

The Provisional Executive Acts Cited In The“Lava Jato Operation” Will Continue In Legal Order of Brazil?

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ABSTRACT: *The Provisional Executive acts in the Constitution of the Federative Republic of Brazil have as their objective the issuance of laws of an exceptional nature by the Chief Executive, and their respective assumptions are the urgency and relevance for a given subject. The present article investigates if the provisional measures studied and that supposedly were edited by purely corporative interests would be considered valid in the Brazilian legal system since it affects the legal legislative process Democratic State of Law and the interest of the society.*

Keywords: *Corporate, Democratic State of Law, Provisional Executive Acts.*

I. INTRODUCTION

The provisional Executive Act is a constitutional institute that enables the Executive Branch to exercise a typical legislative function. This concession is limited, requiring the assumptions of urgency and relevance, that is, the authorization for the President of the Republic to publish, has an exceptional character, and is still conditioned to certain matters that cannot be edited, such as nationality, Political rights, criminal law, citizenship (Brazil, Constitution of the Federative Republic of, 1988).

These assumptions are indeterminate and subjective legal concepts. Even so, the doctrine outlines some parameters of delimitation: relevance is present when a legal norm is required for conflict resolution, while urgency is characterized when it is impossible to wait for the time of the ordinary legislative process.

The doctrine has criticized the excessive and abusive use of Provisional Act, which generates interference between the powers and harms the Brazilian democracy, limiting the power of the legislature and making it submissive to the initiatives and wills of the Executive, since this abusive stance by a power reaches the constitutional principles of decentralization and legal reserve of competences, fundamental for the Democratic State of Law.

II. LEGALITY OF PROVISIONAL EXECUTIVE ACTS AND THE DEMOCRATIC STATE OF LAW

Legality has two meanings depending on the recipient. In the case of the individual, legality allows him to practice any acts in his life, as long as the law does not prohibit. This sense originated mainly in the French Revolution - with the advance of liberal movements - in order to limit the indiscriminate power of the sovereign (Silva, Almiro do Couto and, 2015).

However, when it comes to legality in relation to the Public Administration and the public agent, they may only perform acts authorized by law. This is legality in the negative sense (Filho, José dos Santos Carvalho, 2016). In addition, contemporary thinking comprehends legality more broadly, including the compatibility of acts of the public agent with the entire legal system, from rules to principles (Pietro, Maria Sylvia Zanella Di, 2014). It is worth remembering that rules and principles are species of the genus norm. These are characterized by guiding human behavior through descriptions regarding the permissions and prohibitions of conduct, that is, the rules do not concern themselves with the purpose of the behavior, only with its realization and legal consequence (Ávila, Humberto, 2005). Already the principles are seen as instruments to optimize the legal order, the maximum teleology of the legal norm is always sought in accordance with the factual and juridical realities of a certain order (Alexy, Roberto, 1997).

Provisional Act, as well as all laws, should be related to the interests of the community, under penalty of social inefficiency and even invalidity, as may be observed in the topic below. Therefore, for laws to be in tune with the Democratic Rule of Law, the supremacy of the public interest and fundamental rights must be immanent in the legislative drafting process.

The most important elements for the effectiveness of the Democratic State of Law are related to the participation of the people in decision making by their rulers because they are the representatives of those, as well as the fundamental rights and guarantees must be respected with the edition of any law here that its recipients, as a rule, will be the represented ones, that is, the people (Dalari, Dalmo de Abreu, 1998).

From the Constitution of the Federative Republic of Brazil of 1988, numerous provisional acts (Bulos, Uadi Lammêngo, 2015) were issued by the Chief Executive of the Federal Executive Branch and subsequently became laws, passing through a summary debate by the National Congress on a wide and democratic debate about their respective contents and assumptions. And it is in this scenario that emerged from investigations that such provisional acts were the object of business and private interests to be elaborated and approved, as it is observed in the topic below.

III. THE NECESSARY CONTROL OF THE PROVISIONAL ACTS

One of the reasons for the overuse and abuse of provisional executive acts comes to light with the advancement of investigations of the Lava Operation - it is a source of revenue for funding political parties and for corruption. Gratuity in exchange for incentives for large companies. In this sense, Claudio Melo Filho's disclosure, disclosed by the national press, reveals the price of the Provisional approved in the Federal Senate to benefit the Odebrecht contractor: 22 million reais (abril- veja,2016).

In order to better illustrate the issue of provisional mentioned, it is 613/2013, which allowed tax incentives to be granted to ethanol producers and the chemical industry through presumed credit and the reduction of PIS / Pasep and Cofins rates. The main outcome of the interim measure was to make Odebrecht more economical in taxes. Another MP, 627/2013, established new conditions for Brazilian multinationals to enter into Tax Recovery Programs , changed the taxation of Brazilian companies with subsidiaries abroad, among other devices.

The Federal Supreme Court admits jurisdictional control of these assumptions in cases where there is a blatant misuse of purpose or abuse of the power to legislate, or rather, the formal requirements do not fail to pass through the assessment of the Judiciary also in view of the public interest intrinsic norms Interim measures (Mendes, Gilmar Ferreira, 2015).

It is important to emphasize that the actions of the Judiciary before the legality of the provisional executive acts does not affect the separation of the Powers since there is no interference with the discretion of the Chief Executive, but its scope is to guarantee harmony between the functions of the State. It is therefore a question of the realization of the system of checks and balances (Montesquieu, Charles de Secondat, 2000) in which the Legislative, Judiciary and Executive Powers autonomously perform their respective typical functions to the extent that there is reciprocal control between them .

In this sense, the Judiciary has a reinforced fundamental function to watch over the interest of society in the face of the weakening of the oversight function of the Legislative Power in relation to the Chief Executive's acts, since the latter is also inclined by private interests.

IV. CONCLUSION

Will the fruits of corruption continue to produce effects and benefit purely personal interests? The issue is relevant and, to date, there has been no deep reflection on the economic effects of a possible invalidation of such provisional executive acts. Considering that all said legislation resulted from a possible criminal activity, it could be object of direct action of unconstitutionality by virtue of the deviation of purpose. It can be proposed by both the legitimated universals - President of the Republic, the Senate, the Chamber of Deputies, the Attorney General, the Federal Council of the Lawyers, a political party with representation in the National Congress -as well as the which must demonstrate a relationship of relevance to the subject of the provisional, namely: the Bureau of a Legislative Assembly, the Governor of State and of the Federal District, Union Confederations or National Entities of Class.

However, tax incentives are important instruments of development policy, since they aim to stimulate the formation of fixed and social capital with the objective of generating employment and income and stimulating economic and social development. One way that can be adopted is the review and democratic discussion of the tax incentives granted by the provisional acts mentioned. Those that are really good for the economy and for society can be granted again through laws and not through provisional acts.

Lastly, it urges to point out that it is the National Congress that the power of the people is fully justified, especially by the Federal Chamber of Deputies, and not by unilateral acts taken by the Chief Executive that may reflect internal and external legal insecurity for the country as the international community.

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