

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 JUDICIALIZATION OF POLITICS AND JUDICIAL ACTIVISM: LIMITS OF THE JUDICIARY'S PERFORMANCE

GIOVANNI GALVÃO VILAÇA GREGÓRIO

GREGÓRIO, Giovanni Galvão Vilaça. **The judicialization of politics and judicial activism: limits on the Judiciary's performance.** 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 September 19, 2020.
Virtual room on the digital platform "zoom".
Advisor: Prof. Dr. Carlos Víctor Muzzi Filho

ABSTRACT

In the contemporary scenario, the performance of the Judiciary has gained more and more importance and the discussion about the jurisdictional exercise has been highlighted in several countries. Thus, the research aims to address the factors that led to the judicialization of politics and judicial activism, as well as their implications. The study of the problem theme is justified by the role of the courts when judging actions with a high valuation burden. In this regard, the aim is to investigate the limits of the Judiciary's performance in order to appreciate issues that get involved in the Legislative and Executive spheres. Therefore, it is necessary to examine the principle of separation of powers, including demonstrating that the relationship between the Legislative, the Executive and the Judiciary has undergone mutations over time. It is also observed that the totalitarian regimes, which marked the 20th century, caused an intense constitutionalization of human rights, whose protection was attributed to the courts. Therefore, it is intended to discuss judicial activism from the perspective of substantialist and proceduralist theories, presenting the judicial minimalism developed by Cass Sunstein, as an appropriate form of self-restraint in the Judiciary. The hypothesis worked out is that judicial activism is not compatible with the democratic principle, since the judicial demands of high moral inquiry, as well as the realization of fundamental rights, must be concentrated in the Legislative and Executive - legitimate instances to act in order substantial amount of political values. The Judiciary is responsible for ensuring legitimate procedures, ensuring democratic deliberation, so that citizens can define their own political destiny. Regarding the methodology, the hypothetical-deductive legal method was used, using bibliographic research, through the study of works, articles, dissertations and theses, as well as documentary research, with the analysis of related legislation and jurisprudence. to the research theme. And finally, as a technical procedure, theoretical and interpretive analysis, seeking a solution proposal for the highlighted problem-theme.

Keywords: Separation of powers. Judicialization of politics. Judicial activism. Self-restraint.

FREEDOM OF EXPRESSION VERSUS HATE SPEECH: A MATTER OF (IN) TOLERANCE AND LEGAL CONTROVERSIES

ALESSANDRA ABRAHÃO COSTA

COSTA, Alessandra Abrahão. **Freedom of expression versus hate speech: A matter of (in) tolerance and legal controversies**. 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 September 29, 2020.
Virtual room on the digital platform "zoom".
Advisor: Prof. Dr. Carlos Victor Muzzi Filho

ABSTRACT

Through the hypothetical-deductive method, the present work has as its theme the paradox that exists between the right to freedom of expression and the free expression of thought with hate speech or Hate Speech. The research uses as a theoretical framework the judgment of Habeas Corpus 82.424 / RS, better known as the Ellwanger Case, and makes a hermeneutical approach to freedom of expression from the perspective of Brazilian law and the jurisprudence of the United States Supreme Court. The "Ellwanger Case" judgment defined the theoretical basis of the concept of racism and sparked the debate about the limits of freedom of expression and publication of books with anti-Semitic ideas (BRASIL, 2004). As a research problem, the paper asks: what would be the limitations of the right to freedom of expression so that hate speech does not reproduce the silencing effect of classes that have less social representation? As a hypothesis, it is stated that the excessive limitation of the right to freedom of expression and the free expression of thought tarnishes the general right of freedom, enshrined in the 1988 Constitution of the Federative Republic of Brazil, and the foundation of the Democratic Rule of Law. The research is justified by the need to critically analyze the question of the existence of hate speech and the free expression of thought from the perspective of the weighting technique, through the analysis of the peculiarities of this specific case and as a way of guaranteeing the Democratic Rule of Law. The general objective is to develop a critical analysis of the limits to the right to express and express thought, based on the condemnation of hate speech, in addition to investigating American jurisprudence in concerning to the First Amendment to the United States Constitution. Specific objectives are: a) to demonstrate the existence of a general right of freedom from which the right to freedom of expression and its species is extracted, namely: the right to free expression of thought; freedom of the press; freedom of information; freedom of opinion, among other constitutionally guaranteed freedoms; b) to identify the antagonistic conceptions of the right to freedom of expression in the United States and Brazil, through the study of jurisprudence in both countries, as a way of corroborating the importance of the right to free expression as a maintainer of democracy; c) confirm the virtues of applying the Weighting Technique as limiting the right to freedom of expression, in order to avoid excesses and the silencing effect of hate speech; d) to identify the legal and jurisprudential protection of personality rights, as well as the limitations to the right to freedom of expression, already existing in the Brazilian legal system. As a complementary theoretical framework, the book "Freedom of Expression and Hate Speech" was adopted, by Samantha Meyer-Pflug. As for the other methodological aspects, the work was developed based on national and foreign research, in order to elaborate a comparative law that could influence, or not, the development of the discussion about the limits of freedom of expression in Brazil.

