v. 2, n. 12, 2022

Scientific Journal of Applied Social and Clinical Science

PREVENTIVE CONTROL OF CONSTITUTIONALITY IN THE LEGISLATIVE PROCESS IN SANTA CATARINA

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ID Lattes: 6977931008689438

Abstract: This article aims to investigate the preventive control of constitutionality in the legislative process of the state of Santa Catarina. Thus, initially, a brief reflection on preventive control of constitutionality in Brazil is presented. Then, it seeks to understand the procedure of legislative elaboration that must strictly observe the formalities prescribed in the constitutional text, since the consequences of the law are of paramount importance, since it limits individual freedom or guarantees rights to individuals. Failure to comply with any act of the legislative process will result in the formal unconstitutionality of the law. Subsequently, the author describes the functioning of the Internal Regulations in the legislative houses, in the present case, addresses the Internal Regulations of the State Legislative Assembly, consisting of norms and principles that underlie the legislative, administrative and supervisory functions of the Santa Catarina parliament. Finally, it is worth saying that unconstitutionality is one of the main problems in the quality of laws, especially state and municipal ones, which has serious consequences for the Judiciary and for the effectiveness of citizens' rights. The research method is inductive, based on a literature review on the subject.
Keywords: Preventive Control of Constitutionality. Constitution of the Federative Republic of Brazil. Legislative Process. Legislative proposition. Internal Rules of the Legislative Houses.

INTRODUCTION

The present work intends to investigate, even if it addresses only a small part of the issue and from a very specific point of view, the preventive control of constitutionality, which must be read and understood as a search for subsidies that can solve a part of the crisis that ravages the Legislative Power.

In spite of the control of the elaboration of laws, it is questioned whether what is being created is constitutional or not, that is, if the content of these laws obeys the principles enshrined in the Federal Constitution, regarding fundamental rights and guarantees in view of the social interest? And what is the form of inspection and adequacy of these laws through constitutional and regimental provisions?

Preventive control is carried out before the legal norm comes into force, so that "for any normative species to enter the legal system, it must undergo all the procedure provided for in the Constitution".

According to FERREIRA FILHO (2007, p. 287), control over the law translates into the verification of constitutionality which, rightly, must be considered basic for the survival of the constitutional regime. In fact, it is the realistic criterion of the supremacy of the Constitution, which, if it is not protected by an effective mechanism, is an empty word.

The procedure for drafting the law must strictly observe the formalities prescribed in the constitutional text, as the consequences of the law are of paramount importance, since it limits individual freedom or guarantees rights to individuals. Failure to comply with any act of the legislative process will result in the formal unconstitutionality of the law.

The reason that justifies the researcher's interest in the subject centers on the question that unconstitutionality is one of the main problems in the quality of laws, especially state and municipal ones, which has serious consequences for the Judiciary and for the effectiveness of citizens' rights.

The Yearbook of justice brings a survey of laws deemed unconstitutional by the STF (FEDERAL SUPREME COURT), as follows:

> Since 1988, when the first judicial review action was proposed in the Federal Supreme Court, 2019 was the year in which more cases of this type were judged. In all, 489 were analyzed; in 271 cases, the merits were

> judged. The final balance shows that of every ten laws judged in 2019, seven were considered unconstitutional, in whole or in part.
>
> It also shows that most of the decisions were made in the Virtual Plenary, dedicated to cases in which the jurisprudence is already established. Of the 271 actions judged on the merits, 175 were decided in the online system; 95, in the physical session; and one by monocratic decision.
>
> The year 2020 already shows that it must surpass this mark, despite the problems generated by the Covid-19 epidemic. In the first semester, 161 ADIs were judged on merit – most of them (147 ADIs) in the Virtual Plenary. (underscore added)

Thus, the review of constitutionality constitutes the examination of compatibility existing between the law or normative act edited by the Legislative or Executive Power and the Federal Constitution.

All legal norms must obey the Major Law, the Federal Constitution of the Republic, due to the staggering of norms that allows constitutional supremacy, with the Constitution at the apex of the normative pyramid.

Notwithstanding this, the control of constitutionality must be considered as an important instrument for the preservation of the constitutional order, since the Constitution is a set of norms that manifests itself from the unity of this normative system. The "idea" of judicial review is linked to the supremacy of the Constitution over the entire legal system and, also, to the constitutional rigidity and protection of fundamental rights".

SILVA (2007, p. 23) states that the principle of supremacy requires all legal situations to conform to the principles and precepts of the Constitution.

In this sense, the duty to interpret, respect and keep the Constitution through the exercise of judicial review belongs to all the Powers of the State, each within their respective scope and limits of action, since the objective is to improve this control.

