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## ABUSE OF POWER AND THE STATE OF EXCEPTION

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**Abstract:** This article explores the issue of abuse of power in the judiciary, using Giorgio Agamben's concept of the state of exception as a theoretical reference. The aim is to analyze how judicial power can be exercised in an arbitrary manner, subverting the original intention of the laws and compromising justice. The methodology employed includes a bibliographical review of Agamben's work, accompanied by historical and contemporary case studies that illustrate the abusive use of the state of exception and field research into people's perceptions of the judiciary. Specific examples include arbitrary judicial decisions and undue interventions in public policy. The results show that such abuses of power not only undermine public confidence in the judicial system, but also exacerbate inequalities and perpetuate injustices, leading to a delegitimization of the rule of law. It is concluded that it is imperative to implement structural reforms and strengthen control and transparency mechanisms to prevent the abuse of judicial power, ensuring that the judicial system functions in a fair and equitable manner.

**Keywords:** Abuse of power, State of exception, Giorgio Agamben, Judiciary, Homo sacer

## INTRODUCTION

The judiciary plays a crucial role in maintaining the rule of law, responsible for guaranteeing justice, the impartial application of laws and the protection of citizens' fundamental rights. However, throughout history and in various current contexts, it has been observed that this power can be distorted, resulting in abuses that undermine the very notion of justice and fairness. This article sets out to analyze the phenomenon of the abuse of judicial power, using as its central theoretical reference the concept of the state of exception developed by Giorgio Agamben. Agamben argues that the state of exception,

a condition in which legal norms can be suspended in the name of an emergency, has been progressively standardized in modern democracies, creating zones of indistinction between law and lawlessness.

From this perspective, this study investigates how the judiciary, by extrapolating its criteria for interpretation or failing to analyze cases carefully, contributes to the death of the law. In many situations, arbitrary judicial decisions and undue intervention in public policies highlight the use of the state of exception as a tool of power, allowing illegitimate acts to be committed under the guise of legality. Such practices not only undermine public confidence in the judicial system, but also exacerbate inequalities and perpetuate injustices, leading to the delegitimization of the rule of law.

The methodology adopted in this article involves a detailed review of the literature on the state of exception and the abuse of power, complemented by case studies that illustrate these concepts, in the practice. Specific examples of abuse of judicial power will be analyzed, with a focus on decisions that deviate from legality and the principle of justice. Historical and contemporary cases will be explored to demonstrate the negative impacts of these practices, highlighting the urgent need for structural reforms.

In addition to the literature review and the case studies, a questionnaire was used to collect data on the public's perception of the judiciary. This questionnaire was aimed at a diverse audience, including lawyers, academics and ordinary citizens, to assess the degree of trust, satisfaction and criticism regarding the functioning of the judicial system. The results obtained allow for a complementary analysis of the issues addressed, offering a broader perspective on how the judiciary is perceived by society and how this perception relates to the phenomena of abuse of power and the state of exception discussed throughout the study.

Understanding the dynamics of abuse of power and the undue application of the state of exception is essential to identifying the structural flaws in the judicial system and proposing reforms that promote greater transparency and fairness. This study will contribute to the debate on the need to strengthen control mechanisms and ensure that the judiciary operates within the limits of its powers, thus protecting citizens' fundamental rights. Only through a critical and in-depth analysis will it be possible to glimpse ways of building a fairer and more efficient judicial system, which really fulfills its role as guardian of justice and democracy.

## WORK STRUCTURE

This article is organized into several distinct sections, each addressing specific aspects of the abuse of judicial power and the concept of the state of exception, as developed by Giorgio Agamben. The structure of the paper has been carefully planned to ensure a comprehensive and coherent analysis of the topic, offering the reader an insight into the concept.

The introductory section sets the context for the study, explaining the relevance of the topic and the main objective of the work. Giorgio Agamben's theoretical framework and the methodology used to conduct the research are presented, preparing the reader for the in-depth discussion that follows.

With regard to the theoretical framework, we explored the fundamental concepts of state of exception and *homo sacer*, as proposed by Agamben. We discuss how these concepts apply to the context of judicial power, providing the necessary theoretical basis for the subsequent analysis.

The historical section contextualizes the use of the state of exception over time, highlighting notable cases where it has been invoked to justify abuses of power. This

historical analysis helps to understand the evolution and normalization of the state of exception in modern democracies.

Abuse of power in the judiciary is detailed in the judicial context, identifying the mechanisms by which judges and authorities can exercise their power in an arbitrary manner. We discuss the negative impact of these practices on the rule of law and public confidence in the judicial system.

Then we look at the practical aspects, exploring real cases. This section presents specific case studies, analyzing situations in which judicial power has been abused. The cases are selected to illustrate different forms of abuse and their consequences, providing concrete examples for the theoretical discussion.

In Implications and Consequences we explore the social, political and legal implications of the abuse of judicial power. We discuss how such practices exacerbate inequalities, perpetuate injustices and contribute to the delegitimization of the judicial system.

In the topic Control and Prevention Mechanisms, we propose possible structural reforms and control mechanisms that could be implemented to prevent the abuse of power in the judiciary. We emphasize the importance of transparency, popular participation and the strengthening of institutions.

The conclusion summarizes the main points discussed throughout the article, offering a critical reflection on the current state of the judicial system. We present proposals for future research and highlight the importance of reforms to ensure a fair and just judicial system.

