

The brazilian impeachment and the incompatibility with the political trial

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1 Introduction

This study aimed at impeachment of the President of the Brazil. The theme is important for the democratic system and constitutional state because it refers to responsibility crimes of President democratically elected by the people (Art. 1, sole paragraph, of Brazilian Constitution – CRFB). They affected the constitutional state because of the fact that behaviors responsibility crimes are written in the CRFB text (Art. 85 of CRFB). The form the impeachment is presented in order to be a legal trial. Also here the purpose is not analyzed the problems of Brazilian political system of “coalition presidentialism” (Pérez-Liñan, 2018, p. 33).

Thus, the analysis concentrated in the CRFB form in relation to trials for essentially political institutions. Firstly, it is introduced the impeachment institute (here call responsibility crimes) in the legal system of Brazil to objectively understand the necessary conditions for the President to be sued in the Legislative (Chamber of Deputies and Federal Senate).

The law and constitutional aspects of impeachment will be exposed to highlight the technical and legal standards that should enclose the Senate judgment of the President’s impeachment. It is necessary to have a legal judgment with a jurist instead of a political with politics, in the case of Brazil.

The legal and political grounds listed demonstrate the impossibility of the Brazilian impeachment’s form with the political judgment. Finally, there is a highlight some points of the manifestation of the current Legislative Commission that will propose changes to the Law of impeachment.

2 Brazilian system

The legal provisions about responsible crimes of the President are proper to the rule of law, constitutional state, and government by law. Consequently, it is enough the statement of facts contained in the Law n. 1.079/50 so that the President can be sued, regardless of political advantage, or disadvantage. Otherwise, the over-principle of the constitutional state demands that the rule of law must not violated and delegitimized. There will be illegal and unconstitutional actions overlapping the various source of legitimacy of the public agents’ action, which are the constitutional and under-constitutional legal norms. In view of this fact, if the President that violates the legal norms is not sanctioned, we are facing a government of man over man, based on exclusively political and unlawful decisions. The person of the President prevails instead of probity, impersonality, and the importance of public function (Brossard, 1992, p. 51).

For constitutional state stability it is necessary to have mechanisms that stop the power to avoid their abuse (Montesquieu, 1995, p. 118). Therefore, it must be made possible to accuse suspects of the practice of some crime of responsibility. The impeachment has as its purpose preventing the government from damaging (Santos, 2005, p. 540) the country, holding it accountable for realizations of certain behaviors (Brossard, 1992, p. 4). The CRFB establishes the power of the Chamber of Deputies (Art. 51, I) in authorizing proceedings against the President and the Senate (Art. 52, I) to prosecute and judge him/her (camera system) (Lima, 1960, p. 246-247).

The crimes of responsibility are defined in Art. 85 of the CRFB (Silva, 2021, p. 452) and can be found in special law. It should be emphasized that the sole paragraph of Art. 85 establishes that law would define the crimes of responsibility (Lima, 1960, p. 244). Thus, the crimes, the process, and the trial of the President are specified in Law n. 1.079/50.

2.1 Legislative power

In the impeachment, the legislative power acts as Court, having the disciplinary (Brossard, 1992, p. 133) power, since the Legislative Power is to initiate process, prosecute and try the President of the Republic. The current constitutional text traces the same sense of the previous constitutions of 1891 (Art. 29, Art. 33, Art. 53, Art. 54), 1937 (Art. 85, Art. 86, Art. 87), of 1946 (Art. 59, I, Art. 62, I, II, §1º, §2º e §3º, Art. 88, Art. 89), and 1967 (Art. 42, I, Art. 44, I, Art. 84, Art. 85). The exception was the Constitution of 1934 that established a Special Court (Art. 58) consisting of the four judges of the Supreme Court, three Congressmen/women, and three Senators (mixed system) (Lima, 1960, p. 247).

2.2 The power of try of Legislator

The Legislator's power of judgment is not exceptional, although it is not his primary function. For example, the legislator judges his peers in cases involving parliamentary ethics. The CRFB attributes the power to prosecute and judge to the Legislative Branch, specifically to the Federal Senate. The impeachment trial session is presided by the President of the Supreme Court (STF).