PREVENTIVE CONTROL OF CONSTITUTIONALITY IN BRAZIL

In Brazil, the control of constitutionality is eminently of a judicial nature, since it is up to the Judiciary to decide on the constitutionality or not of a rule. There are other instances of political control of constitutionality, also called preventive control of constitutionality, both within the Executive Branch, when there is a veto to a law on grounds of unconstitutionality, and within the Legislative Branch, when a bill is inadmissible. of law by the Constitution and Justice Commission of each legislative house, for reasons of unconstitutionality.

This way, the control of constitutionality constitutes a mechanism for preserving the constitutional order and, in this sense, every rule issued in any Legislative House, both at the Federal, State and Municipal levels, must be in a situation of adequacy to the Federal Constitution. However, one must always reconcile the principle of autonomy to legislate with constitutionality in the face of the Federal Constitution.

Jampaulo Junior (2008, p. 99) says that:

> Preventive Control would be an extremely useful instrument if exercised as an inspector of constitutionality, as it would prevent vitiated acts from entering the legal system. It happens, however, that the bodies destined to this end distort their functions and start to issue decisions of a political, not a legal nature. Under the allegation of convenience or public interest, they justify that a certain act may be illegal, but fair, and abandon the control of constitutionality. However, something illegal and fair at the same time seems unreasonable.

It is important to assert that the control of constitutionality even before the entry into force of the normative act must be

observed. The rules of the legislative process in the elaboration of laws are fundamental, because from the subjective motivation of the parliamentarian to transform a social need into law, the importance of purifying the project arises, both in the legal aspect and in the merits.

About the legislative process José Afonso da SILVA (2007, p. 41), describes:

> The legislative process is formal in two senses. First, because it is subject to the formality provided for in the Constitution and in the internal regulations of the Legislative Chambers. Second, because it is a representation (or must be) of what actually takes place in the clash of social interests. Therefore, the more divergent the interests of social classes are, the more acute the contradictions of the current social system, the more fierce are the debates and struggles in the process of law formation, since these, as political acts par excellence, is that they will establish the limits of the interests at stake, protecting some and restraining others.

In this context, Guilherme Henrique Martins MOREIRA states that there are two aspects to the definition of the legislative process:

> The phrase Legislative Process can be analyzed from two perspectives, the sociological and the legal. From the sociological point of view, the legislative process would be the manifestation of a set of real factors that would put the legislator in activity, as well as the way in which they would carry out this task. It would be the sociology of the legislative process, concerned with identifying and analyzing the various occurrences present during the formation of laws, such as the popular pressure, the media, pressure groups, party-political adjustments, the exchange of favors between the Government and the parliamentarians, and many others that surround the elaboration of laws.
>
> In turn, in the legal sense, the legislative process can be understood as the set of acts (initiative, amendment, voting, sanction, veto) carried out by legislative bodies aiming at the formation of constitutional, complementary and ordinary laws, resolutions and legislative decrees. Therefore, under the terms of article 59, the elaboration of amendments to the Constitution, supplementary laws, ordinary laws, delegated laws, provisional measures, legislative decrees and resolutions.
>
> Thus, legally speaking, the legislative process is also part of the General Theory of Process, functioning, undeniably, as part of Procedural Law. In addition, there are those who place it in a position of superiority in relation to other branches of Procedural Law, since "the legislative process is responsible for producing the other 'processes', that is, the norms on Civil Procedural Law, Administrative Procedural Law, and others. Second, because there is greater freedom of content in the legislative process".

The article 59 of the Federal Constitution [1] declares that the legislative process has as the object the elaboration (formation) of amendments to the Constitution, complementary laws, ordinary laws, delegated laws, provisional measures, legislative decrees and resolutions.

However, if we want a complete notion of the process of law formation, we will have

1 Article 59. The legislative process comprises the elaboration of:
I - amendments to the Constitution;
II - complementary laws;
III - ordinary laws;
IV - delegated laws;
V - interim measures;
VI - legislative decrees;
VII - resolutions.
Single paragraph. Complementary law will provide for the elaboration, drafting, amendment and consolidation of laws

to recognize, in it, objective and subjective aspects: those consistent in legislative procedural acts; these, in the bodies and people, which are the subjects of this process. Thus, we could say that the legislative process is the set of acts (initiative, amendments, voting, sanction) carried out by legislative bodies and cooperating bodies for the purpose of enacting laws.

In the same sense, to the extent that a proposition is presented. The legislative process is nothing more than the outline of the path to which it is subject, its functioning being regulated by the Internal Regulations of the Legislative Houses.

