS IN THE LIGHT OF ISONOMY

MERITUM MAGAZINE • v.15 • n.2 • p. 365-366 • May/Aug. 2020

GUILHERME ABRAS GUIMARÃES DE ABREU

ABREU, Guilherme Abras Guimarães de. **The illegibility of the territorial limitation of the effects of sentences in collective actions in the light of isonomy**. 94f. 2020. Dissertation (Master in Law). Minas Gerais Education and Culture Foundation - FUMEC. Faculty of Human, Social and Health Sciences, Postgraduate Program in Law. Belo Horizonte, 2020.

Defense on June 8, 2020.
Virtual room on the digital “zoom” platform.
Advisor: Prof. Dr. Luís Carlos Balbino Gambogi

ABSTRACT

Contemporary society is marked by collective disputes and the protection of collective rights in a broad sense, involving a group of people or even the entire society. In this context, Collective Procedural Law is inserted, destined to solve, by means of a single judicial response, conflicts of greater amplitude, avoiding the dispersion of individual demands. Collective procedural law is governed both by the general principles of the process - such as isonomy - and by specific principles, which contribute to giving autonomy to the discipline. In Brazil, the defense of collective interests is systematized, mainly, by Law No. 7,347 / 1985 and by the Consumer Protection Code, which, integrated, form the collective protection microsystem. In Collective Procedural Law, it is common for jurisdictional provisions to reach determined groups or not, to the extent that the interest in discussion radiates. The Federal Executive Branch of Brazil, seeing itself limited in its performance by the decisions rendered in collective actions, instituted a new system, changing, by means of Provisional Measure No. 1,570-5 / 1997, later converted into Law No. 9,494 / 1997, the wording originating in art. 16 of the Public Civil Action Law, with the objective of restricting the effectiveness of sentences handed down in public civil actions to the territorial area within the jurisdiction of the prolacting judge. Thus, it is asked, as a research problem, whether, in the light of isonomy, it would be legitimate to limit the effects of sentences in collective actions, under the terms of art. 16 of the Public Civil Action Law, considering the changes promoted. As a hypothesis, it is stated that the territorial limitation of the effects of sentences in collective actions is not legitimate, since it allows for the multiplication of demands and increases the chances that individuals in identical situations will receive different jurisdictional treatments, denaturing the essence of collective actions. and disintegrating the protection of collective rights. The general objective of the work is to verify, in the light of the principle of isonomy, the legitimacy of the territorial limitation of the effects of sentences in collective actions, under the terms of the new wording of art. 16 of the Public Civil Action Law. The concept of Ada Pellegrini Grinover and others, for which the principle of isonomy implies the fulfillment of the vectors of formal and substantial equality, will be adopted as convergent theoretical land-

marks of the research, importing, in practice, the treatment of unequal to the extent of its inequalities, as well as the conceptions of Sérgio Henriques Zandona Freitas, who affirms that the due legal process cannot be dissociated from the due constitutional process, and that state provisions will only be considered legitimate when built on isonomic participation. As for the other methodological aspects, the research is located in the legal-dogmatic aspect, predominantly adopting deductive reasoning. As for the knowledge sectors, the research is of an interdisciplinary type, as it combines aspects of Collective Procedural Law, Constitutional Law, Philosophy and Theory of Law. It is of the bibliographic type, having as primary data the legislation and the jurisprudence related to the theme and, as secondary data, the doctrines directly related to the interrelated branches of knowledge.

Keywords: Collective Procedural Law. Public civil action. Territorial limitation of the effects of the collective sentence. Isonomy. Provisional Measure No. 1,570-5 / 1997. Law No. 9,494 / 1997.

MERITUM MAGAZINE • v.15 • n.2 • p. 365-366 • May/Aug. 2020

THE CONSTITUTIONAL RIGHT TO RESOURCE AND GROUNDS FOR DECISIONS:
CRITICAL STUDY OF JUDGING IN A SINGLE INSTANCE AT HEADQUARTERS

Laís Alves Camargos

CAMARGOS, Laís Alves. **The constitutional right to appeal and the reasoning of decisions: a critical study of the judgment in a single instance in an appeal court**. 89f. 2020. Dissertation (Master in Law). Minas Gerais Education and Culture Foundation - FUMEC. Faculty of Human, Social and Health Sciences, Postgraduate Program in Law. Belo Horizonte, 2020. Available at: https://repositorio.fumec.br/xmlui/handle/123456789/585.