2.3 Chamber of Deputies

The Board of Chamber of Deputies receives the statement of objections against the President (Art. 51, I, of CRFB with Art. 19, I, of Internal Regulation of the Chamber of Deputies /Resolution n. 17/89). The President of the Board of Chamber of Deputies (Art. 17, II, a, d, and IV, c, of the Internal Rules of the Chamber of Deputies/Resolution n. 17/89) upon receiving the denunciation, must read it in the following session and send it to a special commission (Art. 19 of Law 1079/50). The commission shall issue an opinion within 10 days as to whether or not the denunciation should be deliberated (Art. 20 of Law 1079/50). The opinion will be discussed and voted on whether or not to follow it (Art. 21, Art. 22, and Art. 23 of Law 1079/50).

The indictment and declaration of its merit occurs in the Chamber of Deputies (Art. 23, first paragraph of Law 1079/50), with the function of indictment of the President. When the President of the

Chamber of Deputies proclaims the result of the indictment, the President of the Republic is removed from office (Art. 23, 5th paragraph, of Law 1079/50) and his successor takes office, according to the constitutional provision (Art. 79 and Art. 80 of the CRFB) (Pontes de Miranda, 1953, p. 417). Therefore, the process will be sent to the Senate (Art. 23, 6th paragraph of Law 1079/50).

2.4 Senate

The CRFB set the exclusive power, unique, and final to Senate to process and judge the President for crimes of responsibility (Brossard, 1992, p. 183). The decision is private, irrevocable, and unappealable (Brossard, 1992, p. 160). This is the understanding of the STF that it is limited to guarantee the observance to the procedural rules and the constitutional guarantees in the process of impeachment. It does not accept the thesis that it is a body that reviews the decision of the House of Representatives or the Senate. Thus, the STF moves the expressed rule on the non-removability of the Judiciary appreciation of the threat and injury (Silva, 2021, p. 456) to rights (Art. 5th, XXXV, of the CRFB), unless it pertains to the ample defense and the adversary.

The Senate (Art. 380, Internal Rules of the Senate/Resolution n. 93/1970) receive the accusation decree of the Chambers of Deputies and send copies to accused and original documents to the President of STF (Art. 377, sole paragraph, Internal Rules of the Senate/Resolution n. 93/1970) with the judgment day (Art. 24 of Law n. 1079/50). The accused has an opportunity to defend and may even produce evidence in its favor (Art. 27, Art. 28, and Art. 29 of Law n. 1079/50). After the debates between the accusing commission and the accused are concluded, the President of the session shall make a summary report of the accusation and of the evidence of the accusation and of the defense and shall submit it to a roll call vote of the senators (Art. 378 Internal Rules of the Senate/Resolution n. 93/1970) (Art. 31 of Law n. 1079/50). If the accused is acquitted, the effects in his favor will be produced immediately (Art. 32 of Law n. 1079/50). If convicted, the accused will be *ipso facto* removed from office (Art. 34 of Law n. 1079/50).

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3 Technical specific issues

The provision of factual support that indicates the responsibility of the President in the constitutional text is typical of Brazilian tradition. The constituent chose to determine the acts for which the President could be accused. With this, it reduced the discretionary power of the Legislative Power to acquit or convict the President for any political motivations. The stability and rigidity of the mandate of the head of the Executive Power (Pontes de Miranda, 1953, p. 421-422) was sought; after all, he is directly elected by the people.

3.1 Textual amplitude

The 1988 constitutional legislator, as well as previous ones (1891 – Art. 54; 1934 – Art. 57; 1937 – Art. 84; 1946 – Art. 89; 1967 – Art. 84), exhaustively listed the facts that motivated the impeachment. Thus, by determining them, it sought to keep the Legislative Power discretion to decide the fate of the Chief

Executive Power, which, in a presidential regime, has many attributions and political representation (Lima, 1960, p. 243-244). For this reason, the CRFB defined the facts that could be held responsible, and the law specified them. Therefore, to constitute a crime of responsibility, the President must perform at least one of the facts contained in Law n. 1.079/50, which are framed by the facts of Art. 85 of the CRFB.