The references section provides a complete list of the works cited throughout the article, following APA standards. This bibliography is essential for the academic validation of the study and to guide further reading on the subject.

## **RELATED WORK**

This article is an adapted and derived version of my work “*How Law Dies*”. The adaptation was made to focus specifically on the most relevant and accessible aspects of the topic for a wider audience. While the original thesis exhaustively explores the multiple factors that contribute to the death of law, this article synthesizes and highlights the main conclusions and arguments, providing a concise and to-the-point analysis. The intention is to offer a clear and comprehensive understanding of the phenomenon, while maintaining the academic depth and theoretical robustness of the original research.

## **MATERIAL AND METHOD**

In this Material and Method section, we describe clearly and precisely how the study was carried out. The writing style should be as if we were verbally explaining how we conducted the study, avoiding the use of the first person and using the past tense, since the study has already been carried out. This section is organized as follows:

### **DESCRIPTION OF THE OBJECT OF STUDY**

The subject of this article is the phenomenon of the abuse of judicial power in the context of the state of exception, as defined by Giorgio Agamben. The origin of the study is based on a theoretical and empirical analysis of historical cases and contemporary. The object of study covers arbitrary judicial decisions, judicial interventions in public policies and other forms of abuse of power that exemplify the state of exception.

## **STUDY CONDITIONS**

The study was carried out through a literature review and analysis of specific cases. The literature review involved consulting books, academic articles and relevant legal documents. The analysis of the cases was based on public data, court decisions and official reports. The conditions varied according to the context of each case studied.

## **DATA COLLECTION**

The data was collected through field research, which involved interviews with lawyers, legal professionals, students and lay people. A questionnaire was sent to 600 people, of whom 65 responded, representing a sample of approximately 10.83%. The questionnaire was designed to record society's level of trust in the judiciary, offering a detailed insight into the perceptions and experiences of these different categories of participants. Data collection was conducted to ensure the representativeness and relevance of the results obtained. For the research, specific court decisions were selected which presented an appearance of injustice or which in some way challenged the fundamental principles of fairness and legality. These decisions were not chosen at random, as the central aim of the research was not to test all court decisions, but to focus on those which, at first glance, seemed to contradict the notion of justice. This approach allowed for a more in-depth and critical analysis of systemic failures and potential abuses of power in the judiciary, allowing for reflections on the dynamics that can undermine trust in the judiciary.

## DATA ANALYSIS

The data collected was analyzed using qualitative and quantitative methods. The qualitative analysis involved interpreting court decisions and identifying patterns of abuse of power. Quantitative analysis included statistical evaluation of the survey participants' responses.

## INFRASTRUCTURE AND CONFIGURATIONS

The infrastructure required for the study included access to academic libraries, legal databases and data analysis tools. The specific configurations varied according to the data analyzed.

## THEORETICAL REFERENCE

The concept of the state of exception, as developed by Giorgio Agamben, is fundamental to the analysis of the abuse of judicial power in the context of this study. Agamben, in his work "State of Exception" (2004), argues that the state of exception, originally a temporary measure to deal with emergencies, has been progressively normalized in modern democracies. This normalization creates a zone of indistinction between law and lawlessness, where legal norms can be suspended, and previously illegal acts can be legitimized under the justification of necessity.

Agamben draws on the idea of the *homo sacer*, a figure from Roman law who represents a life that can be killed but not sacrificed, being outside the protection of the law and at the same time included in the legal order. This concept is used to illustrate how individuals or groups can be placed outside the protection of the law during a state of exception, making them vulnerable to the abuse of power.

In addition to Agamben, this study also draws on classical and contemporary theories on the abuse of power and the judicialization

of politics. Max Weber, in his analysis of bureaucracy and legal-rational power, provides a basis for understanding how authority can be exercised in a legitimate way or illegitimate. Weber emphasizes that the legitimacy of power is fundamental to maintaining the social and legal order, and that abuse of power occurs when those in power act outside the limits of their legal authority.

Other theorists, such as Michel Foucault, contribute to understanding disciplinary power and surveillance. Foucault argues that power is not only repressive, but also productive, shaping behavior and consciousness. His analysis of disciplinary institutions and biopower is important for understanding how the judiciary can discipline and control populations through the state of exception.

In the legal context, the theory of judicial activism is also explored. This theory suggests that judges, by interpreting the law in an expansive or creative way, can go beyond the limits of their function, influencing public policies and government decisions. This activism is a form of abuse of power when judges use the state of exception to justify decisions that suspend fundamental rights and freedoms.

The theoretical framework is complemented by empirical studies on specific cases of abuse of judicial power. These studies provide concrete examples of how the state of exception is applied in practice, and how it can be used to legitimize actions that would otherwise be considered illegal or unconstitutional.

Finally, an analysis of contemporary legal literature on human rights and social justice is crucial to understanding the implications of the abuse of judicial power in the state of exception. Authors such as Ronald Dworkin and Amartya Sen discuss the importance of justice as equity and the protection of

fundamental rights in a democratic society. From these perspectives, the study will assess how the abuse of judicial power and the application of the state of exception impact justice and the protection of human rights.

This theoretical framework provides a robust basis for the critical analysis of the abuse of judicial power in the context of the state of exception, allowing for the an in-depth understanding of power dynamics and their implications for the rule of law and social justice.