Defense on June 10, 2020.
Virtual room on the digital platform "zoom"
Advisor: Prof. Dr. Sérgio Henriques Zandona Freitas

ABSTRACT

The 2015 Code of Civil Procedure, in his §3rd of article 1.013, determines that the court will immediately decide the merits when it finds an omission in the examination of one of the requests or when the sentence is null due to lack of reasoning. In other words, this rule allows single judgment in appeal, by the 2nd degree courts, in order to favor speed rather than fundamental rights such as the right to adversary, the reasoning of decisions and the constitutional right to appeal. This research aims to study in detail referred fundamental rights in order to demonstrate that the disrespect to them goes against the Rule of Law, current paradigm since the 1988 Constitution of the Republic, and the due constitutional process, which ensure the supremacy of the Constitution over the law, being of fundamental importance the observance of the people's participation and unceasing inspection rights for the application of the law. This is an original problem issue, of great value in the scientific field, as a new and more comprehensive rule is being analyzed than that existing in the Code of Civil Procedure from 1973 - which provided for the hypothesis of the court to judge immediately the demand only in the case of a final sentence in which there was only a matter of law to be analyzed. There is also relevance for directly compromising the solution of the proceedings, in view of the limitation of the matters that can be appealed to the Superior Court of Justice and the Supreme Federal Court. The present research aims, therefore, to confirm the hypothesis that Paragraph 3 of article 1.013 of the Code of Civil Procedure is not consistent with the Rule of Law. The deductive method will be used to carry out a bibliographic search in books, theses, dissertations, articles in Qualis Capes journals and jurisprudence from the Court of Justice of Minas Gerais, focusing on the constitutional process theory as a theoretical framework, with great contributions from neoinstitutionalist theory whose legal framework is in the fullness of Democracy.

Keywords: Rule of Law. Due constitutional process. Substantiated decisions principle. Right to appeal. Right to adversary proceedings. Fetishism of celerity. 3rd paragraph of article 1.013 of the 2015 Brazilian Code of Civil Procedure

DEJUDICIALIZATION AND ACCESS TO JUSTICE: MEDIATION AND CONCILIATION IN EXTRAJUDICIAL SERVICES

MICHELLY PEREIRA MELO

MELO, Michelly Pereira. **Judicialization and access to justice**: mediation and conciliation in extrajudicial services. 111f. 2020. Dissertation (Master in Law). Minas Gerais Education and Culture Foundation - FUMEC. Faculty of Human, Social and Health Sciences, Postgraduate Program in Law. Belo Horizonte, 2020.

Defense on July 3, 2020.
Virtual room on the digital “zoom” platform.
Advisor: Prof. Dr. Luís Carlos Balbino Gambogi

ABSTRACT

The present study aims to investigate the possibility, taking as a parameter the criteria of admissibility and adequacy, of the use of extrajudicial techniques of conciliation and mediation for the resolution of conflicts in the registry offices. To this end, it opposes jurisdiction and alternative means of conflict composition, seeking to identify the means that best serve access to justice and the realization of the right to citizenship; explains the notary and registration activity in Brazil, presenting its origin, historical evolution, constitutional forecast, main characteristics and guiding principles; and it discusses the social and political grounds for judicialization and its application to notaries as well as the difficulties related to lawyers and plaintiffs and defendants. The methodology used for the development of this dissertation was deductive, dialectical and empirical through a bibliographic and documentary research carried out from previously published sources, such as books, articles, academic works and legislation that refer to the problem theme in analysis allowing to conclude that the conciliation and the mediation as well as the instruments of litigious and social prevention, are procedural mechanisms of pacification of the demands since the parties themselves give solution to their conflicts without the intervention of the judge State. At first, the analysis of jurisdiction and alternative means of conflict is made, as well as the concept of access to justice based on the studies of Cappelletti and Garth. Subsequently, the institution of the Notary is analyzed from its origin, historical evolution, species and regulations in Brazil. In the end, it is understood, from the social and political basis, how the extrajudicial services through mediation and conciliation, collaborate for the realization of access to rights.

Keywords: Conflicts. Mediation. Conciliation. Judicialization. Notary Functions.