Keywords: Freedom of Speech. Free Manifestation of Thought. Weighting Technique. North American First Amendment; Ellwanger Case.

TAX PLANNING AND ITS LIMITS FROM THE PERSPECTIVE OF THE PRINCIPLE OF LEGAL SECURITY: REFLECTIONS ON ADMINISTRATIVE JURISPRUDENCE

RAQUEL SAMPAIO DE VASCONCELOS LINS DILLY

DILLY, Raquel Sampaio de Vasconcelos Lins. **Tax planning and its limits from the perspective of the principle of legal certainty**: reflections on administrative jurisprudence. 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 October 1, 2020.

Virtual room on the digital platform "zoom".

Advisor: Prof. Dr. Carlos Víctor Muzzi Filho

Co-supervisor: Prof. Dr. Raphael Frattari Bonito

ABSTRACT

The present study focuses on the analysis of the limits of tax planning from the perspective of the principle of legal certainty and its consequences in the decisions of administrative courts. First, will be analyzed the constitutional principles that are part of the discussion on tax planning. Afterwards, a chapter will be dedicated to analysis the principle of the legal certainty, considering that this is the protagonist of the present work. The relationship between tax law and private law will also be studied, mainly some concepts of private law that are relevant to understand the topic. Once these premises are established, will be studied the concept of tax planning for different authors and the theory of the phases of the debate of tax planning in Brazil, prepared by Marco Aurélio Greco, in view of its relevance to understand a good part of the divergences in this field. Finally, going through all these concepts and principles that are relevant to understand tax planning, in order to provide pragmatism for the present study, some cases of tax planning present in the Brazilian administrative jurisprudence will be analyzed, mainly with regard to the criteria used in decisions to validate or invalidate transactions carried out by taxpayers. The methodological technique adopted was that of theoretical research, using books, theses, dissertations and articles. The hypothetical-deductive method was used.

Keywords: Tax planning. Legal certainty. Administrative judgments.

THE STATE'S CIVIL RESPONSIBILITY FOR JUDICIAL ERROR IN THE CRIMINAL SPHERE AND THE FUNDAMENTAL RIGHT TO INDEMNITY

FLÁVIO MURAD RODRIGUES

RODRIGUES, Flávio Murad. **The State's civil responsibility for judicial error in the criminal sphere and the fundamental right to indemnity.** 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 October 5, 2020.

Virtual room on the digital platform "zoom".

Advisor: Prof. Dr. Sérgio Henriques Zandona Freitas

ABSTRACT

This study aims to demonstrate the State's obligation to compensate defendants who have been victims of judicial errors in criminal proceedings, which have damaged their individual freedom or even their image or honor. It will be verified that the activity of the State through the organs of the judiciary can cause material or moral damage in the life of a citizen. These State acts, abusive or not, commissive or omissive, can generate illegal condemnation and, from them, will arise onus that need reparation by economic means. It will be demonstrated the hesitation in the Brazilian courts to acknowledge the error and, consequently, its liability and effectiveness of indemnity payment, as well as a presentation about the historical evolution of liability, which will analyze the general aspects of the Theory of Civil Liability and how this subject is established in the Brazilian Constitution of 1988, the Civil Code, the Code of Civil Procedure and the Code of Criminal Procedure. It will focus on the judicial error in the criminal area, on how Brazilian doctrine and jurisprudence conceptualize it and on the necessary requirements so that, if existing, the State should be held responsible under the constitutional command. In order to exemplify the matter in comparative law, the concept of judicial error adopted in various countries will be brought forward, more specifically in Australian, North American, Portuguese and Argentine law and what the Pact of San Jose of Costa Rica and the Spanish legal system determine. Decisions of the Superior Court of Justice and the Supreme Federal Court will be analyzed to propose, at the end, a concept of judicial error and the requirements for the right to compensation. A descriptive research will be done according to the deductive method based on thesis and dissertation banks, Law magazines, physical and digital books, legislation and the analysis of judgments of the Brazilian courts. The theoretical framework will be based on the Theory of State Civil Responsibility developed in Brazil by Sérgio Cavalieri Filho and on the State Responsibility for the Jurisdictional Function, by Ronaldo Brêtas de Carvalho Dias.

Keywords: Civil liability of the State. Judicial error. Criminal area. Damage. Indemnification. Fundamental right.

THE DYNAMIC DISTRIBUTION OF THE PROBATORY CHARGE AND THE DEMOCRATIC STATE OF LAW

JESSICA SERIOUSLY MIRANDA

MIRANDA, Jessica Seriously. **The dynamic distribution of the probatory charge and the democratic state of law**. 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 October 20, 2020.

Virtual room on the digital platform "zoom".