### **HOMO SACER AND THE ABUSE OF JUDICIAL POWER**

The concept of *homo sacer*, central to Giorgio Agamben's work, is crucial to understanding the phenomenon of the abuse of judicial power in the context of the state of exception. In the Roman legal tradition, this was an individual banished from society and placed outside the protection of the law; he could be killed by anyone, but could not be sacrificed in a religious ritual. Agamben uses this figure to illustrate how, in times of a state of exception, certain individuals or groups can be excluded from legal protection, making them vulnerable to acts of violence and oppression without recourse to justice.

In the state of exception, the legal norm is suspended and the sovereign has the power to decide who becomes a *homo sacer*. This suspension of the law creates a zone of indistinction where legal and illegal norms overlap, allowing actions normally considered illegitimate or illegal to be justified in the name of security or emergency. This situation can be exploited by judicial authorities to exercise power in an arbitrary manner, subverting justice and the fundamental rights of citizens.

It is an emblematic figure for the analysis of the abuse of judicial power because it symbolizes those who, by decision of the sovereign, are placed beyond the reach of

legal protection. In modern democracies, the normalization of the state of exception means that the judiciary can, under the justification of a crisis or emergency, suspend fundamental rights and guarantees. This practice not only undermines the rule of law, but also perpetuates inequalities and injustices, placing certain social groups in a position of extreme vulnerability, similar to that of *homo sacer*.

Agamben's theoretical framework, complemented by analyses of Max Weber and Michel Foucault, provides a solid basis for understanding how judicial power can be abused.

Weber, with his theory of legal-rational power, argues that the legitimacy of power is essential for the maintenance of social order. When judges go beyond their limits of authority, justifying their actions on the basis of a state of exception, they undermine this legitimacy, creating an environment where the abuse of power can flourish.

Foucault, for his part, contributes with his analysis of biopower and disciplinary institutions, showing how judicial power can not only re-primitize, but also shape and control populations. The suspension of the law during the state of exception is a form of biopower, where the judiciary exercises control over the life and death of citizens, deciding who deserves the protection of the law and who can be treated as a *homo sacer*.

Agamben's concept, when applied to the study of the abuse of judicial power, reveals the profound implications of the state of exception for justice and human rights. The abuse of judicial power, legitimized by the state of exception, not only subverts the rule of law, but also transforms citizens into *homo sacer*, vulnerable to violence and oppression without recourse to justice. This theoretical framework is essential for understanding the power dynamics that allow the judiciary to exercise authority in an arbitrary and unjust manner, compromising equity and social justice.

## BACKGROUND AND CONTEXT

In order to fully understand the abuse of judicial power and the application of the state of exception, it is essential to analyze the historical development and context in which these practices were consolidated. The state of exception, as theorized by Giorgio Agamben, has deep roots in political and legal history, evolving from a temporary emergency measure to a frequent tool in modern democracies.

### ORIGIN AND EVOLUTION OF THE STATE OF EXCEPTION

The concept of a state of exception can be traced back to Ancient Rome, where the “*senatus consultum ultimum*” allowed for a state of exception.

The Senate was empowered to grant extraordinary powers to a magistrate in times of crisis. This measure aimed to protect the Roman Republic from imminent threats by temporarily suspending certain laws to ensure the security of the state. Over the centuries, the idea of suspending the law in times of emergency persisted, being adapted and refined by different political regimes.

During the 20th century, the state of exception was widely used by authoritarian and totalitarian regimes. Adolf Hitler, for example, consolidated his power through the Reichstag Fire Decree in 1933, which suspended civil liberties and allowed the arbitrary detention of opponents. Similarly, in fascist Italy and the Stalinist Soviet Union, the state of exception was used to justify political repression and the centralization of power.

In modern democracies, the application of the state of exception has become more subtle, but not less significant. After the September 11, 2001 attacks, the United States enacted the *USA PATRIOT Act*, expanding surveillance and detention powers in the name of national security. In France, the terrorist attacks of 2015

led to the declaration of a state of emergency, allowing warrantless house searches and preventive arrests. These examples demonstrate how the state of exception can be normalized, creating a zone of indistinction where the law is suspended and individual rights are compromised.

### CONTEMPORARY CONTEXT

In the contemporary context, the abuse of judicial power in the state of exception is a growing concern. Globalization and the complexity of national security threats lead many countries to adopt exceptional measures on a routine basis. The COVID-19 pandemic, for example, saw several governments adopt emergency powers to deal with the public health crisis. While many of these measures were justified by the immediate need to protect public health, they also raised concerns about the erosion of civil rights and the perpetuation of the state of exception.

Furthermore, the role of the judiciary in applying and interpreting these emergency measures has become increasingly controversial. In many cases, the courts have been called upon to rule on the constitutionality of measures that suspend fundamental rights. Judicial decisions can therefore legitimize or challenge the use of the state of exception, significantly influencing the balance between security and freedom.

### ABUSE OF JUDICIAL POWER

The abuse of judicial power in the context of the state of exception can manifest itself in various ways. Judges can make arbitrary decisions that suspend rights without a clear legal basis, justifying their actions with the need for emergency. This abuse can occur in authoritarian regimes as well as in democracies, where the normalization of the state of exception allows the judiciary to exercise power disproportionately and without adequate control.