EXTRAJUDICIAL USUCAPIÃO: FROM THE STANDARDIZATION TO ITS EXECUTION

Sarah Lara Alves Martins

MARTINS, Sarah Lara Alves. **Extrajudicial adverse possession**: from standardization to execution. 137f. 2020. Dissertation (Master in Law). Minas Gerais Education and Culture Foundation - FUMEC. Faculty of Human, Social and Health Sciences, Postgraduate Program in Law. Belo Horizonte, 2020.

Defense on July 8, 2020.
Virtual room on the digital platform "zoom"
Advisor: Prof. Dr. Antônio Carlos Diniz Murta

ABSTRACT

The present study aims to verify the viability of extrajudicial usucaption as a form of access to formalized property. To this end, the socioeconomic impacts of land informality in Brazil, as well as the institute of usucaption, will be analyzed. Subsequently, the context that justified the attribution of extrajudicial usucaption processing to Real Estate Registry Offices will be studied, which involves the overload of the judiciary and the possibility of access to the law in a fast and safe manner. All stages of the processing of the extrajudicial usucaption that occurs exclusively before the Real Estate Registry will also be described, in addition to clarifying the required evidential documentation, emphasizing the minutes of justification of possession drawn up by the notary. Finally, the main controversies about the institute will be analyzed, such as the financial cost, the need for the consent of the interested parties and specific cases in which the institute is viable. As for the methodological aspects, the work is developed in the theoretical-dogmatic aspect, which will be carried out through a detailed bibliographic and documentary search on the subject, adopting the hypothetical-deductive reasoning as the predominant reasoning.

Keywords: Non-judicial Usucapion. Impediments. Property. Notary office. Land registry.

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PROVISIONAL IMPLEMENTATION OF THE PENALTY: COLLISION BETWEEN THE PRINCIPLE OF THE PRESUMPTION OF INNOCENCE AND THE EFFECTIVENESS OF THE CRIMINAL LAW

BRUNO PINHEIRO CAPUTO

CAPUTO, Bruno Pinheiro. **Provisional execution of the sentence**: collision between the principle of the presumption of innocence and that of the effectiveness of criminal law. 96f. 2020. Dissertation (Master in Law). Minas Gerais Education and Culture Foundation - FUMEC. Faculty of Human, Social and Health Sciences, Postgraduate Program in Law. Belo Horizonte, 2020.

Defense on July 16, 2020.
Virtual room on the digital "zoom" platform.
Advisor: Prof. Dr. Carlos Victor Muzzi Filho

ABSTRACT

The present work has as its theme the provisional execution of the sentence in the Constitution of the Republic of 1988. Therefore, the work faces as a research problem the question of whether it is the provisional execution of the constitutional or unconstitutional penalty. In this sense, the hypothesis presented is that of constitutional the provisional execution of the sentence, insofar as the presumption of innocence is not to be confused with the prohibition of imprisonment, since this is linked to the written order and substantiated by the competent authority. The work is justified by the fact that the constitutionality or unconstitutionality of the provisional execution of the sentence generates a great impact on the freedom of the accused, since, with the admission of the provisional execution of the sentence, the defendant, if convicted, can start serving his sentence soon after the judgment by the Court of Justice or the Regional Federal Court. The general objective of the work is to analyze the institute of the provisional execution of the penalty in the Constitution of the Republic to present a satisfactory answer on its constitutionality or unconstitutionality. As specific objectives, the need to analyze the fundamental rights and guarantees in the Constitution of the Republic is presented; the International Human Rights Treaties; the principles of the presumption of innocence and the effectiveness of criminal law; the position of the Supreme Federal Court in relation to the provisional execution of the sentence; and, finally, the debate on the constitutionality or unconstitutionality of the provisional execution of the sentence. As a theoretical framework, the work draws on the teachings of Robert Alexy, in his book Theory of Fundamental Rights. With regard to the methodological aspects, the work is developed by the dogmatic legal aspect. In addition to this aspect, the work also develops from foreign and national bibliography, scientific articles, decisions of the Supreme Federal Court, Constitutional Law, Procedural Law and Human Rights. Finally, the work found to be the provisional execution of the constitutional penalty, insofar as the prison and the guilt are not confused, since, for the arrest, it is necessary the written order and reasoned by the competent authority, being the grounds of the provisional execution of the penalty, basically, in the fact that the factual and probative analysis in the ordinary instance is exhausted.

