REVISTA
DE DERECHO PÚBLICO

NÚM. 100 (2024) • PÁGS. 87-107 • DOI 10.5354/0719-5249.2024.74895
RECIBIDO: 5/6/2024• APROBADO: 23/7/2024 • PUBLICADO 31/7/2024

DOCTRINA

# Institutional Dialogues, Last Word Theory and Constitutional Supremacy in the Brazilian Supreme Court's Dialogical Judicial Activism

*Diálogos institucionales, teoría de la última palabra y supremacía constitucional en el activismo judicial diálogico del Tribunal Supremo Federal de Brasil*

Emerson Ademir Borges de Oliveira Lidiana Costa de Sousa Trovão and Lara Guimarães Piacenti
*Universidade de Marília, Brazil*

**ABSTRACT** This research examines the development of the last word theory in Brazilian Supreme Court decisions amid the judicialization of political issues from other branches. It explores institutional dialogues, separation of powers, and democratic principles within the rule of law to analyze the Supreme Court's activist actions and their impact on the relationship with the legislative and executive branches. The goal is to determine whether the final word effectively resolves social conflicts through proper constitutional interpretation. A qualitative analysis was conducted using the deductive method.

**KEYWORDS** Judicial activism, institutional dialogues, Constitutional supremacy, Federal Court of Justice, last word theory.

**RESUMEN** La investigación examina el desarrollo de la teoría de la última palabra en decisiones del Tribunal Supremo Federal de Brasil sobre judicialización de cuestiones políticas de otros poderes. Se estudian los diálogos institucionales, la separación de poderes y los principios democráticos del Estado de Derecho para analizar cómo las acciones activistas del Tribunal afectan la relación con los poderes Legislativo y Ejecutivo. El objetivo es comprobar si la última palabra es una herramienta suficiente para apaciguar conflictos sociales mediante la correcta interpretación del texto constitucional. Se realizó un análisis cualitativo utilizando el método deductivo.

**PALABRAS CLAVE** Activismo judicial, diálogos institucionales, supremacía constitucional, Supremo Tribunal Federal, teoría de la última palabra.

## Introduction

The legitimacy of the last word of the judiciary in dealing with national issues has long been debated in Brazil, often reflecting the judicialization of politics, political contexts or issues that go beyond solving problems that affect society.

The conduct of these matters is marked by signs of an individual, partisan and ideological nature, which, when stopped, prohibited or even determined by any judicial order that delimits or determines conduct contrary to their interests, are immediately placed in the deleterious category of activism, harmful to society (Ramos, 2010: 143).

In fact, over the years, the actions carried out in an aggravated manner have been considered activist, and in the judicial sphere, those who propose to overcome the inertia or inactivity of other powers are usually harshly attacked, both by them and by the society that supports them. Nevertheless, principles such as those of inertia, cooperation, respect for federalism, which lead to a harmony of public relations, are left aside to raise only questions of individual order or of certain groups opposed to this interference.

The Brazilian Supreme Court has acted significantly, during the pandemic, as an institution that imposes the balance of the federal pact and dictates the rules of competences, reaffirming constitutional precepts and of compliant interpretation (Fernandes y Ouverney, 2022: 55). The problem, therefore, is based on excess, which, when practiced, inevitably hurts the competence of the other powers. However, when the action is done in a way to solve problems, when there is no other way to obtain guidance on a certain issue of relevance to society, activism is not configured (Silveira, 2014: 29).

From this point of view, the main objective of the research is to analyze how the Federal Supreme Court (STF) in Brazil interacts with other state powers and institutions, identifying concrete examples of institutional dialogues in its decisions. It also seeks to explore the theory of the last word, defining and contextualizing this concept within the framework of constitutional law, as well as evaluating how and when the STF exercises its function of having the last word on constitutional issues, including a comparison with the possible application of this theory in other legal systems.

Therefore, it examines constitutional supremacy, discusses its concept and meaning in the jurisprudence of the STF, and analyzes the extent to which the Court has affirmed the supremacy of the Constitution. The research therefore intends to evaluate dialogic judicial activism in the Brazilian context, defining this concept and its relevance in the context of the STF, and studying examples of decisions in which the Court adopted a dialogic judicial activism approach, considering the impact and implications of this practice in the Brazilian legal system.

This research proposes the analysis of these conditions in light of the pragmatic bases of the last word theory, the institutional dialogues that support the democratic ideal, and how the absence of these statements can represent the need for the protagonist role of the judiciary, as legislator in the democratic state.

## Institutional dialogues and the last word theory in the Supreme Court

Institutional dialogues are at the heart of the democratic process, as they arise from the need for the powers to reconcile their expectations and concerns and to seek the best solution to the problems that affect society. This dialogical process of information exchange, also known as constitutional dialogue, generally takes place between the legislative and judicial powers, but it does not escape the intersection of the executive in the demands that include it as manager of the application and direct distribution of public resources.