Historical and contemporary cases illustrate how the state of exception can be used to justify abuses of power. For example, during the military dictatorship in Brazil (1964-1985), Institutional Act Number Five (AI-5) suspended political and civil rights, allowing arbitrary arrests and censorship, with the backing of the judiciary. More recently, judicial decisions in democratic countries have been criticized for perpetuating states of emergency indefinitely, compromising the protection of human rights.

### IMPLICATIONS FOR THE RULE OF LAW

The historical and contextual analysis of the state of exception and the abuse of judicial power reveals profound implications for the rule of law. The prolonged suspension of fundamental rights and freedoms undermines public confidence in judicial institutions and compromises the legitimacy of the legal system. The state of exception, when normalized, creates an environment where justice becomes arbitrary, and citizens, especially the most vulnerable, become the most vulnerable *homo sacer*, excluded from legal protection.

This history and context provide a solid basis for understanding how the state of exception and the abuse of judicial power have evolved and manifest themselves in practice. This understanding is essential for developing effective control and prevention strategies, ensuring that the judiciary operates within the limits of its powers and protects the fundamental rights of citizens.

## ABUSE OF POWER IN THE JUDICIARY

Abuse of power in the judiciary is a serious threat to the rule of law, justice and human rights. When the judiciary, which should be the guardian of laws and fundamental freedoms, acts arbitrarily or exceeds its legal limits, the impact on society can be devastating. This topic explores what constitutes abuse of judicial power, the mechanisms by which it occurs and the negative impacts of these practices on the justice system.

### DEFINITION AND CHARACTERISTICS OF ABUSE OF JUDICIAL POWER

Abuse of judicial power can be defined as the excessive, illegitimate or arbitrary use of judicial authority, resulting in the violation of fundamental rights and the undermining of justice. It is characterized by decisions that go beyond the reasonable interpretation of the law, ignore established legal procedures or serve private interests to the detriment of the public good. The main characteristics of abuse of judicial power include:

- **Arbitrariness:** Decisions taken on the basis of subjective criteria or without adequate legal grounds.
- **Excess of Authority:** Actions that go beyond the limits of jurisdiction or the powers attributed to the judiciary.
- **Violation of Rights:** Decisions resulting in the suspension or violation of fundamental rights of individuals, or groups.
- **Lack of Transparency:** Processes and decisions that lack clarity, publicity and adequate justification.



## MECHANISMS OF ABUSE OF POWER

Abuse of judicial power can occur through various mechanisms, many of which are facilitated by the state of exception. Some of the main mechanisms include:

- **Expansive Interpretation of Laws:** Judges who interpret laws in an excessively broad or creative way, justifying the suspension of rights under the pretext of emergency or security.
- **Arbitrary and Authoritarian Decisions:** Judgments that do not follow established precedents or ignore fundamental principles of justice and fairness.
- **Intervention in Public Policies:** When the judiciary takes an active role in the formulation or implementation of public policies, going beyond its traditional functions.
- **Indiscriminate Use of Provisional Measures:** Frequent and unjustified application of provisional measures that suspend rights and freedoms without proper analysis and justification.

## IMPACTS ON THE RULE OF LAW

Abuse of judicial power has profound and long-lasting impacts on the rule of law and public trust in judicial institutions. These impacts include:

- **Delegitimization of the Judicial System:** The public perception that the judiciary is corrupt, partial or arbitrary undermines confidence in justice and the impartiality of institutions.
- **Erosion of Fundamental Rights:** The unjustified suspension of rights and freedoms undermines the legal protection of citizens, especially the most vulnerable.

- **Legal insecurity:** inconsistent and arbitrary judicial decisions create an environment of uncertainty, where individuals do not know what to expect from laws and judicial authorities.
- **Inequality and Injustice:** The abuse of judicial power often perpetuates social inequalities and injustices, disproportionately affecting certain groups or individuals.

## EXAMPLES OF ABUSE OF JUDICIAL POWER

To illustrate how the abuse of judicial power manifests itself in practice, it is useful to look at specific cases. Notable examples include:

- **Case of AI-5 in Brazil:** During the military dictatorship, Institutional Act Number Five suspended political and civil rights, allowing arbitrary arrests and censorship, with the support of the judiciary.
- **Use of the USA PATRIOT Act in the USA:** After the attacks of September 11, 2001, expanded surveillance and detention measures were implemented, often justified by an expansive interpretation of national security laws.
- **State of Emergency in France:** After the 2015 terrorist attacks, France declared a state of emergency, allowing warrantless house searches and preventive arrests, raising concerns about abuses and excesses.

## CONTROL AND PREVENTION MEASURES

To mitigate the abuse of judicial power, it is essential to implement effective control and prevention measures, which include:

- **Strengthening Transparency:** Ensuring that all legal proceedings are transparent and that decisions are duly substantiated and published.
- **Reinforcing Supervisory Mechanisms:** Develop and strengthen internal and external control bodies that can monitor and evaluate the work of the judiciary.
- **Education and Training:** Promote the continuous education of judges and legal practitioners on the principles of justice, fairness and the limits of judicial authority.
- **Popular Participation:** Encouraging the participation of civil society in monitoring judicial activities and defending fundamental rights.
- **Description:** In one of the cases worked on by the author, the wife accused her husband of threatening her and obtained a protective order removing him from the couple's home. For two years after the separation, the wife lived in a property without any share in the assets and without paying rent. During this period, the ex-husband had to spend on a lawyer and live in rented accommodation, despite owning his own home. The wife benefited financially from the situation, saving approximately forty-eight thousand reais in rent. The author reports: "She certainly profited almost forty-eight thousand reais from the prosecution, because if she had vacated her husband's house and rented a property of a similar standard, she would have spent that amount."
- **Impacts:** This case highlights how a protective measure can be used strategically to gain property advantages. In addition to the financial hardship imposed on the accused, the case resulted in damage to the property and additional expenses with taxes and unpaid consumer bills. The situation demonstrates the need for careful analysis of complaints to avoid injustice and unnecessary material damage.