Keywords: Provisional Execution of Penalty. Fundamental rights. Presumption of Innocence. Effectiveness of criminal law. Proportionality.

CORPORATE GOVERNANCE AS A LEGAL STRATEGY FOR STARTUPS: CREATING ENVIRONMENTS FAVORABLE TO REDUCE THE CIVIL RESPONSIBILITY OF ANGEL INVESTORS IN BRAZIL

Karina Mourão Coutinho

COUTINHO, Karina Mourão. **CORPORATE GOVERNANCE AS A LEGAL STRATEGY OF STARTUPS**: creating favorable environments for the reduction of civil liability of angel investors in Brazil. 105f. 2020. Dissertation (Master in Law). Minas Gerais Education and Culture Foundation - FUMEC. Faculty of Human, Social and Health Sciences, Postgraduate Program in Law. Belo Horizonte, 2020.

Defense on August 3, 2020.
Virtual room on the digital "zoom" platform.
Advisor: Prof. Dr. Antônio Carlos Diniz Murta

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ABSTRACT

The so-called Industrial Revolution allowed fundamental changes in people's working conditions and lifestyles. However, the technology currently used to produce products and services is completely different from those of the past. In this context of technological innovations, startups are identified, business models characterized by innovation, technology, and environment of uncertainty, in addition to repeatability and scalability. These are businesses that have the capacity to grow exponentially, differentiating themselves from traditional models. The angel investor is an important development figure for the initial stage of startups. He believes in the entrepreneur's idea and invests significant value in starting the business. Without it, many startups would not be able to get out of the product and service ideation phase. As it is still an embryonic business model, many of these startups do not have internal processes and the organization of large companies and are therefore managed outside the corporate governance concepts – compliance –, which is so expensive for foreign investments. Thus, it is asked, as a research problem, in the light of the strategic analysis of law, how corporate governance directly impacts the reduction of civil liability risks for angel investors, a central figure in the technical and financial development of the startup environment in the initial stage. As a hypothesis, it is stated that corporate governance contributes to the legal model of startups, as it increases the possibilities for investments and to establish integral relations with investors, through the adoption of compliance programs, which define internal regulations, observing the legislation applicable to the business, expressing and clarifying the means of compliance with these rules, providing predictability and legal certainty for the contribution of resources, with direct consequences on the civil liability of angel investors. The general objective of this research is to propose ways to minimize the risks of civil liability of angel investors in small and medium technology-based companies – the so-called startups – through the adoption of a corporate governance program (compliance). The research adopts, as a theoretical framework, the concept of Strategic Analysis of Law by Frederico de Andrade Gabrich, for whom the Law must allow the imposition of strategic legal thinking, which allows finding legal and lawful solutions for the achievement of the objectives outlined by people, also considering the importance of interpretation and its dialectical character. As for the other methodological aspects, the research is inserted in a juridical-sociological perspective and is of an interdisciplinary character, since it seeks to coordinate contents concerning the field of Civil Law, Business Law and Strategic Analysis of Law, in order to analyze the object of study in all its plural characteristics.

Keywords: Startups. Angel Investors. Corporate Governance Compliance. Strategic Analysis of Law.

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THE TAXATION OF REVENUE OBTAINED BY THE PRACTICE OF ILLEGAL ACTS AND APPLICATION OF THE 'PECUNIA NON OLET' PRINCIPLE IN THE BRAZILIAN LEGAL SYSTEM

PEDRO ALCÂNTARA TRINDADE NETO

TRINDADE NETO, Pedro Alcântara. **The taxation of revenues obtained by the practice of illegal acts and application of the 'Pecunia Non Olet' principle in the Brazilian legal system**.72f. 2020. Dissertation (Master in Law). Minas Gerais Education and Culture Foundation - FUMEC. Faculty of Human, Social and Health Sciences, Postgraduate Program in Law. Belo Horizonte, 2020.