In this vertex, it can be said that the Internal Regulations of the Legislative Houses has the status of a legal norm and, consequently, integrates the legal system, through a Resolution. Therefore, the norms contained in this internal statute of the Legislative Houses "are rules of positive law endowed with constitutional provision, they are cogent norms, of mandatory observation by all their recipients" (BARBOSA, 2010, p. 174).

THE PREVENTIVE CONTROL OF CONSTITUTIONALITY IN THE STATE OF SANTA CATARINA

The fundamental element of the legislative process, the proposition, is that it will be driven by established rules, which not only guide its forwarding but also allow and ensure coexistence between different political interests that are opposed within a legislative house. The aforementioned rules of the Santa Catarina legislative process are set out in arts. 48 to 58 of State Constitution [2] and in the Internal Regulations of the Legislative Assembly of the State of Santa Catarina (Rialesc)[3].

It must be noted that the strengthening of democratic institutions is directly proportional to the good functioning of the existing mechanisms for the defense and protection of constitutional legality. The control of constitutionality allows the monitoring of the functioning of all the gears that make up the structure of the State, conceived and implemented by the Constitution itself. From the perspective of a democratic regime, good observance, control or inspection of constitutional precepts provide the nation's political and legal institutions with the opportunity to play their role in the defense of freedom.

Furthermore, it is important to highlight the importance of the Internal Regulations in the legislative houses, as it constitutes norms and principles that underlie the legislative, administrative and supervisory functions of parliament.

In addition, it must be noted that the exercise of the Legislative Power occurs during the processing of legislative projects, especially in the work developed by the Constitution and Justice Commission (CCJ) in charge of the technical study of the adequacy of the proposal to the legal system.

Attention is drawn to the fact that it is necessary to adapt the precepts of the law, which is still in the elaboration phase, to the commandments of the Constitution. When acting in this context, the legislating power truly assumes its role of legal commands with the necessary lack to guarantee legal certainty in political and legal life.

In fact, Rialesc provides as follows:

> Article 144. Prior to the deliberation of the Plenary, the proposals, except for requests, motions and requests for information, will be submitted to the manifestation of the

2 SANTA CATARINA, Constitution of the State of Santa Catarina: promulgated in 1989, Legislative Assembly of the State of Santa Catarina, 2014.

3 SANTA CATARINA. Regimento Interno da Assembleia Legislativa do Estado de Santa Catarina. Resolução nº 1/2019. Assembleia Legislativa ado Estado de Santa Catarina, jan/2019.

Commissions, being responsible for:**I - to the Constitution and Justice Commission, first, the examination of its admissibility, when applicable, and, in the others, the analysis of the aspects of constitutionality**, legality, juridicity, regimentation and legislative technique, and to pronounce on the merits of matters in their thematic field or area of activity; [...].

Article 145. The opinion of the Constitution and Justice Commission for unconstitutionality will be final or unlawfulness of the matter and that of the Finance and Taxation Commission in the sense of the budget inadequacy of the proposal.

§ 1 The Author of the proposal may request, with the support of one-tenth of the Deputies, within three sessions after its communication in session, that the opinion be submitted for consideration by the Plenary, in which case the proposal will be sent to the Bureau, for inclusion in the Agenda, in preliminary assessment, and the Author must justify, in writing, his disagreement with the Committee's opinion.

§ 2 If the Plenary rejects the opinion of the Commission and adopts that of the Plaintiff, it will appear in the file of the proposal as "opinion adopted by the Plenary" and the proposal will return to normal processing, otherwise, or if there has not been an application filed within the period established in §1, will be filed by order of the Chairman of the Meeting.

§ 3 Before the filing of the proposal, in view of the opinion of the Constitution and Justice Commission for the injury of the constitutional reservations of initiative, the matter may, at the request of the Author, be converted into a preliminary bill and forwarded to the Commissions to which it is affected. for the examination of the public interest, these Commissions being allowed to: I - hold public hearings to discuss the matter; and II - request diligence and information. (emphasis added)

Therefore, it is possible to observe the performance of the inspection control of a Bill (for example) being activated, when the opinion is final in the Alesc Constitution and Justice Commission (CCJ).

Within the scope of the Executive Power, its holder has the condition of exercising a legal-political inspection in the content of the bills approved by the Legislative Houses brought to its appreciation by means of sanction or veto, the duty that is conferred on him to veto the projects considered unconstitutional prevents a text in disagreement with the Federal Constitution in force.