## CASE STUDIES

To illustrate in a concrete way how the abuse of judicial power and the state of exception manifest themselves in practice, this section presents a series of case studies taken from the work "How protective measures impact property and custody relations in Family Law". These examples demonstrate the real application of the theoretical concepts discussed above and highlight the consequences of these practices for society and the rule of law.

### CASE 1: PROTECTIVE ORDER AND PROPERTY REMOVAL

- **Background:** In Brazil, the protective measures provided for in Law 11.340/2006, commonly known as Maria da Penha, aim to protect victims of domestic violence. However, the application of these measures can have significant side effects in property disputes, as illustrated by the case of a husband falsely accused of threatening.

### CASE 2: FALSE ACCUSATIONS AND TRAFFIC CONSEQUENCES

- **Background:** False accusations in the context of protective measures can have devastating consequences, including loss of life and irreparable justice. A remarkable case reported by the author exemplifies this tragedy.

- **Description:** The author mentions a case reported in the press where a partner falsely accused her cohabitant of raping her stepdaughter. As a result, he was arrested and beaten to death by other inmates. Subsequently, the investigation revealed that there was no rape; the accusation was a ploy by the partner to remain in the property of the cohabitant, who wanted to separate. The author describes: “The investigation found that in fact there was no rape, but rather his desire to separate, and since the house where they lived was his, the partner instead of he believed that by putting him in jail he could use the property with his daughter indefinitely.”
- **Impact:** This case extremely illustrates the consequences of false accusations and the abuse of protective measures. The wrongful death of the accused and the manipulation of the judicial system for personal ends highlight the urgent need for more robust mechanisms to verify the veracity of accusations and protect the rights of all parties involved.

### CASE 3: IMPACT ON CUSTODY AND VISITATION DISPUTES

- **Background:** Protective measures can also profoundly affect custody and visitation disputes, often resulting in one parent being unable to exercise their parental rights.
- **Description:** The author reports on two cases in Goiânia where the simple accusation of threats resulted in parents being banned from seeing their children. The prevailing legal interpretation in the Goiás Court of Justice considers protective measures to be autonomous procedures that do

not require legal proceedings. This can indefinitely prolong the impossibility of visitation, as exemplified in the decision: “Protective measures aim to remove the woman from the context of domestic and family violence in which she finds herself, especially with the precautionary removal of the offender and the protection of her physical and psychological integrity, consisting of an important mechanism for curbing violence and should be applied, regardless of the existence of legal proceedings, as they constitute autonomous measures.”

- **Impacts:** The autonomy of the protective measures and the absence of a legal process to ascertain the veracity of the accusations prevent the It violates constitutional principles and causes emotional and psychological damage to children and parents who have been unjustly removed. This demonstrates the need to reform the system to ensure that protective measures are fair and balanced.

### THE ROLE OF THE JUDICIARY DURING THE PANDEMIC

The COVID-19 pandemic has brought unprecedented challenges for governments, businesses and citizens around the world. The judiciary, tasked with interpreting and applying laws in times of crisis, has played a crucial role in managing the emergency measures adopted to contain the spread of the virus. One of the most controversial decisions during the pandemic was the closure of businesses, a measure which, although necessary to protect public health, had a devastating financial impact on the lives of individuals and companies.

## **TRADE CLOSURE AND FINANCIAL IMPACT**

As the pandemic progressed, authorities at different levels of government ordered the temporary closure of commercial establishments as part of their social distancing strategies. This measure, although crucial to reducing the spread of the virus, resulted in serious economic consequences. Traders faced a sharp drop in revenue, while fixed costs such as rent, wages and taxes continued to accumulate.

## **COURT DECISIONS ON RENT COLLECTION**

Faced with this situation, many shopkeepers turned to the courts for financial relief, especially with regard to the suspension or reduction of commercial rents. Initially, some court rulings were favorable to merchants, granting temporary suspensions or reductions in rent. These decisions sought to balance to maintain rental contracts and the financial reality of tenants, who are severely affected by the restrictions imposed.

However, as the pandemic continued, the judiciary adopted a more restraining stance. Gradually, decisions began to deny rent reductions, based on the principle of *pacta sunt servanda*, which establishes that contracts must be complied with. It was argued that the pandemic, despite its seriousness, did not justify unilaterally changing the conditions agreed between the parties.

## **CONFLICT BETWEEN BUSINESS CLOSURE AND CONTRACTUAL OBLIGATIONS**

This scenario created a significant conflict. On the one hand, the judiciary validated the government's measures to close businesses as necessary to protect public health. On the other hand, it demanded that traders fully comply with their contractual obligations, including the payment of rents, even without generating sufficient revenue to do so.

The duality of the court decisions revealed a practical incoherence: the compulsory closure of businesses made economic activity unfeasible, while the requirement to fulfill contractual obligations imposed an unsustainable burden on traders. Many businesses were forced to close their doors for good, unable to reconcile the lack of income with maintaining fixed costs.