There are several theories that try to conduct these institutional dialogues in a collaborative way, although with converging points, but which support the denial of the imposition of the last word or the final word, as is also usually found in the doctrine. The judiciary, as an organ of judicial control and sometimes in charge of giving the "last word", has been strongly criticized for not establishing this constitutional dialogue, or sometimes for not taking it into account.

The intersectionality of the dialogue reached the Brazilian Supreme Court, whose decision emphasized that "the exercise of the Union's competence at no time diminished the competence of other entities of the Federation in the provision of health services, nor could it, since the constitutional guideline is the municipalization of these services", as noted below:

> 1. The international emergency, recognized by the World Health Organization, does not imply, much less authorize, the granting of discretion without control or counterbalances typical of the Democratic Rule of Law. Constitutional rules not only serve to protect individual freedom, but also the exercise of collective rationality, that is, the ability to coordinate actions efficiently. The Democratic Rule of Law implies the right to examine government reasons and the right to criticize them. Public officials act better, even during emergencies, when they are forced to justify their actions. 2. The exercise of constitutional competence for actions in the health's sector must follow specific material parameters, to be observed, firstly, by the political authorities. As these public agents must always justify their actions, it is in light of them that the control to be exercised by the other powers takes place. 3. The worst error in the formulation of public policies is omission, especially for the essential actions required by art. 23 of the Federal Constitution. It is serious that, under the cloak of exclusive or private competence, the federal government's inactions are rewarded, preventing States and Municipalities, within the scope of their respective competences, from implementing essential public policies. The State that guarantees fundamental rights is not only the Union, but also the States and Municipalities. 4. The constitutional guideline for hierarchy, contained in the caput of art. 198 did not mean a hierarchy between the federated entities, but a single command, within each of them. 5. It is necessary to read the norms that make up Law 13,979, of 2020, as arising from the Union's own competence to legislate on epidemiological surveillance, under the terms of the SUS General Law, Law 8,080, of 1990. The exercise of the Union's competence did it not diminish the competence of the other entities of the federation in providing health services, nor could it, after all,

> the constitutional guideline is to municipalize these services. 6. The right to health is guaranteed through the obligation of States to adopt necessary measures to prevent and treat epidemic diseases and public entities must adhere to the guidelines of the World Health Organization, not just because they are mandatory under the terms of Article 22 of the Constitution of the World Health Organization (Decree 26,042, of December 17, 1948), but because they have the necessary expertise to give full effect to the right to health. 7. As the purpose of the actions of the federative entities is common, the resolution of conflicts over the exercise of competence must be guided by the best realization of the right to health, supported by scientific evidence and the recommendations of the World Health Organization (ADI 6341 MC, Original Rep. Min. MARCO AURÉLIO, Jud. Rep.: Min. EDSON FACHIN, Full Court, judged on 04.15.2020, PUBLIC 11.13.2020).

One of them is the fact that the dialog would begin at the initiative of the legislative power, when it enacts a law. If this rule is found to violate the legal parameter of that state, which in the Brazilian case refers to the Federal Constitution, it would be challenged before the Supreme Court, which "by identifying how this rule would violate the constitution of that country, would withdraw its validity" (control of constitutionality) (João, 2019: 45).

By removing the validity of this rule, which is not supported by the constitutional charter, it would offer its best interpretation of the relevant constitutional provisions during the evaluation process (judgment of the action). Following the Court's pronouncement, the legislature could react by reforming the law or maintaining it in contravention of the Court's guidelines. By disregarding the court's opinion, it would be practicing in your face, running the risk of the same law being challenged again in court. In the case of a modification, the analysis will be made to see if the requirements for being considered constitutionally valid have been met or, in the opposite case, the validity will be withdrawn again (João, 2019: 45).

These considerations permeate the control of the constitutionality of norms, but can be seen, with symmetry, in dialogues in which the interpretation of normative texts that require dialogue between institutions, in order to indicate the best path to follow. With well-defined parameters, it is possible to reach a consensus on what is considered appropriate for the moment, without, however, distorting the constitutional guidelines that must be followed.

It is a cycle that can be brief or filled with heated debates, fragmenting the harmonious objective of institutional dialogue, when both powers, initially in confrontation, submit to measuring forces in the face of the constitutional interpretative context. It is worth mentioning that the legal nature of the judicial action is the utterance of the last words, just remembering the well-known legal phenomenon of *res judicata*, from which there is no longer any possibility of discussing a given subject and the case is closed. The *ad eternum* is still subject to mitigation in terms of criminal review, the petition for relief from judgment or the petition to open a judgment and annulment

action can be used as examples of partial or total deconstruction of this "last word" resulting from a final judicial decision.