Thus, by restricting the facts that can be held accountable, the constitutional Legislator established a level of legal security so that the President could exercise his power without being strictly dependent on generic rules and, therefore, to political discretion. Thus, the President can act with the knowledge of the rules in force, reducing the level of arbitrariness of the agent and the judge (Ávila, 2011, p. 126-128). The legal security established to avoid arbitrariness is inherent to the legal system of the Constitutional State of Law, because it is necessary to have predictability in state action. All citizens must have prior knowledge of what is legal or illegal when making decisions regarding their responsibilities (Ataliba, 2007, p. 171-173). For this reason, it is said that the Legislative Power, when judging the President, must function as the Judiciary Power (Pontes de Miranda, 1953, p. 425).

After the formation of the legal procedural relationship, with the reception of the accusation in its objective and subjective assumptions, the Legislative is bound, strictly, to the general procedural rules (civil and criminal) and those established in Law n. 1.079/50. There is the observance of due process of law and the fundamental guarantees pertinent to any judicial proceeding. Therefore, the Legislative Power must be judged according to the factual support established in Law n. 1.079/50, occurring the legal framework already in the indictment (in the Chambers of Deputies), from a judgment of merit superficial to the cognition (Pontes de Miranda, 1953, p. 425).

3.2 Tipology

The CRFB in Art. 85 establishes general factual support for the crimes of responsibility. In its caption there is an indication of a fact that can be held accountable, which are acts that violate the Constitution. The facts that can be held responsible are foreseen in seven sections¹. The sole paragraph assigns the specification of the crimes of responsibility to a special Law (1.079/50). It is also the special law that disciplined the impeachment process, which is divided into four parts. The first part specifies the facts that may be held responsible for the President and the Ministers of State. The second part regulated the process and the trial of the President and the Ministers of State; the third part foresees the crimes of the Judges of STF and of the Attorney General of the Republic, as well as the rules of the process and the trial; finally, the fourth part contains the rules concerning Governors and Secretaries of the Member-state.

The wording of Art. 4 of Law n. 1.079/50 resembles that of Art. 85 of the CRFB. The *caption* of the cited articles are the same. However, Art. 4 has one more subsection that refers to the “legal custody and employment of public decisions”, in Art. 4 “VII – the compliance with judicial decisions (...)”.

¹ “[...] I – the existence of the Union; II – the free exercise of the Legislative Power, the Judicial Power, the Public Prosecution and the constitutional Powers of the units of the Federation; III – the exercise of political, individual and social rights; IV – the internal security of the country; V – probity in the administration; VI – the budgetary law; VII – compliance with the laws and with court decisions [...]” (Brasil, CRFB).

These differences are remedied by the hierarchical overlap of Art. 85 of the CRFB. Thus, one reads Art. 4 of Law n. 1.079/50 with the text of Art. 85 of the CRFB.

There are two problems: 1) the lack of legal provision for non-compliance with the laws; 2) the inexistence of constitutional provision for the factual support “the safekeeping and legal employment of public funds”. The first refers to the omission of regulation by the derivative legislator about the “compliance with laws” in the final part of Art. 85, VII, of the CRFB, since Art. 4, VII, of Law n. 1.079/50, only provides for the offense against “compliance with judicial decisions”. Consequently, the referred Law does not specify what should be considered an attempt against the “enforcement of laws”. There is a constitutional omission, just as there is no specification of what it means to attempt against the CRFB, foreseen in the *caption* of Art. 85 of the CRFB and in Art. 4 of Law n. 1.079/50 (Massaú, 2019, p. 308-310).

The second problem is understood to be solved by the absence of a constitutional provision, that is, since this is a list of exhaustive factual supports, the absence of a constitutional provision for the offense against “the safekeeping and legal use of public funds” indicates its tacit revocation, not being received by the 1988 CRFB. This is due to the absence of a constitutional basis for the continued validity of item VII of Art. 4 of Law n. 1.079/50 (Brossard, 1992, p. 11).