According to the IBGE: *“In the first year of the Covid-19 pandemic, Brazilian commerce suffered record losses, with 7.4% of establishments closing and a 4% drop in the number of people employed in the sector.”*

## **CRITICAL ANALYSIS**

The actions of the Judiciary during the COVID-19 pandemic have exposed the complexity of balancing rights and duties in times of crisis. If, for on the one hand, the preservation of public health justified strict measures, on the other, the lack of flexibility in contractual interpretation aggravated the economic crisis. By adopting a conservative stance in relation to contractual obligations, in many cases the judiciary disregarded the exceptional nature of the pandemic situation and its practical consequences for traders.

## **FINAL REFLECTIONS ON THE JUDICIARY'S ROLE IN THE PANDEMIC**

The pandemic has highlighted the need for a more adaptive and sensitive approach by the judiciary in emergencies. The balance between protecting public health and economic viability must be carefully considered, avoiding solutions that, in practice, make it impossible for companies to survive and jobs to be maintained. For future crises, it is essential that the judiciary is prepared to adopt measures that include the flexibility needed to guarantee justice and fairness in exceptional contexts.

## **PERCEPTION OF THE PERFORMANCE OF THE JUDICIARY**

A survey carried out as part of this work revealed worrying results about society's perception of the judiciary. The study, which involved interviews with 65 people out of a total of 600 questionnaires sent out, included a homogeneous sample of lawyers, legal professionals, students and citizens in general. The data indicates a largely negative view of the judiciary in Brazil.

Of the participants, 87.7% believe that the judiciary can make decisions motivated by corruption, partiality or benefiting certain groups. In addition, 83.1% said that judges can give better treatment to rich people, showing a perception of inequality in judicial treatment. Another alarming finding is that 36.9% of those interviewed said they did not trust the judiciary, while 29.2% were indifferent.

Only 33.8% say they trust the judiciary. The survey also pointed out that 70.8% of the respondents have witnessed or heard of decisions

The majority of respondents also believe that the judicial system has led companies into insolvency during the pandemic. In addition, 81.5% believe that the current behavior of the judiciary has diminished its credibility, and an overwhelming majority of 96.9% said that the judiciary needs significant reforms, especially in transparency and human rights education.

These figures show an urgent need for a review and reform of the judicial system, reflecting a deep dissatisfaction and mistrust on the part of the population regarding the role that the judiciary plays in society.

## **IMPLICATIONS AND CONSEQUENCES**

The analysis of the abuse of judicial power and the norm- lization of the state of exception reveal profound and varied implications for the rule of law, social justice and public trust in judicial institutions. In this section, we explore the social, political and legal consequences of this phenomenon, highlighting how it affects fundamental rights, perpetuating inequalities and delegitimizing the judicial system.

### **EROSION OF FUNDAMENTAL RIGHTS**

One of the most serious consequences of the abuse of judicial power is the erosion of fundamental rights. When the judiciary, under the justification of a state of exception, suspends rights and freedoms, the legal protection of citizens is severely compromised. As exemplified by the cases discussed above, protective measures and other arbitrary judicial actions can result in the violation of rights such as property, freedom and protection against arbitrary detention. This suspension of rights creates an environment of legal insecurity where citizens cannot rely on justice to protect their basic freedoms.

### **DELEGITIMIZATION OF THE JUDICIAL SYSTEM**

Public confidence in the judicial system is essential for maintaining the rule of law. When the judiciary acts arbitrarily or excessively, this trust is undermined. Inconsistent judicial decisions or decisions that favor certain parties without a clear legal basis lead to the perception that the system is corrupt or biased. The delegitimization of the judicial system has far-reaching consequences, including a decrease in citizens' cooperation with legal authorities and an increase in disrespect for laws and norms.

## **PERPETUATION OF INEQUALITIES**

Abuse of judicial power often perpetuates existing inequalities and creates new forms of injustice. Vulnerable groups, such as women, ethnic and socio-economic minorities, are disproportionately affected by arbitrary judicial decisions. In the context of protective measures, for example, the use of these tools for property gains or custody disputes can severely harm the real victims of violence, who need effective protection. In addition, the lack of a fair and equitable process for all increases the marginalization of these groups, exacerbating social and economic inequalities.

## **SOCIAL AND PSYCHOLOGICAL IMPACTS**

The social and psychological implications of the abuse of judicial power are also significant. Individuals who face unjust or arbitrary judicial decisions can suffer lasting emotional and psychological damage. The feeling of powerlessness in the face of a judicial system that is supposed to protect them can lead to trauma, depression and general distrust of public institutions. These impacts are not limited to the individuals directly affected, but also extend to their families and communities, creating a cycle of distrust and alienation.

Based on the figures collected in the survey, the impacts of court decisions perceived as The high level of distrust in the judiciary, with 36.9% of respondents saying they don't trust the system, is profound and worrying. The high level of distrust in the Judiciary, with 36.9% of respondents stating that they do not trust the system, generates a feeling of legal insecurity, where citizens feel that their rights may not be adequately protected. This perception can lead to a weakening of social cohesion, since respect for laws and legal institutions is a fundamental pillar for social stability.

Furthermore, the belief that judges can give preferential treatment to rich people or certain groups (83.1% and 87.7%, respectively) contributes to the perpetuation of social inequalities. This perception fuels a sense of injustice among the less privileged, who may feel marginalized and unprotected by the system, which can result in greater social alienation and distrust of public institutions.

