

International Journal of Human Sciences Research

RELIGIOUS ORGANIZATIONS AND THE ELECTORAL PROCESS

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Abstract: One can increasingly observe the mobilization of religious organizations to influence politics and law, thus making use of institutional instruments to participate in power. This work aims to investigate the legal provisions and the jurisprudence of the national courts regarding the practices of religious agents for the election of their representatives in the formal instances of power. The method used was documentary and bibliographical research, as well as consultation with official jurisprudence repositories. The greater relevance of the law in certain subjects was found, namely, donations of goods for campaigns, electoral propaganda and abuse of religious power. In the end, a greater permeability of the law to other sciences is proposed so that areas subject to conflict can be identified and appropriate solutions can be proposed.

Keywords: right; elections; policy; religion; democracy.

INTRODUCTION

Currently, there is an active participation of religious agents within the electoral process so that representatives of their interests are chosen in the instances of power.

Based on this finding, it becomes relevant to investigate whether the practices developed collide with electoral law, which aims to take care of the normality and legitimacy of elections, preventing distortions that harm equality between candidates and the democratic regime.

Based on the above, this work aims to investigate, examine and study the jurisprudence and decisions of electoral courts regarding the influences of religious organizations in the Brazilian electoral process. Specifically, verify which rules are applicable to the cases and which interpretations are given to them. At the end, critically discuss the material and information gathered.

METHODOLOGY

Documentary and bibliographical research was carried out, through reading, analysis, interpretation and filing of doctrines, scientific articles and other academic works.

Then, jurisprudence searches were carried out on the websites of Brazilian courts regarding the application of electoral rules to cases of interest.

RESULTS ACHIEVED

During the research, the role of religious organizations in three different ways was revealed to be relevant: 1. Donations of goods for campaigns; 2. Electoral propaganda and; 3. Abuse of religious power.

As for the first point, there was a prohibition for religious entities to donate money or any type of good to candidates and parties, which is expressly stated in art. 24 of Law Number: 9,504/97. The prohibition is reinforced by the decision of the Federal Supreme Court in the Direct Action of Unconstitutionality number 4,650, according to which legal entities cannot contribute to electoral campaigns. For Pretório Excelso, the aforementioned rule would have the objective of preventing the formation of promiscuous alliances between the discriminated institutions and the Public Power, preventing the capture of political power by other forces present in society.

With regard to political advertisements, there is a ban on their placement in temples (article 37, §4, of Law Number: 9,504/97), as well as any form of promotion of an electoral nature. Thus, the use of brooches (TRE-PR, Resource, number: 26.695), the distribution of electoral propaganda material inside the temple (TSE, AI number 781.963) and the presence of flags, politicians, popular and of the party's colors in religious worship, transforming it into a party act (Resource, number: 18.814). However, if the candidate's presence at the act does not generate any kind

of electoral evidence, it will characterize a mere exercise of the right to religious freedom (TRE-SP, Resource, number: 78.279; and Resource, number: 173.917).

Finally, the abuse of religious power occurs when religious discourse is used to promote candidacies or political guidelines adopted by the organization's leaders or priests. The Superior Electoral Court understood in the judgment of Ordinary Appeal number: 537.003 that the induction of votes by reverential fear is contrary to the secularity of the State. The same court understands that the candidate who did not witness the promotion act cannot be harmed if he did not know what happened (RO Number: 265.308, 4/5/2017). In the Regional Electoral Court of Rio de Janeiro, in turn, it has already been stated that the voter's degree of devotion can make him feel obliged to vote for the nominated candidate - anointed and consecrated - by his leader (Resource, number: 47.738, 8/2/2019). One cannot fail to note that in the 2022 elections, illegitimate practices were developed on a large scale through the use of religious discourse to demonize political opponents or sacralize allies, with the invocation of a supposed struggle between good and evil being common. However, there

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is still no manifestation of the Judiciary on this matter.

It was noted from the research that many of the decisions are taken according to exclusively normative criteria, inheritance of the so-called "legal positivism" of Hans Kelsen, who, influenced by Niklas Luhmann, saw the law as a closed and autopoietic system. As if this were not enough, it is known that electoral law is often produced by the political classes in their own interest, without any technical study as a basis. It is understood that the correlation between acts performed by these entities and the potential for influence on electoral acts must be established with certainty, which would allow for a precise individualization of conduct that must be prohibited. Legislators and interpreters often allow themselves to be uncritically guided by legal common sense, which cannot prevail in a democracy.

CONCLUSION

From all of the above, it is concluded that the legal discourse needs to be based on knowledge of other areas of human sciences so that a balance can be found between the right to religious freedom and the fairness of the electoral process.