Providing the final understanding and, from there, weaving strategies for its implementation has been the greatest challenge in the issue of the enthronement of the judicial commandments by the other powers. The judiciary, while issuing this order, is often at the center of discussions about whether it is responsible for the non-harmonization of the contexts presented to it, disregarding its dialogic capacity and the objectives of the Federative Republic of Brazil, highlighting the fragility of the democratic rule of law when it is not possible to engage in a dialogue between the powers:

> The questioning moves to visualize, from the conflict, a possible understanding of what we want to be as a constitutional democracy, despite hypothetically more consolidated by an experience and learning of comings and goings and, similarly, of risks – always present – of arbitrariness anti-democratic practices practiced by each of the powers. The purpose is to understand the limits of a reality that is so called democratic and, therefore, the first step is to be aware of its own fragility. A frailness, by the way, that starts in the speech and permeates our history (Benvindo, 2014: 74).

It should also be remembered that law is dynamic, as the transitory nature of certain legal situations observed in the demands of society. The problem arises, however, when this last word spoken by the judiciary, especially the Supreme Court, contradicts the objectives and wishes of the other powers, against or in favor of society, but which are seen not only as points of convergence, but as interference by the judiciary in its institutional powers.

As it flows from the constitutional law itself, understands that the degree of control exercised by the judiciary in relation to the acts practiced by the other powers is reflected in the Supreme Court's own jurisprudence, but that, with the aim of systematizing it, "a valuable instrument is created to assess the activist character or not when a particular judicial decision is made" (Ramos, 2010: 153). There would be greater scope for judicial control of administrative acts, depending on whether the merits are assessed.

From then on, the dialogical exercise of democracy undergoes a reversal, and the institutional arrangements that had previously been created for the sake of harmony among the powers go awry and provoke the crises of institutional and constitutional dialogue when they arise from conflicts between the Supreme Court and the other powers. Major conflicts have been observed in times of crisis, although there are also constant clashes that are a natural consequence of the separation and division of powers that result from the democratic rule of law.[1]

Divergences are healthy for the democratic process, and they must exist so that the

1. According to Dallari's lessons "the democratic Rule of Law is an ideal that can be achieved, as long as its values and its organization are properly conceived, considering the fundamental presuppositions for the elimination of formal rigidity, of the supremacy of the will of the people and the preservation of freedom and equality" (2014: 302).

dialectical forces are balanced, or so that one overlaps the other for the good of the people. In a moment of crisis, the omissions of the powers are more evident, and the famous pointing out of the guilty provokes tension in the face of the unfavorable scenario. Driven by the strengthening of the judicial task of controlling the legislative activity, initiated by the Brazilian Federal Constitution of 1988, it is observed that the limits (not yet outlined by the doctrine) of the performance of the judiciary are often reached.

It often happens due to the inefficiency of the representative powers in adopting the normative measures appropriate to that implementation, as an attempt to pressure the Parliament to implement the Constitution:

> For many, the matrix of these problems resides in the working dynamics of the presidential government system, incapable of generating governments supported by stable parliamentary majorities, which aggravates in a framework of exacerbated multipartyism like ours. Others, like political scientist Fernando Limongi, argue that the mechanism of party coalitions has allowed Brazilian presidentialism to operate at success rates in relation to Executive Power initiatives, very close to those of parliamentary systems (Ramos, 2010: 289-290).

The imposition of legal measures on other powers is considered the fifth cause of judicial activism within the Supreme Court, in which constitutional principles are extracted from concrete measures adopted by the legislative and executive branches, with emphasis on those in which there is an inevitable contribution and application of financial resources (Brandão, 2019). The deference and appeal to its precedents, as well as the absence of a doctrine focused on the common law doctrine of *stare decisis*, leads the action of the Brazilian Supreme Court to the weakening and deviant fragmentation of the thesis stated in its jurisprudence, causing unnecessary legal uncertainty in society.

This is also an issue that takes up judicial activism and is strongly linked to the theory of the last word of judges with constitutional competence, but who form a collegial body for which they necessarily have the duty of coherence. A cycle of judicialization is formed, which is completed when there is judicial activism that is willing to review the evaluation of the legislature or the executive, or to impose on them rules and behaviors based on abstract principles, and not only judicialization in the strict sense - the submission of political issues to the judiciary (Brandão, 2019).

There is a problem that makes it impossible to connect ideas for constitutional dialogue, based on the so-called counter-majority difficulty, which is the result of the maximum that there is with regard to the judiciary, a democratic deficit of courts formed by lifelong judges, "who were not elected by popular vote, nor are they regularly subject to electoral control, to annul acts that are the result of political deliberation of representatives elected by the people" (Barbosa, 2018: 112).

This would be one of the causes that prevent the exercise of a healthy dialogue between institutions, since the final word of the judiciary, for example, when it declares the unconstitutionality of a normative act, includes the rejection of a political decision submitted to the deliberation of the representatives of the people.

Two other theories that have been discussed are those of Dworkin and Waldron, which are based on democratic contexts and the appreciation of the judiciary or parliament as bodies that settle social controversies. However, they are opposites, since Dworkin concentrates his studies on the defense of the relationship between democratic theory and the strong system of judicial review, while Waldron supports the defense of the supremacy of Parliament in the face of judicial supremacy.