Advisor: Prof. Dr. Sérgio Henriques Zandona Freitas

ABSTRACT

The present study has as its theme the dynamic distribution of the burden of proof provided for in article 373, paragraph 1, of the Code of Civil Procedure of 2015 and, by objective, its critical analysis from the premises of the constitutional process model. Following the line of research of the *Stricto Sensu* Postgraduate Program in Law at FUMEC University, the aim is, after studying the theories of the process and the foundations of the Democratic Rule of Law, to verify the adequacy of the dynamic form of distribution of the evidential burdens to the constitutional paradigm, which establishes the guidelines of a democratic constitutional process. Its main hypothesis, at the end confirmed, is the compatibility of the dynamic distribution of the burden of proof with the Democratic Rule of Law, based on the observance of the procedural guarantees established by the Constitution of the Republic of 1988. For a better understanding of the dynamic distribution of the burden of proof, confirmed by the Civil Procedural Code of 2015, general notions about the proof institute will be presented, followed by the study of the various theories on the distribution of the burden of proof, thus outlining the bases for dynamization. The study adopts the deductive method and is developed through jurisprudential and bibliographic research in physical and digital books, websites, bank of theses and dissertations and Qualis Capes journals.

Keywords: Constitutional Process. Democratic state. Test. Burden of proof. Dynamic distribution of the burden of proof.

THE RECONSTRUCTION OF THE DISTRIBUTION OF THE BURDEN OF PROOF IN THE ADMINISTRATIVE PROCESS THE PERSPECTIVE OF THE CONSTITUTIONAL PRINCIPLES OF THE PROCESS

ADRIANO DA SILVA RIBEIRO

RIBEIRO, Adriano da Silva. **The reconstruction of the distribution of the burden of proof in the administrative process from the perspective of the constitutional principles of the process.** 156f. 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 October 24, 2020.

Virtual room on the digital platform "zoom".

Advisor: Prof. Dr. Sérgio Henriques Zandona Freitas

ABSTRACT

The research proposal is the verification, in the Code of Civil Procedure, of the application of the distribution of the burden of proof, set out in art. 373 (BRASIL, 2015), precisely in the administrative process. The problem-issue facing this study and for which it intends to understand can be explained in the following statement: has the State applied the distribution of the burden of proof, in the constitutional process model, in administrative processes? The development of the research is justified by the need to check whether the test institute has been used by the State in the context of its administrative processes and its application as it meets the constitutional process, by its institutional principles and the Democratic Rule of Law itself. The general objective is to verify the application of the distribution of the burden of proof in administrative processes, testifying the proposal through the institutional principles of the process. The general objective is to verify the application of the distribution of the burden of proof in administrative processes, testifying the proposal through the institutional principles of the process. Specific objectives are: a) to conceptualize the institutional principles of the process (broad defense, contradictory and isonomy); b) to study the procedural rights and guarantees applied to the administrative process; c) describe the current situation of the burden of proof, addressing the concept and the evolution, in the administrative process; d) describe the main changes and innovations brought by the Civil Procedure Code (BRASIL, 2015) regarding the distribution of the burden of proof and its application in the administrative process; e) to analyze the presumption of veracity and legitimacy of administrative acts and the flexibility of the burden of proof; f) study the procedure for reversing the burden of proof in the administrative process and the Principle of Cooperation; g) study the dynamic theory of the burden of proof in the administrative process; h) analyze the jurisprudence on the distribution of the burden of proof; i) to propose advances on the test institute in the administrative process.

The theoretical framework of the dissertation is the Theory of the Democratic Constitutional Process, by the work of José Alfredo de Oliveira Baracho, as well as the studies of Sérgio Henriques Zandoná Freitas, regarding the Procedural Law of Public Administration, also seeking the testification of Popper, object of the research by Rosemiro Pereira Leal and André Cordeiro Leal. As for the methodological aspects, it will be based on the analytical procedure, which aims at a critical approach to the problem theme. It will therefore be based on the inductive method. Exploratory research will be carried out in order to allow greater familiarity with the problem, with a view to making it more explicit, which will be effective through foreign and national bibliographic research and documentary research. Also from an interdisciplinary perspective, through the study of the Constitutional Process, Civil Procedural Law and Administrative Law. The conclusion of the research confirms the need to reconstruct the dynamic distribution of the burden of proof in the administrative process by the State and the Public Administration, taking into account the constitutional process, due to its institutional principles and the Democratic Rule of Law itself.

Keywords: Democratic state. Procedural constitutional principles Administrative process. 2015 Civil Procedure Code. Reconstruction of the dynamic distribution of the burden of proof.

SUMMARY No. 231 OF THE SUPERIOR COURT OF JUSTICE: A PRINCIPIOLOGICAL- CONSTITUTIONAL (RE) CONSTRUCTION IN THE DEMOCRATIC STATE OF LAW

CARLOS HENRIQUE PÉRPETUO BRAGA

BRAGA, Carlos Henrique Pérpetuo. **Summary no. 231 of the Superior Court of Justice**: a principled-constitutional (re) construction in the Democratic State of Law. 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 October 27, 2020.