In this north, the veto is a form of expression of disagreement by the State Governor with the terms of a bill submitted to his appreciation as soon as it is approved by the Legislative Assembly. (Rialesc, article 307)

The veto may have two grounds: unconstitutionality (legal veto) or inconvenience (political veto). Through the legal veto, the State Governor rejects bills that violate the Constitution. He thus acts as a defender of the legal order, exercising preventive constitutionality control whose objective is to prevent the entry into force of a norm fraught with vices.

It is worth mentioning that the political veto allows the Chief Executive to reject bills whose content is contrary to the public interest of the Government at that time. (article 305 of the Rialesc)

As for the scope, the veto can be total or partial. It must be expressly manifested. In addition, you must communicate the reasons for the veto to the President of Alesc within 48 hours after the deadline has expired. (article 311, Rialesc)

Furthermore, it must be noted that the veto implies the re-examination of the project by the Legislative Power, being rejected if it obtains a favorable vote of the absolute majority of the deputies (article 309 of the Rialesc). This

analysis must be carried out within 30 days of receipt, under penalty of including the veto in the agenda of the immediate session, with the remaining proposals being put on hold until the final vote (article 310 of the Rialesc).

If the Deputies of the Legislative Assembly of the State of Santa Catarina (Alesc) decide to maintain the veto, the bill is considered rejected. However, if the Legislative Power rejects the veto, the bill is considered approved and must be sent to the Chief Executive for enactment. It can be seen, therefore, that the rejection of the veto dispenses with governmental consent, although its manifestation is a fundamental requirement for the transformation of the project into law (article 311 of the Rialesc).

In spite of the Judiciary, the Control of Constitutionality, in the course of the legislative process, can be exercised individually, exercised by the parliamentarian when provoking the judiciary, seeking a security measure.

Therefore, it is up to those involved in the legislative process, the mission of polishing the legislative proposal, indicating the constitutional and legal vices that it may have. This way, the parliamentarian will be able, in the course of the legislative process, to remedy the illegalities and unconstitutionalities pointed out, amending or even replacing the project by means of a substitute.

THEORETICAL FRAMEWORK OF THE FUNCTIONING OF THE PREVENTIVE CONTROL OF CONSTITUTIONALITY IN SANTA CATARINA

As the subject of preventive control of constitutionality in Santa Catarina's legislative process is very specific, therefore, with few works that address the subject, the present work will present and problematize, among others, describing the constitutional principles involved in the legislative process, the control procedures in the legislative production and the moments that the control of constitutionality occurs during the legislative process expressed by the doctrine.

Initially, it is worth mentioning CANOTILHO (2002, p. 1014) who asserts:

> [...] the sense of control that focuses on imperfect norms departs, in some respects, from the sense of pure jurisdictional control. The court's decision cannot consist in the annulment of norms, but in a pronouncement on the unconstitutionality of concrete (imperfect norms) leading, in the immediate term, to a proposal to veto or reopen the legislative process.

Subsequently, it was necessary to mention the concept of legislative process José Afonso da SILVA (2007, p. 41):

> The legislative process is formal in two senses. First, because it is subject to the formalities provided for in the Constitution and in the internal regulations of the Legislative Chambers. Second, because it is a representation (or must be) of what actually takes place in the clash of social interests. Therefore, the more divergent the interests of social classes are, the more acute the contradictions of the current social system, the more fierce are the debates and struggles in the process of law formation, since these, as political acts par excellence, is that they will establish the limits of the interests at stake, protecting some and restraining others.
>
> the article 59 of the Federal Constitution states that the legislative process has as the object the elaboration (formation) of amendments to the Constitution, complementary laws, ordinary laws, delegated laws, provisional measures, legislative decrees and resolutions.
>
> But, if we want a complete notion of the law formation process, we will have to recognize, in it, objective and subjective aspects: those consistent in legislative procedural acts; these, in the bodies and people, which

> are the subjects of this process. Thus, we could say that the legislative process is the set of acts (initiative, amendments, voting, sanction) carried out by legislative bodies and cooperating bodies for the purpose of enacting laws.

Regarding the possibility of improving preventive control of constitutionality procedures, DEL NEGRI's book (2003 p.69) is cited, which deals with the theory of democratic legitimacy.

Thus, André Del Negri, in his work, says that: (2009 pp. 69/70)

> The perspective developed in this research involves a displacement of these traditional positions because of the epistemological shift brought about by the paradigm shift arising from the validity of the Constitution. The democratic character of the law, in a Democratic State of Law, does not insist on the simple act of analyzing whether the law was produced by a competent body and in accordance with the regular procedure (validity), much less the compliance that the norm imposes (efficiency). It must be observed, above all, if the law, legitimately through the participation of popular sovereignty and if the preparatory procedure for the provision (law) is capable of ensuring the observance of the democratic-constitutional principles of contradictory, broad-defense and isonomy.