In Dworkin's teachings, it is possible to find several central objects of analysis for the construction of his theory, such as the distinction between principle and political argument. On the basis of these, the judiciary must make decisions based on the concept of law as integrity and elaborate a sophisticated theory of the interpretation and application of law (Longo Filho, 2015: 93).

Regarding the ideas defended by Waldron:

> Waldron vehemently criticizes the practice of judicial review, that is, the attribution of unelected judges to declare the nullity of laws passed by democratically constituted parliaments. Despite this criticism, he does not ignore the reality of the existence of judicial review systems, including classifying them as strong, intermediate, and weak. However, he makes a distinction between judicial review and judicial supremacy. He understands that judicial review can operate at best as a modest restraining power; while the idea of judicial supremacy implies that judges must be supreme or even sovereign in politics and that all other constituted Powers must be subordinate to them (Longo Filho, 2015: 96).

These issues of judicial supremacy are part of the theory of constitutional dialogues insofar as they affect the premises for constitutional interpretation and the last word given by the judiciary. The adoption by Parliament of norms that go beyond the constitutional understanding of the Supreme Court implies the analysis of three other theories of the normative problem related to knowing what the last word in constitutional interpretation should be.

One of them, coming from the article by Peter Hogg and Allison Bushell, is based on the premise that there is a possibility of a reversal of the constitutional decision of the Supreme Court through the action of the legislative power. In these cases, the control of constitutionality can be understood "not as an insurmountable barrier for democratic institutions, but as a catalytic instrument for a dialogue between political institutions on the best way to reconcile individual freedoms and the interests of the community" (Brandão, 2019: 336).

In any case, democratically, there is a need for an institution capable of having the last word on constitutional interpretation, in order to define the concepts raised by the parties. This function assigned to the judiciary consists in exercising a logical and preconstitutional question of normative institutional design, a true stabilizing function of the law.

In fact, the supremacy denoted by the situations defined by the judiciary requires the analysis of the normative superiority of the dialogical theories, especially in terms

of constitutional interpretation, given the various deficiencies that exclude certain behaviors in the light of Brazilian law. Thus, it is necessary to examine the extent to which the actions of the Supreme Court are consistent with the interpretation of the Federal Constitution, and for what reason there must be limits to the exercise of the last word in constitutional matters.

## Judicial constitutional supremacy

The supremacy of the constitutional text, as a set of fundamental rules governing a nation, obliges the other rules to obey it, with the purpose of maintaining cohesion among them and guaranteeing legal certainty for the implementation of the precepts contained. It is from this that society is guaranteed the limits of action of the powers, institutions and rights to be enjoyed by all, whose duty it is to defend it in the face of any threat to its solidity.

The Supreme Court, as guardian of the Constitution, has been harshly criticized when it has proposed to exercise the function of deciding definitively on matters of great importance to society, usually in moments of social outburst. As in many historical moments, decisions were taken by bodies that were functionally imbued with legitimate attributions, but whose effects turned out to be disastrous.

The process of consolidating constitutional rules always passes through the evaluation and protection of constitutions and through the manifestation of arbitrators (courts) that functionally propose to interpret the terms that dictate the rules of the game of democracy. These written rules and arbitrators, according to Levitsky and Ziblattwork more effectively and survive longer "in countries where written constitutions are reinforced by their own unwritten rules of the game" (Levitsky and Ziblatt, 2018: 103), which "serve as flexible grids for the protection of democracy, preventing the daily postponement of political competition from turning into a free struggle" (Levitsky and Ziblatt, 2018: 103).

As a result, these disputes over the supremacy of constitutional interpretation have led the country to regrettable episodes of conflict between the powers, when, according to explicit constitutional provisions, the latter should engage in dialogue and find the best way to harmonize decisions for the benefit of society. However, the constitutional supremacy of the judiciary, characterized by the exercise of the last word, calls into question the limited performance of the Supreme Court in institutional contexts and, in certain situations, reveals real excesses in the face of the power it accumulates.

For this, there is what is called "institutional reserve", that is, a kind of patient self-control, restraint and tolerance, the aim of which is to limit the use of a legal right in favor of its institutional interests. It can be understood as an act of avoiding actions that, no matter how much they appear to be covered by legality, greatly violate its spirit, that is, indicate a misinterpretation of the purposes for which it is intended (Levitsky and Ziblatt, 2018: 103).

As a result of the will of the constitutional legislator, the text of the Federal Cons-

titution significantly limits the exercise of creativity of judges and courts, which is covered by the mantle of discretion and freedom to act within the legal parameters. The constitutional jurisdiction was entrusted to them, but it was in the doctrine that the setting of parameters supported by positive law "to measure the activist character or respect for the separation of powers of constitutional jurisprudence finds a vast field of possibilities from which one should, methodologically, select those points that are most relevant to the treatment of the issue" (Barroso, 2010: 168).