Virtual room on the digital platform "zoom".

Advisor: Prof. Dr. Sérgio Henriques Zandona Freitas

ABSTRACT

The theme of this research is Precedent 231 of the Brazilian Superior Court of Justice, which prohibits the reduction of the provisional penalty below the legal minimum. Said entry contradicts express legal provision, notably art. 65 of the Brazilian Penal Code, and, therefore, violates several principles of a constitutional nature, intrinsic to the application of the penal sanction, notably, the legality (or reservation of the law), the personality, the individualization, and limitation of sentences, giving different situations different identical. As a research problem, it is asked whether the statement in Precedent 231 of the Brazilian Superior Court of Justice is in line with due constitutional process and with the provisions contained in the Brazilian legal system, in particular, with art. 65 of the Brazilian Penal Code. It is initially stated, as a research hypothesis, that the precedents of Precedent 231 of the Brazilian Superior Court of Justice adopt premises incompatible with the fundamental guarantee of jurisdiction and with due constitutional process, violating the mentioned principles head-on, in addition to the maximum principle of the Democratic State right. For the development of the research, the concepts of constitutional process and Democratic Rule of Law, introduced by Ronaldo Brêtas de Carvalho Dias, and his unique understanding of power (exercised exclusively by the people), capable of guiding the exercise of jurisdictional function on effectively democratic bases. The general objective of the research is, therefore, to criticize the statement of Precedent 231 of the Brazilian Superior Court of Justice and its application, seeking to verify its compatibility with the due constitutional process. About the other methodological aspects, the research is guided by the hypothetical-deductive method, operating from and bibliographic research, national and foreign, in addition to jurisprudential research.

Keywords: Precedent 231. Brazilian Superior Court of Justice. Constitutional process. Due to the constitutional process. Democratic state.

ADJUSTMENT OF THE TRANSPARENCY OF BIDDINGS AND CONTRACTS OF THE FEDERAL UNIVERSITY OF MINAS GERAIS TO THE LAW ON ACCESS TO INFORMATION

MARA DUTRA LEITE

LEITE, Mara Dutra. **Adjustment of the transparency of biddings and contracts of the Federal University of Minas Gerais to the law on access to information.** 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 October 28, 2020.

Virtual room on the digital platform "zoom".

Advisor: Prof. Dr. Sérgio Henriques Zandona Freitas

ABSTRACT

The present study analyzes the adequacy of the transparency of bidding and contracts of the Federal University of Minas Gerais - UFMG with regard to the provisions of Law No. 12,527, of November 18, 2011, known as the Law of Access to Information - LAI, through the analysis of data contained on the University's website and its units. In order to have a better understanding of the topic, an explanation about the right of having access to information was presented, and the principles of transparency and publicity were subsequently discussed, as well as the provisions contained in CR / 88 of 1988. The following chapters referred to the provisions contained in the LAI and the Tax Liability Law. When approaching the specific problem of work, issues related to public procurement, transparency of bidding and their contracts were discussed, as well as the methodology applied to analyze the studied data. After such an analysis, the scores obtained by each Managing Budget Unit - UG were counted for subsequent consolidation of the data collected and generation of final considerations regarding the adequacy of the transparency of bidding and contracts from UFMG to LAI.

Keywords: Transparency. Active Transparency. Public Transparency. Access to Information Law.

FISCAL EXECUTION AND THE EFFICIENCY PRINCIPLE: FROM JUDICIAL ACTION TO ADMINISTRATIVE COLLECTION

LEONARDO BRANDÃO ROCHA

ROCHA, Leonardo Brandão. **Fiscal execution and the efficiency principle: from legal action to administrative collection**. 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 November 18, 2020.
Virtual room on the digital platform "zoom".
Advisor: Prof. Dr. Carlos Victor Muzzi Filho

ABSTRACT

This work has as question the analyze the judicial tax enforcement, by the efficiency principle, as instrument (in)efficient to tax collection and the administrative procedures adoption. The tax enforcement have shown delegitimated procedure. Thus, aims to analyze the historical and it's tax collection numbers, in contrast to the efficiency principle. Equally, the procedure of the law 10.522/02 will be analyzed under the due process os law perspective in order to explain the opposite way of the tax revenue, tendentious to neglect judicialization. Thus, will be checked the tax collection procedures, judicial or not, used by the Procuradoria Geral da Fazenda Nacional. Also the tax collection systems of Chile, Peru and Argentina will be noted. The general objective is the understanding of the migration from the judicial tax enforcemet to the administrative revenue. The bibliographic research will be used through the deductive and comparative method, as well as data research to, in conclusion, determine a need of improvement of the judicial tax collection procedure, already threadbare.

Keywords: Tax enforcement. Revenue. Tax. Efficiency principle. Administrative procedures.