Furthermore, Guilherme Henrique Martins MOREIRA talks about the control of constitutionality during the legislative process, saying:

> First of all, it must be noted that this review of constitutionality can be carried out in two cases, one when the unconstitutionality is material, and another when it comes to formal unconstitutionality, when rules of the legislative process, whether constitutional or regimental, are not respected.
>
> Still on the subject, it must be noted that, in both cases, this control must be carried out through the writ of mandamus, and never through the direct action of unconstitutionality. This is because ADIn presupposes the existence of a finished, perfect norm, and not yet being formed. Thus, the jurisprudence of the

STF (FEDERAL COURT OF JUSTICE):

"DIRECT ACTION OF UNCONSTITUTIONALITY - PROPOSED AMENDMENT TO THE FEDERAL CONSTITUTION - INSTITUTION OF THE DEATH PENALTY THROUGH PREVIOUS PLEBISCITARY CONSULTATION - EXPLICIT MATERIAL LIMITATION OF THE REFORMING POWER OF THE NATIONAL CONGRESS (ARTICLE 60, § 4, IV) - INEXISTENCE OF ABSTRACT PREVENTIVE CONTROL (IN THESIS) IN BRAZILIAN LAW - ABSENCE OF A NORMATIVE ACT - NO KNOWLEDGE OF DIRECT ACTION.

(...)

'In fieri' normative acts, still in the formation phase, with procedural steps not completed, do not give rise to and do not give rise to concentrated control or in thesis of constitutionality, which assumes - except for situations that configure legally relevant omission - the existence of species definitive, perfect and finished regulations. Contrary to the normative act - which exists and which can have immediate legal effectiveness, constituting, for that very reason, an innovative reality of the positive order -, the mere legislative proposition contains nothing more than a simple proposal of a new law, to be submitted to the appreciation by the competent body, so that, from its eventual approval, its formal introduction into the legal universe can be derived.

The jurisprudence of the Federal Supreme Court has clearly reflected this position in terms of abstract normative control, demanding, in terms of what the constitutional text itself prescribes - and with the exception of the hypothesis of unconstitutionality by omission - and that the direct action has, and can only have, as a legally suitable object, only laws and

> normative acts, federal or state, already enacted, edited and published. " (STF - FEDERAL SUPREME COURT), ADIn 4662-6-DF, Rapporteur of Min. Celso de Melo, DJ 05/10/1991).
>
> Thus, being the control regarding formal or material unconstitutionality - regardless of the situation -, the preventive control can only be carried out in concrete, and control through the abstract way, of direct action, cannot be admitted. Identical is the positioning of the doctrine:
>
> "The abstract control of norms presupposes, also in the Brazilian legal system, the formal existence of the law or normative act, after the definitive conclusion of the legislative process. It is not necessary, however, that the law is in force. As explained in a recent ruling, the direct action of unconstitutionality can only have 'the legally reputable object of laws and normative acts, federal or state, already enacted, edited and published'. This orientation excludes the possibility of proposing a direct preventive action of constitutionality".

It is important to point out that in the Brazilian legal-constitutional system there are three systems for controlling the constitutionality of laws and acts of public power: the political, the jurisdictional and the mixed.

Undoubtedly, the most widespread among us due to its effectiveness, is the jurisdictional or repressive control, not being used by us the mixed control – so called because some kinds of laws are subject to political control and others to jurisdictional control.

However, from the three systems, we are interested in the delineation of this study the political or preventive control of constitutionality.

A problem is the fact that laws emerge without due inspection of compatibility with the Constitution, in view of the appreciation in a single instance by a proper body with such a task, which, data venia, cannot be the only one to pronounce the sentence. of constitutionality, with the entire House also having the right, which is also configured as a duty, to care for the Fundamental Constitution of Brazil.

FERREIRA FILHO (2007, pp. 12 to 14), makes an in-depth reflection on the problems in legislative drafting by mentioning "the crisis of the law and the legislative crisis":

> The reference to these crises may perhaps intrigue the layman, or the inattentive and superficial observer. How can we speak of a crisis of the law, of a legislative crisis, when there are so many laws, when new laws are enacted everywhere?
>
> The multiplication of laws is a universal and undeniable phenomenon. It can safely be said that so many laws have never been made in such a short time. [...].
>
> On the other hand, this multiplication is the result of the extension of the domain in which the ruler intrudes, due to the new conceptions about the mission of the State. The law is now omnipresent. There is no field of human activity, there is no sector of human life, where the government is not dictating rules. [...].
>
> However, this multiplication is, above all, the result of its transience.
>
> Instead of waiting for the rule to mature before enacting it, the legislator edits it to, from practice, extract the lesson about its defects or inconveniences. It follows that the more numerous the laws, the greater the number of others, which are required to complete them, explain them, patch them up, fix them... the stigma of levity.
>
> These incessant changes in the laws "have an impact on all social relations and affect all individual requirements. It is affected the more the more boldness is put into them, the more ambition is given to them, the more freely it is thought to be done. The citizen, then, it is no longer protected by a certain right, for justice follows changing laws.