According to this understanding, the constitutional interpretation carried out not only by the judiciary, but also by the other powers, must have as a starting point the outlined parameters, the meaning of which is projected by the text of the rule, the Federal Constitution. If there is a need to observe rules inserted in normative texts, it is essential that the interpretation of this norm is carried out in consideration of these conditions, giving adherence to the textuality of the provision.

Using the doctrine of Waldron (2003), if it is verified that there is a judicial supremacy manifested to nullify or reduce the constitutional functional performance of the other powers, there will be configured a usurpation of the constituent power. It is enough to remember that the other tripartite powers are also constituted and, therefore, it is the mission of the courts to avoid making interpretations that distance the interpretive action of other powers, considering only its own convictions. As Longo Filho points out, what is most frightening is "the danger of the judiciary becoming the 'voice' of the Constitution" (Longo Filho, 2015: 99).

Seeking to disperse this power of the Judiciary among the other powers can be, on the one hand, a reckless attitude and, on the other hand, a solution. In fact, the solubility of the final word, coming from a body that has an institutional and constitutional function to exercise it for the good of society, would be the ideal of State manifestation in matters relevant to everyone.

In this area, it seems that the main problem of a legal system in which the supremacy of the judiciary is emphasized is that it leads to the irresponsibility of the legislator, who ends up being inactive in the face of various problems, leaving constitutional solutions to the courts. The rebellion against decisions comes when their interests are contradicted, even though the action was the result of their negligence. As Souza Neto and Sarmento explain:

> Despite the rhetoric of "judicial supremacy" in the constitutional interpretation, present in several judgments, there is in the Supreme Courtcase law some opening for reviewing its previous positions, when challenged by subsequent legislative acts. This opening to dialogue is healthy, as it allows for reciprocal control between the powers of the State, enabling the correction of errors in constitutional hermeneutics (2012: 335).

However, if we analyze the cases that have been made in an expansive, *ultra petita* way, in which the prerogative is imposed on the other powers and undermines the democratic ideal of the rule of law, there is a serious risk that these actions will be reproduced, no longer being isolated cases, but becoming part of the daily life of the courts.

## Cooperation principle, federalism,and judicial dialogical activism of the Supreme Courtduring the COVID-19 pandemic

Much is said about the judicialization of politics, in a pejorative sense, in which the most varied problems arising from the other powers operating in politics are sooner or later transferred to the judiciary. In some works, it is customary to assume that the judiciary is inactive and that everything that comes before it is somehow provoked, either by the powers themselves or by democratic institutions through representation.

The supremacy of the judiciary foresees an activism whose opinions are divided as to the support of the movement, but touch on the recognition that the judiciary must have the last word in the interpretation of laws and the constitutional text. The excessiveness that characterizes activism, in order to be accepted as an interpretive judicial activity that derives from the constitutional function assigned to the judiciary, only requires calibration in the performance of judges and courts.

The opposite of activism would be judicial restraint. These two legal movements develop a pendular trajectory in different democratic countries, in which "there are situations in which the majority political process is blocked by the obstruction of minority but influential political forces, or by historical changes in the legislative process" (Barroso, 2010: 327).

However, these are general lines arising from the principle of inertia that supports judicial activity in the context of access to justice, as well as the inescapability of jurisdiction. If these principles were not only constitutional, but scattered throughout the legal system, their relevance would still be reflected in the actions of the powers, with mandatory observance. Together with other fundamental principles, they only substantiate the need for consistency in the choice of legal claims, in order to prevent the judiciary from becoming the exaggerated bearer of the last word.

Contrary to what some scholars claim, Leite goes on to say that "judicial activism is present in the contemporary legal world, forgetting that the judiciary is characterized by being an inert power, urged to pronounce on demands that generally involve the non-fulfillment of the State's duties towards its citizens" (Leite, 2021: 1). The problem is based on the answer to the question: if there was no action (even activist) by the judiciary, how could the citizen demand the enforcement, protection and claim rights or damage to these constitutional, fundamental and unavailable rights?

In particular, when the Supreme Court takes a stand on fundamental rights issues that are morally controversial, it decides for itself (after being provoked), it dictates the last word on a given issue, in order to call society to stability. In constitutional terms, this flexibilization of the adjudication model "may assume greater importance than stability, since flexible rules may make a broad dialogue on the proper meaning that such norms should take in concrete cases impossible" (Brandão, 2019: 346).

While certain situations are unavoidable and judicial decisions are the most viable way to resolve disputes, it is certain that much of the judicialization of politics occurs due to the absence or exhaustion of dialogue. As Brandão asserts:

> The cycle of judicialization is only completed if, in addition to judicialization in the strict sense - submission of political issues to the Judiciary -, there is activism - a willingness of the Judiciary to review the valuation of the Legislative or Executive, or impose rules and conduct on them, based on abstract principles (Brandão, 2019: 178).