A REFLECTION ON LAND MANAGEMENT, PROPERTY AND REGISTRATION

AMANDA DE CAMPOS ARAÚJO

ARAÚJO, Amanda de Campos. **A reflection on land management, property and registration**. 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 November 30, 2020.

Virtual room on the digital platform "zoom".

Advisor: Prof. Dr. Marcelo Barroso Lima Brito de Campos

ABSTRACT

One can easily see the current difficulty faced by state agencies in promoting public policies aimed at identifying and regularizing vacante lands. The objective of the research was to assess whether it is possible to extract, from the historical process of formation of the current Brazilian land framework, the existence of procedures to control the privatization of properties and, consequently, to identify "vacant" lands, which these are returned properties. For this purpose, firstly, the institutes of possession, property and vacant lands were characterized. Having established the necessary premises regarding the legal contours of these institutes, a historiographic analysis of the national territorial occupation was carried out, identifying their main characteristics, legislation and the practical effects of governmental action. Then, the founding bases of the Real Estate Registry were assessed, as well as the form of construction of the registry collection, in order to verify the level of security and relevance of the registered data, for possible territorial ordering policies. It was observed that the Real Estate Registry is the only source capable, at present, of providing knowledge of private properties and, consequently, enabling the identification of vacant lands, although the registry collection must be worked with extreme caution so that it is effectively able to provide relevant data to this task. The research allows to verify that the existence of a control of the property was always intended, but it was only possible to favor and strengthen the possessions, resulting from the irregular occupation of the territory.

Keywords: Land management. Privilege of possess. Real estate registration. Relevance of the collection.

THE FINES IN THE COURTS OF AUDITORS AND THE EXCESS OF DISSUASION: LIMITS TO THE EXERCISE OF THE SANCTIONED ADMINISTRATIVE POWER

ERIC BOTELHO MAFRA

MAFRA, Eric Botelho. **The fines in the courts of auditors and excessive of dissuasion: limits on the exercise of the sanctioned administrative power.** 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 December 7, 2020.

Virtual room on the digital platform "zoom".

Advisor: Prof. Dr. Lucas Moraes Martins

ABSTRACT

Considering the utilitarian theories (deterrence) of Sanctioning Administrative Law, this dissertation aims to discuss the penalties applied by the Accounting Court of the State of Minas Gerais and the Federal Accounting Court to verify whether the penalties, imputed by the aforementioned Courts, would be attributed under these theories, taking into account the induction of behaviors to provide good governance and accountability of the respective individuals under jurisdiction, or would be based on a justifying strategy on the same theoretical bases developed to legitimize the application of penalties by simply non-compliance with the rules of the legal system. In this direction, seeking to deepen the analysis of the application of administrative sanctions by the Federal and Accounting Court of the State of Minas Gerais, the legal contours of the powers conferred on these Accounting Courts and their current conception as an effective public agency of fundamental rights and inducer of good public management will be examined. Furthermore, the theories elaborated on the justification of the penalty's purpose will be explained, which can assist in the development of the idea of sanction in the Accounting Courts, in order to then develop a conception that the application of sanctions by these public agency must go beyond the mere retribution, notably in the face of the autonomy of principles and grounds of these referred administrative sanctions, which should not be unrestrictedly bound by Criminal Law. To this end, the reasons contained in the decisions of the TCU and TCEMG will be studied in order to verify the focus given on the imputation of penalties with the primary objective of contributing to the practice of these Courts. Starting from preliminary studies that point to the imputation of penalty justified by the mere practice of an act contrary to legal norms, the hypothesis is that these sanctions have their own specific vocation which distinguishes them materially from other branches of law, especially in the face of the role attributed to the Accounting Courts. This role, without departing from the fundamental constitutional guarantees to avoid arbitrariness in its application (over-deterrence), with the approximation of contemporary theories about the justification of penalty's purpose, allows the rapprochement between these Accounting Courts and those under jurisdiction, for thus they would allow the promotion of good governance and accountability of their controlled ones in a perspective based on dissuasion.

Keywords: Audit institution of the Government. Law of administrative sanctions. Accounting Courts. Utilitarian theories (deterrence theories). Retributive theories. Over-deterrence.

THE UNCONSTITUTIONALITY OF THE CEBAS CERTIFICATION REQUIREMENT OF LAW 12.101 / 09 IN FACE OF IMMUNITY PROVIDED FOR IN THE 1988 FEDERAL CONSTITUTION

WILMARA LOURENÇO SANTOS

SANTOS, Wilmara Lourenço. **The unconstitutionality of the cebas certification requirement of Law 12.101 / 09 in face of the immunity provided for in the 1988 Federal Constitution.** 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 December 10, 2020.

Virtual room on the digital platform "zoom".