4 Factors of mismatching of Brazilian impeachment

This topic aims to highlight the factors that cause dysfunction in the legal system in the face of the political decision of the impeachment trial itself.

4.1 Legal responsibility

In a constitutional state of Law, the principle ‘the prince is free from the laws’, derived from *Ulpiano’s* (Bobbio, 2020, p. 128) Digest, I, 3, 31 (Art. 99 of the Constitution of the Empire of Brazil of 1824) does not hold. No one should be sheltered from legal irresponsibility. This is the case with the President, who, in addition to being held responsible for common infractions (Art. 86 of the CRFB), has the so-called crimes of responsibility.

Therefore, the name does not make the concept, or the category, because legal systems are constituted by the enchainment of rules and principles, which have propositions or formulas, expressing them, and concepts, expressed through words (Pontes de Miranda, 1953, p. 421). In reference to Art. 85 of the CRFB, the responsibility called political texts (Law n. 1.079/50) bring legally structured factual supports. It is legally incoherent and unreasonable for the President to go through the impeachment process; if the accusation is not consistent; it is also incoherent and unreasonable for him not to go through the impeachment process if the accusation is consistent; it is also incoherent if the realization of one of the facts of Law n. 1.079/50 is proven, and he is not convicted; or to suffer impeachment without incontrovertible evidence of the realization of one of the facts (Brossard, 1992, p. 53). However, in an unlawful manner, the issue in practice resides in the political decision of admissibility of the accusation in the Chambers of Deputies and processing and judgment in the Senate (Art. 86, *caption*, of the CRFB with Art. 31 of Law n. 1.079/50), genuinely political institutions.

Ultimately, the process and the judgment of responsibility of the President (Mafei, 2021, p. 234-236) is not made by a factual and legal judgment. It depends on the representativeness of the Chief of Executive in the Parliament to be acquitted or convicted, as it shows to be the practice in Brazil to hold responsible or ignore the practices described in the factual support of Law n. 1.079/50². This legal-institutional design violates the principle of the normative force of the constitution, the principle of legality, the principle of the unity of the legal system, the principle of practical concordance, and interpretation in conformity with the constitution (Hesse, 1993, p. 24-28), since the violations of the CRFB and Law n. 1.079/50, even if proven, depend on political consent with regard to admissibility and the final decision (Massaú, 2019, p. 304)³.

The responsibility to be analyzed in the impeachment is legal, because the contradiction occurs precisely because all Public Agents are bound by the legal texts and the highest hierarchy position in the Executive Power depends politically to remain unscathed even under the expressed constitutional and legal violation. If there is factual support that describes illicit conduct, such evaluation and judgment do not depend on political judgments, but on legal ones. The essence of the Constitution/law over the will of individuals, including those who are invested in public positions and administer the public good. The observance of legal dictates must guide the accused and the judges.

It could be argued that the President can commit common criminal offenses, being judged by the STF (Art. 86, *caption*, 4th paragraph, of the CRFB)⁴, after his mandate; therefore, the impeachment would have a political judgment, because the constitutional legislator decided so. It happens that the problem is concentrated in having a political judgment on facts that expressly violate the constitutional and infra-constitutional text. In this sense, there is no room for political judgment in maintaining a President, *e.g.*, who refused to comply with the decision of the Judiciary Power dependent on the exercise of the functions of the Executive Power (Art. 85, VII, of the CRFB with Art. 12, 2, of Law n. 1.079/50) or tried to subvert by violent means the political and social order (Art. 85, III, of the CRFB with Art. 7, 6, of Law n. 1.079/50).

4.2 The problem of political trial

These examples show that there is no room for political decision, as the constitutional legislator⁵ wished, which, by its very nature and dynamics, is organically moved by interests, group solidarity, party-political⁶ animosities, among other factors that constitute abuses and impartiality factors,

² See Mafei (2021).

³ See Brossard (1992, p. 177-178).