When this is not possible, judicialization becomes the most sought-after path, giving rise to decisive and, in some cases, exaggerated actions by the courts, which consider themselves the only ones capable of harmonizing the understanding of certain matters. But this attitude does not exempt judges from responsibility for possible excesses in the face of such a serious democratic responsibility.

There is a tension in giving the last word, which must be carefully supported by legal and constitutional principles in order to guarantee the effectiveness necessary for the production of legal effects. Through the lessons of Hachem and Pethechust:

> In the paradigmatic work "Irresponsible Judges" by Mauro Cappelletti, who denounces, as in Italy, the problem of the lack of accountability of judges reached such a dramatic level that it was the object of a national popular referendum. This is because it reached a point where it became inconceivable to maintain in the country a judicial system lacking in professionalism and completely immune from liability to parties and third parties harmed by acts or omissions filled by fault, in some very serious situations, of judges (Hachem and Pethechust, 2020: 213).

The control of abuses committed by the judiciary, among other difficulties to be faced, has been constant, especially to the Internal Affairs Units of the State Courts and the National Council of Justice, responsible bodies, *prima facia*, to the investigation of these conducts. In the citation, it is verified that exacerbated judicial conduct on the part of magistrates is common throughout the world. In some countries, "the absorption of new powers by the judiciary, not accompanied by the imposition of limits and not subject to control, has allowed abuses and the installation of a superpower with preponderance in relation to other constitutional bodies" (Hachem and Pethechust, 2020: 213), as reflected by Hachem and Pethechust.

The Brazilian political system, as argued in this work, has undergone a significant expansion of the powers of the judiciary, making the Supreme Court the central body for interpreting and giving meaning to the Constitution. This was accompanied by several transformations in the system of judicial control of constitutionality, "especially after the 1988 Constitution, they contributed to a significant increase in the judicialization of politics and social relations, culminating in the strengthening of the Supreme Court and the activist positions taken by the Court" (Hachem and Pethechust, 2020: 213).

The environment that questions activist actions in the judicial sphere, as well as claims for means of self-restraint and judicial supremacy, and the difficulty of countermajoritarianism, arises with the political justification plan, which in turn permeates other discussions, such as the issue of the separation of powers and the democratic legitimacy of judicial decisions. It is within this framework "that we seek to resolve the tensions that often arise between the majoritarian political process - made up of elec-

tions, public debate, Congress, executive leaders - and constitutional interpretation" (Barroso, 2010: 327).

As for self-restraint, since it is a means in response to activism, it does not have an equal context, nor does it rely on clear definitions, since there is a consensus that the judge creates the right only sporadically and not systematically. However, the great current debate "is to know the limits within which the creative activity of the judge is legitimate. If these limits are exceeded, the judge's action would be illegitimate and subject to correction" (Araújo, 2017: 81), because it violates the principle of separation of powers.

The Supreme Court has already expressed its opinion on the adoption of measures to remedy constitutional omissions:

> The Judiciary, in exceptional situations, may determine that the public administration adopt measures to ensure constitutionally recognized rights as essential, without this being a violation of the principle of the separation of Powers, inserted in Article 2 of the Federal Constitution (RE 669,635 AgR, min report. Dias Toffoli, j. 3-17 2015, 2nd T, DJE of 4/13/2015).

Society also usually places many expectations on the judiciary, with the Supreme Court as a body of trust and deliberation. Nevertheless, the institutional exchange with society does not allow judges to be seen as members with direct democratic legitimacy, while they cannot be replaced if they engage in behavior considered contrary to the interests of the people.

Although this reputation has deteriorated over the years, especially in the context of possible hidden political alliances between ministers appointed by certain governments and the connection to their decisions, it is possible to conclude that these are not the only reasons for one or another manifestation of the Supreme Court. Controversial cases are fully taken up and (partly) push away the possibility that certain personal desires of the judges overtake the others in joint decisions (Silveira, 2014: 89).

The question is whether this legitimacy conferred on the Court would be popular and, if so, to what extent this indirect legitimacy is constitutionally conferred, once elected by a political body. For this reason, although it is said that the legitimacy of the constitutional judiciary is that of the constitution itself, it is revealed only when it respects the political values of a democratic society, even when it turns to defending the interests of a minority to the detriment of the majority.

For example, the U.S. Supreme Court's decisions in Dred v. Sanford and Lochner v. New York were harmful to Afro-descendants and workers because they stabilized the controversies through decisions that included the denial of the claim to fundamental rights. Such attitudes fail to build a more open and flexible decision-making model that allows for the stabilization of decisions after a broad deliberative process (Brandão, 2019).