Advisor: Prof. Dr. Rafael Frattari Bonito

ABSTRACT

The purpose of this dissertation is to discuss the CEBAS certification requirement (Certificate of Social Assistance Beneficent Entity) advocated in Law 12.101 / 09, for the regulation of tax immunity contained in the Federal Constitution of 1988, against the judgment of RE 566.622 /RS in headquarters of general repercussion by the STF, however prove its validity with regard to the exemption established by ordinary law, segregating the referred institutes and their requirements for tax purposes of non-payment of taxes or legal waiver. Ordinary legislation allows the work carried out by philanthropic entities of social assistance, health and education to enjoy the tax exemption instituted by the Federal Union, provided that they comply with the requirements of the infraconstitutional norm, culminating in the administrative certification of these institutions, validating the exemption from collection of taxes. taxes. However, these institutions have the right to tax immunity, provided for in articles 150, V'c 'and 195§7 of the 1988 Federal Constitution, which provides for the prohibition of the institution of taxes on the assets, income or services of these institutions, provided that the requirements of the law are met. The legislation prepared to regulate the requirements of tax immunity is contained in Complementary Law, article 14 of the National Tax Code, prohibiting the distribution of profit or income, determining that the amounts received by the institution are fully reversed for the execution of the activities covered by the Bylaws and that the accounting is regular.

Keywords: Tax immunity. Certification. National Tax Code. Philanthropic entities. Federal Constitution. Complementary law. Ordinary Law

ANALYSIS OF THE OBSERVANCE OF THE PRINCIPLES OF BROAD DEFENSE AND CONTRADICTORY IN THE DISCIPLINARY ADMINISTRATIVE PROCESS OF THE PUBLIC SERVANT OF MINAS GERAIS IN THE FACE OF THE MINING ANTICORRUPTION LAW

GLÁUCIA MILAGRE MENEZES

MENEZES, Gláucia Miracle. **Analysis of the observance of the principles of broad defense and contradiction in the disciplinary administrative process of the public servant of Minas Gerais in the face of the mining anticorruption law.** 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 December 14, 2020.

Virtual room on the digital platform "zoom".

Advisor: Prof. Dr. Marcelo Barroso Lima Brito de Campos

ABSTRACT

The proposal is to understand that, within the scope of the Comptroller General of the State of Minas Gerais, there are two punitive procedures, namely, the Disciplinary Administrative Process and the Administrative Process for Accountability of Legal Entities, this coming from the Anticorruption Law, which although they are legal sanctioning, at the Internal Affairs Department, had different rites, which makes it possible to question the observance of the application of the broad defense and the contradictory, especially in the Disciplinary Administrative Process. Therefore, this is the focus that the research seeks to understand and provide a critical-propositional view of the main aspects discussed, with an emphasis on constitutional precepts. It is intended, therefore, to verify if there is a difference of applicability of the principles of broad defense and contradictory with a view to improving the Minas Gerais Administrative Disciplinary Process, based on: the procedural rules that guide the legal responsibility process contained in the Law Federal No. 12,846 / 2013, regulated by State Decree No. 46,782 / 2015, before the amendment given by State Decree of No. 47,752 / 19, within the scope of the State Executive Branch; and the legislative proposal that was pending at the Legislative Assembly of Minas Gerais that aimed at improving the application of these principles. The methodological aspect used in the research will be the legal-dogmatic one, with the hypothetical-deductive method of approaching knowledge, because by presenting the problem one can refute or not the hypothesis. As for the generic types of research, it is possible to classify it into legal-comprehensive, legal-propositional and legal-comparative. The research was based on the "Theory of the Constitutional Process" by José Alfredo de Oliveira Baracho, in which it aims to identify the supremacy of the constitutional norms over the others that make up the current procedural normative body, through the imposition of constitutional guarantees

of the constitutional principles of the adversary and of broad defense. The results obtained through this study indicate that the Statute of the civil servant of Minas Gerais needs to be modernized in view of the observance of the constitutional principles of broad defense and contradiction, in comparison to the Anti-corruption Law also of the State of Minas Gerais, since it is necessary to harmonize the procedural steps, in view of the Disciplinary Administrative Process and the legislative evolution that is guided by the realization of the Democratic Rule of Law, with the possibility of reformulating its normative body. It is believed that the identification of the principles of widespread and contradictory defense in the Administrative Disciplinary Process and Administrative Process for Accountability of Legal Entities, as well as the analysis of procedural differences, adding possible differentiation in the use of these principles in view of the 1988 Constitution, legislative reform can be proposed. Thus, it appears that it is essential that the public servant, who responds to such correctional process, be given the opportunity to avail himself of the guarantees of his fundamental rights in process.

Keywords: Constitution of the Federative Republic of Brazil. Broad and contradictory defense. Administrative Disciplinary Process of Minas Gerais. Administrative Process for Accountability of Legal Entities in Minas Gerais. procedural and Democratic Rule of Law.