Defense on August 4, 2020.
Virtual room on the digital "zoom" platform.
Advisor: Prof. Dr. Rafhael Frattari Bonito

ABSTRACT

This paper aims to discuss a recurrently debated matter, both on media and academic environments: the taxation of illicit income and the intricacies of either encouraging or abhorring such practice from the Brazilian government. On the present paper, under the guidance of the researched problem, we dissertate about the possibility of the State profiting from the taxation of goods and values acquired from various criminal activities, and the possible conflict between criminal and tributary law standards. In order to properly address the many possible perspectives on the law it is mandatory the understanding the concepts of legal-tax rule and tribute along with the constitutional principles that rule the National Tributary Code. Furthermore it is critical to analyze the pecunia non olet principle and its implications on current Government decisions; developing a critical analysis based on doctrinaire studies. The general objective of the present dissertation is to demonstrate that the pecunia non olet principle should not be applied based solely on the moralist common idea of justice, requiring instead a deeper analysis of each case under the interpretation of the law. The ideas presented on this paper rely on the work of Amilcar de Araújo Falcão who advocates in favor of unrestrictive taxation of illicit income, and Ricardo Lobo Torres who, in opposition, postulates that the Government should not profit from practices frowned upon by the State itself. In addition, Alfredo Augusto Becker and Daniel Lin Santos are quoted as advocates of a more prudent analysis of each context aiming for equilibrium between the seemingly antagonistic criminal and tributary law. The conclusion that it is viable to charge tribute over illicit income, except for some caveats widely discussed throughout the text.

Keywords: Pecunia non olet principle. Taxation. Ilicit practices.

THE DIALETICS OF LEGAL SYSTEMS IN BRAZILIAN LAW WITH THE RECEPTION OF THE CULTURE OF PRECEDENTS:
PERCEPTION, ILLUSION AND RESULT

Ana Paula Soares da Costa Sosi

SOSI, Ana Paula Soares da Costa. **The dialectic of legal systems in Brazilian law with the acceptance of the culture of precedents: Perception, illusion and result**. 102f. 2020. Dissertation (Master in Law). Minas Gerais Education and Culture Foundation - FUMEC. Faculty of Human, Social and Health Sciences, Postgraduate Program in Law. Belo Horizonte, 2020.

Defense on August 4, 2020.
Virtual room on the digital "zoom" platform.
Advisor: Prof. Dr. Antônio Carlos Diniz Murta

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ABSTRACT

The insertions currently occurring in the Brazilian constitutional process, especially those that occurred in the civil process with the insertion of the preceding figure, are not new in the internal procedural plan. Even though it was not something new, these insertions led us to ask again the role of the jurisprudentialization of law in Brazil. First, the study sought historical elements of the process in Brazil, expanding sequentially to a detailed plan from which the elements of the main legal systems are extracted to understand the functioning of the interpretative figure and the formation of precedent in distinct traditions from its structural genesis. In this context, evidently and necessarily followed by the theoretical-philosophical elements that support it, it was possible to complement a research by analyzing the functional elements practiced by the courts (for mere descriptive functionality), since the procedural insertions mainly based on the preceding figure are among us an element of judicial policy for managing repetitive litigation, together with other mechanisms of containment and prevention by binding and restrictive jurisprudence. The research retrieves the history of jurisprudentialization of law based mainly on the reasons that led the courts to adopt precedents and precedents as a way of controlling mass demands. What can be seen - a repetition of demand growth control - from this perspective it can be seen that no application used by the courts since Brazil was sufficient in the management of the number of claims. Contrarily, the result obtained by the state and higher courts is still the exponential growth in the number of cases. Would repetitive litigation management then be the appropriate means to understand or stop the slowness of the courts? Are precedents demanding for the administration of justice and in that sense would there be similarities with the precedents of other system (s)? The present research then seeks to answer how these mechanisms of containment of demands may or may not contribute to the democratic judicial process in Brazil and whether the mechanism of the precedent is adequate or of possible use in a legal universe different from the one that gave rise to it.

Keywords: Jurisprudence. Overviews. Precedents. Repetitive litigation microsystem. Higher courts.

ANALYSIS OF THE IMPUNITY OF POLITICAL AGENTS WITH JURISDICTION BY POSITION OF FUNCTION, IN THE CRIMINAL SPHERE, BEFORE THE SUPREME FEDERAL COURT

RANIERI JÉSUS DE SOUZA

SOUZA, Ranieri Jésus de. **Analysis of the impunity of political agents with jurisdiction due to the prerogative of function, in the criminal sphere, before the Federal Supreme Court**. 2020. Dissertation (Master in Law). Minas Gerais Education and Culture Foundation - FUMEC. Faculty of Human, Social and Health Sciences, Postgraduate Program in Law. Belo Horizonte, 2020.