For the most part, the decisions issued by the Supreme Court are monocratic, in which "the reporter has the powers granted by law to determine the merits or the con-

ditions of admissibility of the action or appeal, ordinary or extraordinary" (Vieira, 2018: 169), as recalled by Vieira. In other words, the jurisdiction of the Supreme Court is, in most cases, exercised by a single person, in addition to which the collegial body acts, in practice, from the agenda defined by the judges, who define what they will not decide monocratically.

Confirming this understanding, the function to be performed by the members of the judiciary "allows them to defend their own political-ideological agendas and conceptions - even if, in the end, they do not even realize that they are acting in this way due to the majority opinion" (João, 2019: 127). From then on, the politicization of justice can be seen, in which the attitude of the members of the courts is legitimate, but not dialogical.

For this reason, Vieira emphasizes that "there is, therefore, a dangerous selectivity in terms of what enters the agenda of the Supreme Court and what awaits eternal judgment" (Vieira, 2018: 171). The theme of general repercussions, established by the 45th Constitutional Amendment, expanded this degree of discretion when it allowed the Supreme Court to receive only resources that had general repercussions, thus defining the issues and processes that would be adjudicated that year.

Judicial discretion, influenced by the form of discretionary interpretation, suggests the analysis of the Kelsenian view, which seeks to distance pure subjectivism from the hermeneutic function, as well as the positivist view given in the 18th century, which removed the discretion of all judicial function. It is even mentioned that in the nineteenth century "classical positivism continues to strongly influence some segments of legal science, and doctrinal manifestations clinging to the old dogma of the purely cognitive or declaratory interpretation of a pre-existing law are not uncommon" (Ramos, 2010: 122).

What Kelsen defends, in his obvious lessons, is that there is a certain freedom of discretion for both the legislative and the judicial activity, especially when one has the duty to respect the previously established legal parameters. This first milestone is given by constitutional norms, which are circumscribed by the fundamental aspects of the state organization and its interface with civil society (Ramos, 2010: 122).

In a scenario in which there are not necessarily correct answers, the adoption of positions by a collegial power that has the power to create laws among its attributions, even if indirectly, will generate divergences of opinion. Despite the impossibility of a dialogue between the legislative and the judiciary, especially between them and the executive, they are the first to act in the imposition of norms in society, whether they are rules resulting from legislative activity or judicial decrees.

This is the construction of judicial activism, based on constitutional legitimacy, wide discretion and the possibility of having the last word on various matters of social interest, whether for majorities or minorities. In Barroso's lessons, "the idea of judicial activism is associated with a broader and more intense participation of the judiciary in the achievement of constitutional values and purposes, with greater interference in the scope of action of the other two powers" (Barroso, 2010: 324).

Activism, within the Supreme Court, demonstrates, for Godoy:

> Excessively expansive action that can and should be criticized when it is carried out on the grounds that the Supreme Court has the last word on the interpretation of the Constitution, as such an understanding excludes the main actors, institutions, and recipients of the task of interpreting, constructing, and applying the 1988 Constitution. For this reason, Constitutional Law and the interpretation of the Constitution cannot be monopolized by a single Power, subject or institution (Godoy, 2015: 46-47).

The judicialization of politics is already a common phenomenon in normal times, and it is accentuated in times of crisis. Judges are increasingly required to understand the substantive concept of democracy in a more concrete way, so that they can delimit, through constitutional interpretation, the space allocated to each of the organs of the State. This, of course, is within the scope of the judicialization of politics, which, through the review of public policies, is composed not only of questions of direction in relation to constitutional norms, but also, in most cases, of omissions arising from these powers (Silveira, 2014: 59).

The discussion revolves around the so-called juris-centric bias, which emphasizes the judicial interpretation of the Constitution, so that the judiciary ends up taking up reasons that would fall under the competence of the legislature. During the COVID-19 pandemic, many policy issues were brought before the judiciary, particularly in relation to measures to combat and prevent contamination by the coronavirus, and what the allocation of powers would be in the context of this pandemic.

There was a lot of discussion about what would be the right direction for the population, considering that there are no real concrete solutions to face the global health crisis; what has been done so far has been encouraged by scientific research, empirical data and positive experiences lived in other places. In fact, there is a system of cooperation among federal entities that reflects the guidelines of the 1988 Federal Constitution, which "sought to reflect the new trends in federalism, as the original constituent went beyond the dualism of enumerated and reserved powers, a relevant feature of classical federalism" (Ramos, Ramos and Costa, 2020: 54).

Cooperation was at the heart of the objectives outlined in the 1988 Federal Constitution, in order to make the principle of the separation of powers more effective, so that its exercise would be as harmonious as possible, even in the face of mutual control obligations. The exercise of its powers, based on the typical instruments of cooperation necessary for a federation, is not always possible in coordination with democratic constitutional principles, given the tensions that arise with increasing levels of complexity.

This guarantees the premise that, in a system of cooperative federalism, the Union and the federating units must act together in order to exercise their powers in accordance with the complex political engineering provided for in the constitutional text. It implies the understanding that "since there is no supremacy of any of the spheres in the performance of common tasks, since responsibilities are shared, the effective provision

of good public services is ultimately compromised if the desired harmony does not materialize" (Ramos, Ramos and Costa, 2020: 54).