⁴ The Art. 86, *caption* of the CRFB provides for the possibility of the President being prosecuted and judged by the STF in the case of committing common criminal offenses linked to the office he holds (Art. 312, Art. 316, and Art. 317 of the Penal Code), if two-thirds of the Chamber of Deputies agree. On the other hand, 4th paragraph of Art. 86 of the CRFB determines that the President will not be held responsible for facts unrelated to his function while he is in office. After the end of his term, the former ex-President will be prosecuted and held responsible for such facts. It should be noted that the factual support described in Art. 9, 7 of Law n. 1.079/50 considers it a crime of responsibility to act in a manner incompatible with the honor, decorum, and dignity of the office. This means that if the President commits a common crime, *e.g.* murder or bodily injury, he or she may be impeached, since it is a political judgment about what is considered honor, decorum, and dignity of office (Silva, 2021, p. 453).

⁵ See Pontes de Miranda (1959).

⁶ See Sallum; Casarões (2011).

regardless of the facts that contradict them. Political interests are not always in accordance with the public interest (which is also expressed in the constitutional text), which should prevail over any other type of interest. Furthermore, the illicit fact is not qualified (whether political or legal) by naming⁷ it, but it is characterized according to its nature. In this case, the factual supports bring legal-functional illicit acts (Brossard, 1992, p. 58-59).

Legal criteria cannot be evaluated and judged by political parameters any more than political criteria can be judged by legal ones. Even if the impeachment has the objective of protecting the state from the President's mismanagement (Brossard, 1992, p. 78), it does not mean that the criteria defined constitutionally and specified by law can be a factor for political judgment. It is not enough to call them political; they need to have their form and subject matter political. Legal reasons are not judged politically, and political reasons are not referred to the judiciary (Brossard, 1992, p. 139).

The inconsistency that stands out is the way impeachment in the Brazilian State is structured. Although the legislator aimed to shield the President of the Republic from excessive pressure from the Legislative Power, he ended up distorting an institution that should be preponderantly political. For this reason, it is important to highlight the difference in the provision of impeachment in Brazil compared to the United States of America (Ouverney, 2016). For the Americans, the *Article II, Section 4* of the United States of America Constitution has factual support with an open meaning and a greater degree of indetermination than the Art. 85 of the CRFB.

If the existence of the President's accountability is healthy for democracy (Brossard, 1992, p. 3-5), it means admitting that this accountability cannot be hostage to political judgments regarding the accountability for committing expressly determined conduct. If the irresponsible actions of the President are proven, he must suffer impeachment for the sake of democracy. For democracy is weakened if it is thought and carried out in favor of or against the person who is occupying the presidential office. Democracy demands the equal treatment of all. It cannot be subject to political judgments of convenience, animosities, and circumstances.

It would be different if the impeachment process and trial were based on strictly political reasons, such as governability, reliability, morality (*latu sensu*), and not on specific action determined by law. Therefore, the argument that the violation of the factual support expressed in the CRFB and specified in Law n. 1.079/50 is excusable due to unforeseen and extraordinary circumstances corroborates the fact that impeachment in Brazil is wrongly disciplined (Brossard, 1992, p. 143). The unforeseen and/or extraordinary circumstances are absorbed by the rules and principles carrying exceptions that should be legally analyzed by a legal court, since there are predetermined conducts to be respected.

⁷ In the case of impeachment, the debate to be highlighted is whether it was a crime or not (Brossard, 1992, p. 64-70). However, it is not the place to carry out this debate, since it is not the objective of this article, which is focused on the analysis of whether the form is subject to political or legal judgement, regardless of whether the impeachment is characterized as criminal or political in nature, according to the character of sanction.

⁸ Article II, Section. 4. 'The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.' (UNITED STATES OF AMERICA)..

4.3 The impeachment form

The configuration of impeachment in Brazilian style is leaning towards the judicial system, due to the form and stages resembling the judicial process (Brossard, 1992, p. 37). In this case, it would be appropriate for the Judiciary Power to judge the Chief Executive, since it is necessary to take into consideration the principles of the normative force of the constitutional text, legality, the impartiality of the judge and the technical aspects, fundamentally with regard to the relationship between the facts and the factual support. Furthermore, if the crime of responsibility is a violation of a duty of office and function (Brossard, 1992, p. 80), then the decision to keep the President in office or not is not a violation. It is not a political decision, when we are facing a constitutional and legal violation.