Defense on August 7, 2020.
Virtual room on the digital platform "zoom"
Advisor: Prof. Dr. Lucas Moraes Martins

ABSTRACT

Brazil and other countries in the world adopt the forum as a function of prerogative, with the aim of protecting relevant public functions. Certain authorities, depending on the positions they hold, have the prerogative to be tried by a collegiate body and not by a judge of first instance. The Brazilian Constitution of 1988 established several cases of authority with jurisdiction by function of prerogative, defining in which Court these authorities are judged. This study analyzed whether the forum for the prerogative of function in the Supreme Federal Court generates impunity for political agents in the criminal sphere. The present research was developed in the scope of the sociological-legal aspect, with the analysis of the forum by prerogative of function in the legal and factual scope and had as theoretical framework the concepts proposed for the institute in the Constitution of the Republic and in the work "The forum privileged"of Lúcio Ney de Souza (2014). Work carried out with analysis of the comparative law and of the Brazilian Constitutions. Barriers of the system were pointed out, such as the excessive number of authorities with jurisdiction and the question of whether the forum covers crimes that occurred before the moment when the authority took office or, still, crimes that do not have connection with the function performed. Finally, the results obtained in the Supreme Federal Court were analyzed in relation to the judgment of investigations and criminal proceedings that are pending before the Court due to the jurisdiction of the court, from 2001 to 2016. It was identified that less than 1% of the court cases on the prerogative of function result in condemnation in criminal proceedings within the jurisdiction of the Supreme Federal Court. It was concluded that the forum by prerogative of function generates impunity for political agents in the criminal sphere.

Keywords: Forum by function prerogative. administrative authorities. Federal Court of Justice. impunity. penal sanction.

THE PERFORMANCE OF THE SUPREME FEDERAL COURT AND THE CONSTITUTIONAL PROTECTION OF MINORITIES, UNDER TWO HYPOTHESES: COUNTERMAJORITY OR MAJORITY FUNCTION?

Fabrício de Almeida Silva Reis

Reis, Fabrício de Almeida Silva. **The performance of the Supreme Federal Court and the constitutional protection of minorities, under two hypotheses**: countermajority or majority function? 112 f. 2020. Dissertation (Master in Law). Minas Gerais Education and Culture Foundation - FUMEC. Faculty of Human, Social and Health Sciences, Postgraduate Program in Law. Belo Horizonte, 2020. Available at: https://repositorio.fumec.br/xmlui/handle/123456789/584.

Defense on August 18, 2020.
Virtual room on the digital platform "zoom"
Advisor: Carlos Victor Muzzi Filho
Co-supervisor: Prof. Dr. Luis Carlos B. Gambogi

ABSTRACT

Within the scope of constitutional jurisdiction, critical notes stand out, extracted from questioning about the countermajoritarian function of the Constitutional Courts. As a research problem and in light of Jeremy Waldron's theory of the opposition to the Judicial Review and the theory of decision-making in a democracy by Robert Alan Dahl, theoretical frameworks of research, the work asks whether the action of the Supreme Court (STF), in the protection of minority rights, would be a majority. As a research hypothesis, given the study of the countermajoritarian function of the Supreme Court, we will try to demonstrate whether, in the examples collected by Luís Roberto Barroso, this performance is proven. The legitimacy of jurisdictional control of laws is faced with the difficulty of combining the principle of separation of functions with the democratic principle, an objection to the North American model of judicial review, known as "countermajoritarian difficulty". It is up to the Judiciary to be the interpreter and guardian of the Constitution, whose decisions have repercussions in other spheres. However, it lacks democratic credentials in the face of moral dissent. As a general objective, it seeks to establish a historical line of constitutional jurisdiction in Brazil, and to conclude, based on case studies, whether the role of the Supreme Federal Court in the protection of minorities is, properly speaking, countermajoritarian. The specific objectives of the work are to analyze constitutional jurisdiction based on idiosyncrasies in the systems of North American common law and civil law; to analyze the main constitutionality control systems and their implementation by the Judiciary; examining criticisms of constitutional jurisdiction, in light of Jeremy Waldron's theory of opposition to Judicial Review and Robert Alan Dahl's decision-making in a democracy; investigate the action of the Supreme Federal Court on the protection of minority rights, with case studies for comparison purposes; and to identify