> It is no longer guaranteed against rulers whose audacity allows them to legislate according to their whim. The disadvantages or advantages that a new law can produce or bring are such that the citizen learns to fear everything or to expect everything from a legislative change.
>
> With that, the legal world becomes a babel. The multitude of laws drowns the jurist, crushes the lawyer, stuns the citizen, bewilders the judge. The boundary between the licit and the illicit is unclear. The security of social relations, the main merit of written law, evaporates. [...].
>
> Now, the transience and the devaluation of the law are extremely harmful to social life: It is Burdeau who underlines: "The law does not have only legal significance, it also has a social value: it is an element of order and certainty in the relationships of the life of independent of social aspirations and the inhuman generosity of ideals, it is the firm point, a little lukewarm perhaps, but indispensable for the stability of institutions".

Thus, the aforementioned author states that "it is notorious that parliaments do not take into account the legislative needs of contemporary states: they cannot, in time and in time, generate the laws that governments demand, that pressure groups request. The rules that traditionally guide their work give - it is true - an opportunity for delays, opportunities for maneuvers and delays. As a result, projects accumulate and delay. And this delay, in the word of the government, in the murmur of public opinion, is the sole and exclusive reason why the evils from which the people suffer are not alleviated."

Furthermore, argues FERREIRA FILHO (2007, pp. 12 to 14):

> Nor are the parliaments, by their own organization, in a position to slowly but satisfactorily carry out the legislative function. The way in which its members are chosen makes them less frequented by consideration and culture, but extremely sensitive to demagoguery and advocacy on their own behalf. Interests have no difficulty in finding eloquent spokespeople, the common good does not always find them. On the other hand, the way you work is also inappropriate for the decisions you have to make. How, for example, can we establish a plan through parliamentary debate? **Now, the incapacity of the Parliaments leads to their abdication. Here and there, the delegation of the Legislative Power, ostensibly or in disguise, becomes a common rule, despite constitutional prohibitions. The imagination of constitutionalists reveals itself in finding ways for the Executive to legislate while the magistrates look the other way in order to then see violations of the Constitution.** Even more, giving up rowing the current account [...]. (emphasis added)

There are three forms of preventive control in the national order. The first of these, carried out within the scope of the legislative houses through their thematic commissions, especially the Constitution and Justice Commissions (CCJ).

The CCJ is the body responsible for analyzing the constitutionality of all projects and propositions in progress at the Legislative Assembly of the State of Santa Catarina (Alesc). Its powers are established in article 72 of the Constitution of the State of Santa Catarina, in verbis:

> Article 72. The thematic fields or areas of activity of the Constitution and Justice Commission are the following, and it is incumbent upon them to exercise its legislative and supervisory function:
>
> I - Constitutional, legal, legal, regimental or legislative technical aspects of projects or amendments subject to consideration by the Plenary of the Assembly; [...]. (emphasis added)

This way, the exercise of the Legislative Power occurs during the processing of legislative projects, especially in the work

developed by the CCJ in charge of the technical study of the adequacy of the proposition to the legal system, according to the thematic fields described above.

The purpose of the CCJ is to adapt the precepts of the law that is still in the process of elaborating the commandments of the Constitution. When acting in this context, the legislating power truly assumes its role in legal commands with the necessary lack to guarantee legal certainty in political and legal life.

In the words of CASSEB (2008 p. 290), the rationale for the control of constitutionality is in article 58 of the Magna Carta, in verbis:

> It is important to highlight that article 58 of the Federal Constitution enshrines the control of the legality of legislative proposals and the control of their merit through the Permanent Commissions, established in each Legislative, both at the Federal, State and Municipal levels, as established by the respective Internal Rules.
>
> **Thus, the aforementioned Commissions, especially the Constitution and Justice Commission, play the role of supervisor of the Constitution in the legislative scope, or as some scholars prefer, political control.**
>
> **Likewise, it enshrines article 66, first paragraph, the possibility of the Executive Power exercising the control of constitutionality, through the manifestation of the Head of the Executive Power, vetoing a legislative proposal in part or totally, under the argument of unconstitutionality or for administrative convenience. (I highlighted this part)**