The risks of a political trial – which is not the object of this analysis – exist to the extent that Legislative Power is essentially political. Thus, irreparable abuses may occur, since the Senators lack professional training in law, and the judgment may be based on political positions of solidarity or antagonism for being or not aligned politically with the accused. Also, the interests of the country may not influence the judgment. The senators judge with their own or the interests or interests of their ideology, which affect a decision, whether it be condemnatory, when it should be acquitted, or the opposite. These and others are the risks of having a political trial of the President (Brossard, 1992, p. 174-175). Therefore, the loss of office of a President should not be reduced to political reasons, as it occurs in parliamentarianism with the vote of no confidence, because the consequences are diverse⁹.

The impeachment in Brazil should be disciplined differently than through specific factual support (Brossard, 1992, p. 52-53), because it is desired in this process a political trial in which the President's bad performance is at stake. Therefore, factual supports must be formatted for political decisions, in which decisions involving political animosities, moralities, impartialities, among other substrates of the political game, can be made. However, one also cannot allow the President to become a hostage of the Legislative Power; legal and political limits must be established for the impeachment of the head of the Executive Power. Although this was the objective of the original constituent legislator, the impeachments of Presidents Fernando Collor and Dilma Rousseff and many other accusations against other Presidents – who did not suffer impeachment proceedings – are proof that the factual constitutional and law support are not imperative as they should be in a constitutional state of Law.

4.4 Issues about the updating of impeachment Law

The news published (03/03/2022) on the STF website of the creation by the Senate of a Commission, chaired by Justice Ricardo Lewandowski (STF), in charge of updating Law n. 1.079/50 brings in its content the need to modernize the procedural rules, adapting it to the constitutional text in order to ensure respect for due process of law, for the full defense, for the adversary, and for individual guarantees, among other constitutional principles (MINISTRO..., 2022). In this sense, the text did not analyze possible mismatches with the constitutional rules.

⁹ In the case of parliamentarianism, the prime minister who has lost office can remain in parliament. In the case of the president, he loses office and becomes ineligible for a period of 8 years (Silva, 2021, p. 456-457).

However, the president of the commission, according to the news report, stated that it would be necessary to define the factual basis of the crimes of responsibility in order to rule out the possibility of an extensive interpretation. He also highlighted the need to observe the principle of the individualization of the penalty and proportionality, with the objective of attributing a technicality to the application of penalties according to the conduct of the agents. It is understood that there are two mistakes. The first relates to the scale the penalty. The CRFB defines the penalty to be applied to any of the conducts described in the regulating Law. It is not a case of establishing the scale of the penalty as it was done, outside of the CRFB, in the impeachment of former President Dilma Rousseff. The sanction for the crimes of responsibility is not criminal in nature.

The second mistake is to try to make the conduct described in the factual supports more precise, since who judges the impeachment is a political institution that, throughout history, has demonstrated political and not legal judgments, either by ignoring the analysis of complaints, in the Chambers of Deputies, or in the judgment of Presidents. Making the conduct more specific will weaken (even more) the normative force that the CRFB and the regulating law should possess. Since the court is political, the decision to accept the indictment and to convict for crimes of responsibility are political, and it may ignore the irresponsible conduct of the President of the Republic in the name of political force and prestige. If this occurs, the constitutional text and the regulating law, specifically the principle of the rule of law, are ignored and violated.

For all the analyses and arguments developed in the text, modernizing impeachment is either making it a political trial or turning it into a legal one. In the first case, the factual supports should contain broad descriptions, *e.g.*, such as national security, crime of treason, immorality, among other generic descriptions, leaving it to political discretion to decide whether or not keeping the President of the Republic in power is salutary for Brazil. In the second, the constitutional and infra-constitutional texts are maintained, and the competence of the decision is attributed to the STF.

5 Conclusion

The text aims to analyze the pertinence of a political trial in the face of a constitutional and legal provision strictly formatted in legal molds. By providing factual support describing certain conducts, the constitutional legislator reduced the Legislative Power discretionary power to institute the process and judge the impeachment of the President.