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which are the two hypotheses that rule out the argument that the action of the Supreme Federal Court in protecting the rights of minorities, is a general and routine rule. The research is developed in a juridical-sociological methodological perspective, with na interdisciplinary perspective, based on concepts of political and philosophical theories of Law, encompassing the areas of Constitutional Law, Human Rights and Civil Law. Deductive reasoning, descriptive method and bibliographic, jurisprudential and legislative research were preeminently adopted.

Keywords: Constitutional jurisdiction. Judicial review of constitutionality. Federal Court of Justice. Counter-majoritarian function. Minorities.

OBSTETRIC VIOLENCE IN BRAZIL: AN ANALYSIS OF THE FUNDAMENTAL RIGHTS PERSPECTIVE

Regiane Priscilla Monteiro Gonçalves

GONÇALVES, Regiane Priscilla Monteiro. **OBSTETRIC VIOLENCE IN BRAZIL**: An analysis of the fundamental rights perspective. 2020. Dissertation (Master in Law). Minas Gerais Education and Culture Foundation - FUMEC. Faculty of Human, Social and Health Sciences, Postgraduate Program in Law. Belo Horizonte, 2020.

Defense on August 21, 2020.
Virtual room on the digital "zoom" platform.
Advisor: Prof. Dr. Marcelo Barroso Lima Brito de Campos

ABSTRACT

The term obstetric violence was recently instituted, attributed to institutionalized gender violence and practiced against pregnant women. Socially rooted and naturalized in favor of the power relationship in the doctor-patient relationship, it occurs through a mechanization / commercialization of the delivery process. In this process, the woman goes through a kind of appropriation of her body, which is extended to all health professionals involved in the action and which materializes in a dehumanized treatment, abusive of techniques proven useless and conscious pathologization of the natural processes of childbirth. Currently, Brazil does not have any federal legislation that positively or even conceptualizes the practices of obstetric violence. While Bill 7,633 / 14 remains in progress in the National Congress, the Judiciary responds to several demands put on trial on the subject. Contextualizing the reality arising from obstetric violence, the present study sought to answer the following questions: is obstetric violence capable of harming women's fundamental rights? And given the legislative omission, how has the Brazilian Judiciary handled the issue? To answer these questions, the present research analyzed what would be the impacts of legislative omissions, in the confrontation by the Judiciary in the protection of the fundamental rights of women and also the debasement of constitutional principles such as the dignity of the human person. As a theoretical framework, the theory of Robert Alexy was adopted, in the concept of human dignity, and, finally, as a form of judicial analysis of the legislative omission Ronald Dworkin. In view of the multidisciplinary nature of the theme, the research material was concentrated in the areas of law, but with important contributions from specific themes in the biological sciences to explain topics in the exclusive domain of the health areas, such as episiotomy, kristeler maneuver, among others. other medical procedures that, if misused, are capable of generating obstetric violence. The predominant type of reasoning for the analysis of the material was, therefore, inductive-deductive and, for the analysis of the data collected from the STJ and STF judgments, the qualitative. To carry out the research, several complementary methodological procedures were used, namely, bibliographic research and documentary analysis of judicial judgments. To carry out the research, several complementary methodological procedures were used, namely, bibliographic research and documentary analysis of judicial judgments. The conclusions obtained by the present research were sufficient to affirm that obstetric violence culminates in a true violation of fundamental rights and also the debasement of constitutional principles such as the dignity of the human person, establishing a true state of exception when it comes to childbirth, which does not happen , for example, in other areas of the medical sciences,

whose free and informed consent is an essential requirement for any and all procedures. He concluded that the Judiciary, even in the absence of its own law, has been able to punish conduct through a fundamental and fundamental analysis of women's rights. Finally, he concluded that the humanization of childbirth, so defended by the Rehuna movement, can contribute to the minimization of obstetric violence and the protection of women's fundamental rights.

Keywords: Obstetric Violence. Violation. Dignity of human person. Fundamental rights. Humanization of childbirth.