It also measures Paulo Adib CASSEB (2008 p. 290), in the following terms:

> [...]of all the formal aspects examined by the Committee on Constitution and justice and Citizenship (CCJC), the analysis of constitutional issues emerges as something primordial, since the exercise of preventive control of the constitutionality of propositions derives from this attribution.
>
> In this case, the CCJC makes a judgment of conformity to verify if the proposition is compatible with the Federal Constitution. Although the CCJC and the Committee of equivalent competence in the Senate are extremely well-known due to the exercise of constitutionality control, it is important to point out that this activity was not exclusively conferred on them, since, as Sergio F.P. by O. Penna and Eliana Cruxên B. de Almeida Maciel), the investigation of the constitutionality of the propositions constitutes "**power-duty" of parliamentarians and must be carried out during all phases of the legislative process, which allows us to infer that the recognition of the unconstitutionality of part or the entirety of a proposition has to be expressed by each deputy and by the other committees, as soon as the addiction was detected.**
>
> In addition, the CCJC also analyzes the legality of projects. Luiz Henrique Cascelli de Azevedo comments that the evaluation of legality means, first, the examination of the adequacy of the proposition **"to the major principles that inform the legal system and, consequently, to the Constitution itself",**and, secondly, it refers to "reasonableness, logical coherence, possibility of conforming to positive law (...) the unlawfulness of a proposition, therefore, can be determined from the perception of a conflict with the principles enshrined in the legal system, which, often, are explicitly positive". (emphasis added)

It is worth mentioning that the aforementioned author attests that there is "practically absolute respect by the rest of the House" for the CCJ's deliberations that express the unconstitutionality and unlawfulness of the propositions, so much so that the appeals that challenge such decisions are rare and among those filed, a good part is rejected by the plenary.

CASSEB (2008 p. 290) describes:

> It is true that the almost intangibility of the CCJC's decisions, on the points

> mentioned, does not derive only from its prestige, but also because its considerations are not merely technical. For Walber de Moura Agra, the assessment carried out by the CCJC "**has a political character, the deputies and senators that compose it declare the constitutionality or not of the norms according to the interests involved.** The valuation methodology used relegates the legal assessment and applies a criterion of convenience and opportunity.
>
> Another important attribution of the CCJC resides in the investigation of the admissibility of Constitutional Amendments. At least according to the regimental norms, this analysis must not reach the merits of the Amendments, but only the aspects of constitutionality and legality, an issue that will be addressed in due course, on the occasion of the study of the process of formation of Constitutional Amendments. (highlighted)

It is important to highlight the rules of the Internal Regulation on the issue of judicial review. The CCJ is the body responsible for the analysis and, in this sense, the aforementioned commission can bar the processing of matters when its opinion points to the existence of a defect of unconstitutionality or lack of legality.

The Internal Regulation is, therefore, the mechanism that must establish the legislator's freedom of action, on the one hand, and, on the other hand, the limits of his political action in what may result in an affront to the higher legal system.

Guilherme RIBEIRO (2015), comments that in practically all Brazilian legislative houses, the opinion of the Commission that examines the constitutionality of the proposition has a terminative character, that is, it suspends the processing of the matter until the Plenary manifests itself on the opinion, approving it. or rejecting it.

RIBEIRO (2015 p. 15) warns that in the Chamber of Deputies there is an inversion of order regarding the examination of legislative proposals made by the standing committees, as described:

> [...] The examination of its constitutionality and legality is part of the process of understanding a given bill, and there is always a committee specialized in this matter. While, as a rule, the Commission that assesses the legal and constitutional aspects is the first to examine the proposal, in the Chamber of Deputies this Commission is the last to issue its judgment on the matters. **The Constitution and Justice Commission is the narrow end of a funnel through which all propositions must pass.**When it is the first, congestion often occurs, as the Commission is unable to assess the large number of proposals that are submitted for its examination within the time allowed. For this reason, the Chamber of Deputies reversed the order, pasting the narrow end of the funnel as the last examination of the proposals being processed by the Commissions. (emphasis added)

As for the control of constitutionality carried out by the Chief Executive, provided for in article 71, item V of the State Constitution and in article 305 of the Rialesc, can veto the bill that was approved in the legislative process for understanding it unconstitutional, is the so-called political veto.