However, the Brazilian Senate, on two occasions – in the impeachment of Presidents Fernando Collor and Dilma Rousseff – ignored the constitutional and legal limits. In the case of President Fernando Collor, even with the resignation before the decision, the Senate opted to apply the sanction of ineligibility for 8 years (Art. 52, sole paragraph, of the CRFB). In the case of President Dilma Rousseff, the Senate decided to remove her from public office, but did not apply the sanction of ineligibility for 8 years. This demonstrates that political and circumstantial interests overruled the legal commandment. Furthermore, with delimited and determined factual support, the political nature of the impeachment decision must give way to a factual-legal analysis and decision, under penalty of becoming a decision against the law and unconstitutional. Inadmissible in a constitutional state of law

that ties the legitimacy of all political and public functions and decisions to legality and constitutionality.

The institution of impeachment must be changed or abolished in Brazil. In the case of change, the Judiciary should have the competence to decide, or change the constitutional text to a generic and undetermined factual support, in which political decisions can fit without violating the constitutional/legal command. Thus, disrespect and violation of constitutional and legal command should not be tolerated under the argument that the competence of the processing and judgment of impeachment is political, because in the constitutional state of law, what is political must be in accordance with legal limits.

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O impeachment brasileiro e a incompatibilidade com o julgamento político

Resumo. O texto tem como objetivo analisar a (in)adequação de julgamento político prevista para os crimes de responsabilidade estabelecido na Constituição da República Federativa do Brasil de 1988 em relação ao Presidente da República. Os fatos que levam ao *impeachment* previstos na Constituição são condutas específicas que se constatadas devem levar o Presidente a perda do mandato, pois não cabem juízos políticos de adequação. A constatação da realização dos fatos descritos na lei regulamentadora dos crimes de responsabilidades perfaz a responsabilidade do gestor público que

descumpriu mandamento constitucional e legal. Neste sentido, o julgador não deve realizar julgamento político, mas jurídico, sem a influência de rivalidades políticas, pessoais ou disputas de poder. O método empregado no estudo foi o hipotético-dedutivo, para que se pudesse compreender como funciona o *impeachment* no Estado brasileiro, e o analítico, a fim de retirar as das análises as respostas em relação a inadequação normativa ou prática de como o instituto do *impeachment* está disciplinado.

Palavras-chave: Constituição Federal; Impeachment; Inadequação; Julgamento político.

The brazilian impeachment and the incompatibility with the political trial

Abstract. The text aims to analyze the impeachment institute in Brazil. For that, the focus is the impeachment of the President of Brazil. Different from other legal realities, the Brazilian legal system foresees specific and determined conduct that constitute the so-called crime of responsibility. The President is prosecuted and judged by the components of the Legislative Branch. The Brazilian Judiciary guarantees the observation of due process of law and the realization of the right to a full defense. The problem that arises is of having specific and determined factual support and a political judgment. The political judgment is neither technical nor does it observe the legal elements of the norm and the concrete case; on the contrary, it is based on public opinion and the direct or indirect interests of the judges themselves. Thus, one can have a decision condemning a President without having carried out the conduct described in one of the factual supports. A decision may also be rendered absolving the President having engaged in the conduct described in one or more of the facts. In these two cases, we will have a decision that violates the constitutional and under-constitutional text, without being able to challenge it. This decisively affects the principle of the rule of law, weakening it is a normative force. For this reason, changes are necessary in the sense that if the establishment of conducts in factual supports remains, the judgment of the President should be by Judiciary; if the trial by Legislative Branch is chosen, the conducts foreseen in the factual supports should be vague, indeterminate, and generic to the point of fitting into political judgments, which contain interests. The method used in the research was the analytical one, due to the need to understand the positive and negative aspects of the current configuration of the impeachment institute in Brazil. Since this is a theoretical analysis, the research technique used was bibliographic, since the two examples of impeachment took place from judgments in the Legislative Branch.

Keywords: Federal Constitution; Impeachment; Inadequacy; Political Trial.