THE RESOLUTIVE PERFORMANCE OF THE PUBLIC MINISTRY IN THE PARADIGMATIC PERSPECTIVE OF THE DEMOCRATIC STATE OF LAW

ZAPHIA BORONI DE SOUZA

SOUZA, Zaphia Boroni. **The resolute performance of the Public Ministry in the paradigmatic perspective of the Democratic State of Law**. 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 December 16, 2020.
Virtual room on the digital platform "zoom".

Advisor: Prof. Dr. André Cordeiro Leal

ABSTRACT

The 1988 Constitution of the Federative Republic of Brazil, which instituted the project of the Democratic State of Law, raised the Public Ministry to the category of an independent, permanent institution, with responsibility for the defense of the legal order, the democratic regime and social and individual interests unavailable, therefore, it is important to have a prominent role in the taxation of the implementation of the democratic project. In this bias, it is proposed, by legal dogmatics, the so-called resolute profile of the Public Ministry, which has as premise the proactive, reflective action, focused on preventive taxation and acting in the extrajudicial scope. The research developed in this work aims to study the ways of resolving action by the Public Ministry, notably the civil inquiry, the commitment to adjust conduct, recommendations and public hearings, questioning them in the face of the legalconstitutional paradigm of the Democratic State of São Paulo. Law, investigating whether they are in line with legal democracy or whether the Public Prosecutor's Office would still have a historical bias of authoritarian activity. Therefore, the theoretical bases that relate to democratic proceduralism were analyzed, whose foundations are found in the constitutional theories of the process, presenting the paradigmatic understandings of the Rule of Law, with an approach to the paradigmatic developments of the Liberal State and Social State, treating, for end, of the current paradigm of the Democratic State. It also addressed the introductory precepts of the foundations of democratic proceduralism, seeking, finally, to correlate the preventive action of the Public Ministry as being the most legitimate form of ministerial action in the Democratic State of Law. The research is bibliographic and uses Karl Popper's hypothetical-deductive methodology.

Keywords: Public ministry. Resolute Performance. Democratic State. Democratic proceduralism.

RESCISORY ACTION BASED ON PRECEDENT OF CONSTITUTIONAL CONTENT: ANALYSIS OF ARTICLE 525, § 15 OF THE CPC BEFORE THE DECLARATION OF INCONSTITUTIONALITY DELIVERED BY THE STF IN DIFFUSED CONTROL

RENATA CRISTINA SILVA MOURÃO

MOURÃO, Renata Cristina Silva. **Rescisory action based on precedent of constitutional content**: analysis of article 525, § 15 of the CPC before the declaration of unconstitutionality delivered by the STF in diffuse control. 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 December 18, 2020.

Virtual room on the digital platform "zoom".

Advisor: Prof. Dr. André Cordeiro Leal

ABSTRACT

The object of this work is to assess the (in) compatibility between the fundamental right to res judicata and the suitability of the rescission action in view of the declaration of unconstitutionality issued by the STF under diffuse control, pursuant to the provision contained in article 525, § 15 of the CPC. This is because, according to the proceduralist provision, any time the STF decides against the res judicata, it can be the object of rescission action, even after the two decadential years that gave it a constitutional guarantee that it will not be changed any more, since these two years will be counted against the final judgment of the decision handed down by the Supreme Court. In this context, there would be a contradiction between the provision contained in the CPC and the constitutional guarantee of legal certainty guaranteed to the disputing parties by the Originating Constituent. The decommissioning of the res judicata, whose application of the law or normative act was requested by the interpretation of a magistrate imbued with the duty to control constitutionality in the specific case, is not understood as a decision that is limited to applying a law subsequently declared unconstitutional. From this perspective, the following question arises as a research problem: the decommissioning of res judicata whose term starts from the publication of the unconstitutionality decision issued by the Supreme Court under diffuse control would constitute deensa to the fundamental right of legal security? The principle of legal certainty is implicitly provided for in the Federal Constitution, constituting a measure that allows the parties to have knowledge and certainty regarding the unfolding of their acts based on the existing legal regulation. As a corollary of legal certainty, the legislature gave the res judicata the status of constitutional guarantee, which in the teachings of Humberto Theodoro Júnior confers certainty on the right recognized by the courts. The methodological aspect to be used will be the legal-dogmatic one, because the research will be elaborated in the field of law using elements internal to the legal system, characterizing it in a theoretical research. The source of the research will be bibliographic and the multidisciplinary knowledge sector, since it is based on the branches of Constitutional and Civil Procedural Law, open to the development of the theme. At the end of the research carried out, it will be sought to demonstrate that the stipulation of the initial term for the filing of rescission action from the date of the unconstitutionality decision rendered by the STF, constitutes an affront to the constitutional value attributed to legal certainty.

Keywords: Thing judged. Legal Security. Precedents. Constitutionality Control. Relativization.