Psychologically, the perception of a corrupt or biased judiciary can lead to increased feelings of impotence, frustration and despair. Individuals who believe they cannot rely on the judicial system to protect their rights are more susceptible to developing disorders such as anxiety, depression and generalized mistrust. This mistrust can spill over into other areas of public life, making it difficult to build a more cohesive and just society.

Finally, the high percentage of respondents who have witnessed or heard of court rulings that have driven companies into insolvency during the pandemic (70.8%) and who consider the current behavior of the judiciary to be detrimental to their credibility (81.5%) indicates a significant economic impact. This not only affects the economic well-being of the parties involved, but also the morale of society, which may see the judicial system as an agent of oppression rather than a protector of rights, exacerbating distrust and social discontent.

## **FRAGILIZATION OF THE RULE OF LAW**

The normalization of the state of exception weakens the pillars of the rule of law. When the suspension of laws becomes common practice, the principle of legality, which requires all government actions to be based on the law, is compromised. This leads to an environment where arbitrariness and discretion prevail, to the detriment of predictability and legal certainty. The weakening of the rule of law

facilitates the concentration of power and the erosion of democratic freedoms, threatening stability and social cohesion.

### **POLITICAL CONSEQUENCES**

It is possible to measure the political consequences of negative perceptions of the judiciary, although this is complex and depends on several factors. The political consequences of this are mainly due to the erosion of legitimacy and public trust in judicial institutions, which can have a direct impact on governability, democratic stability and the relationship between the powers of the state.

**Delegitimization of institutions:** When a significant portion of the population believes that the judiciary is biased, corrupt or unequal, the legitimacy of the legal system is compromised. This can lead to a crisis of confidence in state institutions as a whole, since the judiciary is seen as a pillar of democracy. If confidence in the judiciary is shaken, the validity of laws and government decisions can also be questioned, resulting in a weakening of state authority.

**Increased Political Polarization:** Negative perceptions of the judiciary can contribute to increased political polarization. Political groups can appropriate these perceptions to criticize or attack opponents, using popular discontent as a mobilization tool. This can intensify political divisions and make it difficult to forge the consensus necessary for governability, leading to greater political instability.

**Distrust and Civic Retraction:** The lack of justice in the judiciary can result in civic retrenchment, where citizens become less inclined to participate in the democratic process, such as voting or getting involved in social movements. This retrenchment weakens democracy, as citizen participation is crucial to the health of a democratic system.

Furthermore, this mistrust can fuel support for populist or authoritarian movements that promise to “clean up” or “reform” the system, often through methods that can threaten democratic freedoms.

**Impact on Political and Legal Reforms:** The perception that the judiciary needs reform (as indicated by the 96.9% of respondents who believe in the need for reform) can lead to political pressure for changes in the judicial system. If these reforms are not conducted in a careful and balanced manner, there is a risk that they will be motivated more by political interests than by the need to improve justice. This could result in reforms that weaken the judiciary’s independence, further undermining its legitimacy and the separation of powers.

**Institutional instability:** In extreme cases, continued distrust of the judicial system can lead to widespread disrespect for the law and judicial decisions, creating an environment of institutional instability. Disrespect for judicial decisions can weaken the rule of law, encouraging extralegal behavior and undermining social cohesion.

These consequences, although difficult to quantify in precise terms, are measurable through indicators such as electoral participation, trust in political institutions, the frequency of protests and demonstrations, and legislative and governmental stability or instability. These indicators can be monitored to assess the impact of negative perceptions of the judiciary on political and social dynamics.

### **THE NEED FOR STRUCTURAL REFORMS**

The implications of the abuse of judicial power and the state of exception highlight the urgent need to of structural reforms. It is imperative to develop effective mechanisms for control and supervision of the judiciary, ensuring that decisions are based on clear

legal grounds and that citizens' rights are protected. In addition, it is essential to promote transparency and accountability in the judicial system, strengthening public trust and ensuring justice and fairness for all.

## REFLECTION

In short, the consequences of the abuse of judicial power and the state of exception are vast and far-reaching, affecting all aspects of society. The erosion of fundamental rights, the delegitimization of the judicial system, the perpetuation of inequalities and the social and psychological impacts are just some of the implications of this phenomenon. In order to preserve the rule of law and protect citizens' rights, it is important that the judiciary operates within the limits of its authority, with transparency, fairness and respect for fundamental freedoms.

## CONTROL AND PREVENTION MECHANISMS

To mitigate the abuse of judicial power and ensure that the state of exception does not become common practice, it is essential to implement effective control and prevention mechanisms. In this section, we discuss the necessary reforms and control mechanisms that can be adopted to prevent the abuse of judicial power, emphasizing the importance of transparency, popular participation and the strengthening of control institutions.

### STRENGTHENING TRANSPARENCY

Transparency is key to ensuring that the judiciary operates in a fair and equitable manner. Measures that promote transparency include:

- **Publication of Court Decisions:** All court decisions must be published in a way that is accessible and understandable to the public. This allows citizens to follow and understand the justifi-

cations for decisions, increasing confidence in the judicial system. Cases, such as in the Goiás Court of Justice, with decisions within the scope of the Domestic Violence Court, without publishing them, amount to decisions on measures that violate the adversarial process and the right to a fair hearing. Decisions must be published even in cases of judicial secrecy.