At this point, DALLARI (2007) clarifies:

> The main constitutionality control mechanism available to the Executive Power, still in the preventive phase, is the prerogative of the presidential veto.
>
> It must be noted, however, that the objective behind the involvement of the two Powers already in the elaboration phase of the norm is not only legal, but also mainly political., **inserting itself in the principle of interdependence and harmony between the Powers as a mechanism of checks and balances. By enacting a law, the Executive Power attests that it stems from the joint will of the Powers, which, in turn, provides greater "political security", and consequently legal security, for its compliance. (I highlighted this part**)

In wise words FERREIRA FILHO (2017) asserts that the veto in its modality can be total or partial, however such constitutional tool remains protected by the Constitutional Charter (article 66, § 1), which allows the President of the Republic to refuse or sanction a bill that is unconstitutional or contrary to the public interest. However, the refusal of the head of the Executive Power must be based on legal reasons, regarding the argument of unconstitutionality, or if it deals with reasons contrary to public interests, that is, the veto is for the convenience of the executive, it will use the eminently political prerogative.

Besides, regarding the possibility of having a preventive control of constitutionality with the participation of the Judiciary, it is necessary to illustrate that the Federal Supreme Court (STF) has admitted the control of constitutionality, called diffuse control of ostensibly unconstitutional legislative project, being recognized the legitimacy for parliamentarians to plead the non-deliberation of the project, which will undoubtedly result in an unconstitutional rule, through the Writ of Mandamus.

Therefore, the main request is that the supposedly unconstitutional bill not be put to a vote, but incidentally, the question of the unconstitutionality of a bill must be taken care of, that is, clearly a preventive control.

Therefore, according to the jurisprudence of the STF (FEDERAL SUPREME COURT) it is in the sense that there is a true subjective public right of parliamentarians to the due legislative process, that is, not to participate in a legislative process fraught with unconstitutionality, and such a stain defies a writ of mandamus.

For Professor Guilherme RIBEIRO (2015) the application of the bylaws is an "interna corporis" matter, citing as an example the repeated decisions of the STF (FEDERAL SUPREME COURT), in the writs of mandamus, numbers: 22.503/DF and 20247/DF. Jurisdictional control of the legislative process exclusively based on the Federal Constitution.

FINAL CONSIDERATIONS

It is essential to understand the importance of the Internal Regulations in the Legislative Power, as it is the internal law of the Legislative Houses, an instrument that disciplines their political-administrative life, in an authentic self-regulation of conduct. Thus, it consists of a set of provisions that restrict, expand or regulate the rights and freedoms of members of the legislature, the way of deliberating, and that, by establishing a method, avoid inconveniences and prevent difficulties. In fact, it is an attribution of collegiate bodies in general, administrative and judicial, it gains greater importance in legislative collegiate, because there it is not just a matter of functional autonomy (such as election of the board of directors and the exercise of disciplinary power over its members) but it encompasses the regime of deliberations, determinations or votes, decisively influencing the validity of laws.

This way, the internal regulations, with regard to the process of legislative elaboration, constitute necessary complements to the laws. Procedural norms constitute a guarantee of a constitutional nature. If the manner and form of the realization of these guarantees were left to the discretion of occasional interests, to the discretion of those who owe them obedience, anarchy would be implanting within the power and the insecurity of citizens. Legislative assemblies must observe not only the Constitution and the general law, but the Internal Regulations in particular. A legislative act is unconstitutional when it was formed in disagreement with the regimental norms.

As stated here, unconstitutionality is one

of the main problems in the quality of laws, especially state and municipal ones, which has serious consequences for the Judiciary and for the effectiveness of citizens' rights.

Therefore, the Legislative Houses have a legislative function within the separation of powers, with the mission of "creating laws", and, for that, they must seek to adapt legislative acts to the higher law, without which they may incur in excess of power, configured for the vice of unconstitutionality.

In addition, exercising preventive control of constitutionality means barring the entry of pre-normative legal acts or legislative projects or proposed amendments to the Constitution, in the legal system of a given territorial order, which do not comply with the Federal Constitution, as well as with the State Constitution or infra-constitutional laws, since the Law does not admit incompatible norms.

Furthermore, one cannot ignore the fact that, even if a good judgment of the technical capacity of the Legislative Power in general is not made, a law, in order to be approved, goes through a long process of purification, in which many of the original defects are detected, before approval.

Finally, it is necessary to emphasize the work of the Commissions, especially the commissions of constitutional control, in the improvement of the projects, as well as the veto power of the Executive Branch, which often detects violations of the Constitution that would be previously controlled. In this context, the various procedural steps through which the legislative proposal passes, added to the confrontation of the various parties present in the discussion and deliberation stage, tends to correct errors and reduce unconstitutionalities, and in parliament a pluralist democratic representation must always exist.

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