CIVIL AGREEMENTS IN ADMINISTRATIVE IMPROBITY HYPOTHESES: LEGAL-NORMATIVE DEVELOPMENTS AND REFLECTIONS ON THE TEMPORAL AND MATERIAL LIMITS OF AGREEMENTS BASED ON THE CNMP AND CSMPMG RESOLUTION

FLÁVIA BARACHO LOTTI CAMPOS DE SOUZA

SOUZA, Flávia Baracho Lotti Campos de. **Civil agreements in the event of administrative improbity hypotheses**: legal-normative developments and reflections on the temporal and material limits of the agreements based on the CNMP and CSMPMG resolution. 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 December 19, 2020.

Virtual room on the digital platform "zoom".

Advisor: Prof. Dr. Sérgio Henriques Zandona Freitas

ABSTRACT

The 2015 Civil Procedure Code recognised, as a procedural foundation, the search for consensual settlement of conflicts, consecrating the existing forms of self composition established in Act 7.347/85, Act 12.846/13 and Act 12.850/13, components of the microsystem against corruption. Nevertheless, article 17, §1º of Act 8.429/92, in its original wording, prohibited agreements, transactions or reconciliations dealt by that Law in cases of administrative improbity, aiming to protect public property and administrative morality, as of civil liability of public agents or third parties who, together, committed unsubstantiated acts. The principle of supremacy and unavailability of the public interest prevailed in its traditionalist bias. The constitutionalization of administrative law, from the perspective that all fundamental rights should, as far as possible, be sought and preserved, without absolute prevalence of any of its principles, as well as the paradigm shift from a punitive and imposing Public Administration to a consensual and more dialogical one, generated reflexes in the instruments or methods of management control. Thus, the judicial slowness and the high costs within the legal apparatus system, combined with the effectiveness in complying with extrajudicial agreements, resulted in the most incipient search for consensual solutions to conflicts, including the fight against corruption with faster and more effective refund of the treasury. In this perspective, Act 13.964/19 changed Act 8.429/92 to allow for agreements to be made in the event of administrative misconduct and to enact the agreement of non-civil pursuit, with no regulation though, and limiting it to the phase of the civil or preparatory investigation to the main procedure for the civil act of misconduct. The purpose in this dissertation is thus, with basis on a bibliographical research, using the hypothetical-deductive method and having as a theoretical reference the constitutionalization and consensus in contemporary Public Administration,

to define what is of public interest in administrative improbity actions; to demonstrate the possibility of making agreements also in the course of the main demand, starting from the application of the principle of proportionality, reasonableness and a more coherent and coordinated normative interpretation of the legal system; to recognise , as yet to be regulated, the possibility of analogy application of the guidelines foreseen in the Resolutions of the National Council of Public Prosecutors and the Superior Council of the Public Prosecutor's Office for the conclusion of the terms for conduct adjustment and to point out, at the end, the material limits of civil agreements in administrative improbities, safeguarding the fundamental rights and guarantees of citizens and, consequently, of the collectivity.

Keywords: Administrative misconduct. Consensual public administration. Civil agreements.Regulation. Material extension and limits.

THE PROVISION OF PUBLIC SERVICES: THE NEED TO ENHANCE LAW 13.460 OF 2017 (USER DEFENSE CODE)

ITIBERÊ GUARÇONI MARINHO

MARINHO, Itiberê Guarçoni. **The provision of public services:** the need to enhance Law 13,460 of 2017 (User Defense Code), 2020. Dissertation (Master of Law). Minas Gerais Education and Culture Foundation - FUMEC. Faculty of Human, Social and Health Sciences, Postgraduate Program in Law. Belo Horizonte, 2020.

Defense on December 23, 2020.
Virtual room on the digital platform "zoom".

Advisor: Prof. Dr. Raphael Frattari Bonito

ABSTRACT

This paper deals with the provision of public services under a constitutional perspective. The issue is addressed in accordance with the dictates referring to the binomial state's duty to provide services and the citizen's right to have services provided with quality, especially when it comes to essential public services. The Constitution of the Federative Republic of Brazil in 1988 is known as the "Citizen Constitution", and presents in its text several generations of rights and a democratic context and a constitution that guarantees the provision of public services is an activity that is above all, it is the citizen's right and is essential to human dignity. However, the activity of services does not always happen appropriately in order to guarantee the citizen and user of these services the effectiveness of their rights. Thus, the study aims to demonstrate the fragility of public service that, despite having in hand an instrument in the molds of the Consumer Protection Code, capable of gathering, in a single legal document, with the publication of Law 13.460 of 2017, the so-called User Defense Code, the defense of their rights and duties as a way of seeking constitutional guarantee and effectiveness in relation to them is still uncertain. Will be presented, the context of public services, its particularities that prevent the existing protective legislation from applying to the user of public services in a broad and effective manner, as the protection of the user of public services is still uncertain even with Law 13.460 of 2017. Given this, it is defended here the improvement of the User Defense Code, capable of bringing legal security and effectiveness to the rights of the user of public services, which are constitutionally foreseen.

Keywords: Constitution. Constitutional System. Code of Consumer Protection. Public Services. Essential services. Services uti universi. Services uti singuli. User. User Protection Code. Legal Security.