- **Broadcasting hearings:** Whenever possible, court hearings should be broadcast live or made available afterwards. This provides visibility to the judicial process and allows the public to monitor the conduct of judges and lawyers.
- **Authorization to record:** de- hearings will be recorded.

## REINFORCEMENT OF SUPERVISORY MECHANISMS

Oversight mechanisms are essential for monitoring and evaluating the work of the judiciary. Some important measures include:

- **Internal Control Bodies:** Create or strengthen internal control bodies within the judiciary, responsible for monitoring the conduct of judges and ensuring compliance with ethical and legal standards.
- **External Control Bodies:** Establish or strengthen external control bodies, such as judicial councils or parliamentary committees, which can independently investigate and evaluate the work of the judiciary.

## EDUCATION AND TRAINING

Continuous education and training of legal professionals is crucial to prevent the abuse of judicial power. Recommended measures include:



- **Human rights training:** Include human rights training as part of the training program.

It is an integral part of the training curriculum for judges and lawyers. This ensures that legal professionals understand and respect the fundamental rights of citizens.

- **Transparency and Accountability Training:** Offer regular training on the importance of transparency and *accountability*, reinforcing the need for ethical and fair conduct in the exercise of judicial power.

## POPULAR PARTICIPATION

Popular participation is a powerful tool for preventing abuses and ensuring that the judiciary operates fairly. Some ways to promote popular participation include:

- **Citizen Participation Councils:** Create citizen participation councils that can provide *feedback* and monitor the work of the judiciary. These councils should include civil society representatives, human rights organizations and other interested parties.
- **Public Forums:** Hold regular public forums where citizens can express their concerns and suggestions about the functioning of the judicial system. This promotes an open and constructive dialog between the judiciary and society.

## LEGISLATIVE REFORMS

In order to guarantee a fair and equitable judicial system, it is necessary to implement legislative reforms that strengthen control and prevention mechanisms. Some suggestions include:

- **Revision of the Rules on Protective Measures:** Reform the rules governing

protective measures to ensure that they are applied in a fair and equitable manner, avoiding abuses and protecting the rights of all parties involved.

- **Incorporation of Defense Mechanisms:** Ensure that all judicial measures include adequate defense mechanisms, allowing the accused to present their version of the facts and exercise their right to an adversarial process and a broad defense.

## ENCOURAGING INNOVATION AND CONTINUOUS IMPROVEMENT

The judiciary must be open to innovation and continuous improvement in order to meet modern challenges. Some measures include:

- **Use of Technology:** Adopt technologies that facilitate access to justice, such as online platforms for submitting and monitoring legal cases. Technology can also be used to monitor judicial action and identify patterns of abuse.
- **Performance evaluation:** Implement performance evaluation systems for judges and courts, based on criteria of transparency, efficiency and respect for human rights. These evaluations should be conducted in a transparent and participatory manner.

The implementation of control and prevention mechanisms is essential to ensure that the judiciary operates within the limits of its authority, respecting the fundamental rights of citizens and promoting justice and equity. Transparency, oversight, continuous education, popular participation and legislative reforms are key pillars for building a fairer and more effective judicial system. Only through a continuous commitment to improvement and innovation will the judiciary be able to fulfill its role as guardian of justice in a democratic society.

## CONCLUSION

To conclude the article on the actions of the Judiciary during the pandemic, let's recap the main points discussed and offer a critical reflection on the current state of the judicial system.

During the COVID-19 crisis, the judiciary has played a crucial role in dealing with a series of unprecedented legal and social challenges. The decisions made have had a significant impact on the lives of citizens and the functioning of companies, especially in the commercial sector.

First, we examined how the trade closure measures were one of the most controversial decisions. Although these measures were implemented with the legitimate aim of curbing the spread of the virus, they had profound economic repercussions for traders, many of whom saw their livelihoods threatened.

The judiciary, in turn, was called upon to take a stand on crucial issues, such as the suspension of commercial rents during the crisis. Initially, some decisions were timid in their support for traders, but over time, a stance prevailed that did not allow for a reduction in rents due to the pandemic. This position, although based on contractual principles and legal certainty, was criticized for not sufficiently considering the adverse economic impacts faced by tenants.

It is undeniable that the judiciary has had the challenge of balancing the application of

the law with the need to mitigate the economic damage to those affected by the restrictions. However, most of the decisions reflect a strict interpretation of the existing legal norms, leaving little room for flexibility in exceptional times.

In light of these considerations, it is imperative to open a debate on the adaptability and capacity of the judicial system to respond to emergency crises. The pandemic has highlighted the need for reforms that give the judiciary greater flexibility to deal with extraordinary situations, without compromising the fundamental principles of justice and fairness.

Proposals for future research could explore legislative alternatives that allow the judiciary to adopt more adaptable approaches in periods of time.

In addition, it is essential to consider how jurisprudence could evolve to more fully incorporate the social and economic aspects of public health crises. In addition, it is essential to consider how jurisprudence could evolve to more fully incorporate the social and economic aspects of public health crises.

In short, the pandemic has revealed not only the challenges facing the judiciary, but also the pressing need for adaptation and innovation in the legal system. Only through strategic reforms and the adoption of a progressive vision of justice can we ensure that the judiciary continues to fulfill its mission in an effective and inclusive manner.

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