However, it was not known for sure whether this measure would be effective in all areas, and therefore several theories emerged to explain the most diverse situations related to the pandemic, from herd contamination to social distancing and lockdown: from the use of drugs without scientific approval to mass vaccination. In all these scenarios, it was possible to verify the exact role of each federal entity, as well as what would be the responsibility of the Union.

The analysis is based on the competence to carry out health actions, where the main debates were concentrated, followed by the economic issue, between fierce tempers and exacerbated demands, both collectively and individually. Constitutionally, it is a very broad right, based on articles 196 to 200, which leads to the interpretation of a total and unlimited guarantee, as well as the joint liability of the federal entities, in a tripartite delimitation, in the light of the federal pact.[2]

Activism has been coined over the months, in the judgment of direct unconstitutionality actions, such as n. 6341, 6441, 6526, among many others, reporting several agendas. It is discussed to what extent the imposition of restrictive measures harms the individual freedom of people when the State exercises its duty of protection. Thus, when government officials impose on the local or state population sanitary measures to prevent and combat the pandemic, such as social distancing, the use of masks, as well as, in some cases, lockdown and curfew, the legislative duties end up restricting freedoms in favor of other fundamental freedoms, such as that of the collective.

This activism in times of pandemic was born from the ineffectiveness of the legislative power due to the slowness of the legislative process and the figurative role of the executive power. In this scenario, the political powers lacked protagonists and effectiveness, which gave rise to the expressive expansion of judicial activity and the inevitable activist position and guarantee of rights over Brazilian public policies (Leite, 2021).

However, it is only for the legislator to limit the exercise of fundamental rights in order to protect other fundamental rights or the same rights only for different holders. Thus, what was seen in relation to the sanitary security measures imposed by government officials through standards was the weighing of fundamental rights, "in search of a balance of interests, so that the determination of their validity must include the analyzable, factual and evaluative aspects of the legislator's prior weighting (pre-weighting)" (Campos, 2016: 83).

The plenary of the Supreme Court of Justice recognized the competence of the federal entities and, on this occasion, confirmed the understanding that the measures adopted by the federal government in Provisional Executive Order no. 926 of 2020 to face the new coronavirus "do not exclude the concurrent competence, nor the norma-

2. The federative pact, according to Abboud and Mendes (2020), "consists of a constitutional rule that must necessarily be safeguarded in our legal system. It is, more precisely, a legal asset, against whose deficient protection can– *rectius*, should – invoke the *Untermassverbot* in times of crisis".

tive and administrative measures adopted by the states, the Federal District and the counties".[3]

This was an object of discussion and much friction between the federal government and the states and counties, which had to adopt restrictive measures according to the degree of contamination as well as the lethality of the disease, contrary to the understanding spread by the federal chief executive. The demonstration was the result of a Direct Action of Unconstitutionality (No. 6341) proposed by the Democratic Labor Party, in which it argued that:

> The redistribution of sanitary police powers introduced by MP 926/2020 in Federal Law 13,979/2020 interfered in the cooperation regime between federal entities, as it entrusted the Union with the prerogatives of isolation, quarantine, interdiction of movement, of public services and essential and circulation activities.

Therefore, the federal pact is reaffirmed and the Supreme Court, as the arbiter of the federal conflict, expands the spectrum of understanding of the conflict that destabilizes the federal pact and ends up playing a prominent role in the institutional design adopted by the Brazilian federation (Nery, 2015).

It is important to mention that the judicialization of politics, as already discussed in this paper, implies that the judiciary decides, sometimes with the last word, on relevant issues from a political, economic, moral or social point of view, representing a real transfer of power. It can result from inertia, as well as from the complementation of specific contexts within the framework of public policies, in the face of the lack of realization of fundamental rights and the adoption of a strategy by the other powers, which requires the adoption of measures on controversial issues, commonly called constitutional entrenchment of rights.

At this point, it is important to mention the following decision as an example of how the Federal Supreme Court acted:

> 1. In moments of severe crisis, strengthening the union and expanding cooperation between the three powers, within the scope of all federative entities, are essential instruments to be used by the various leaders in defense of the public interest, always with the absolute respect for the constitutional mechanisms of institutional balance and maintenance of harmony and independence between the powers, which must be increasingly valued, avoiding the exacerbation of any personalisms that are harmful to the conduct of public policies essential to combating the COVID-19 pandemic. 2. The severity of the emergency caused by the coronavirus pandemic (COVID-19) requires Brazilian authorities, at all levels of government, to concretely implement the protection of public health, with the adoption of all possible and technically sustainable measures for the support and maintenance of the activities of the Unified Health System. 3. The Union has a central, primordial and essential role in coordinating an international pandemic

3. Supremo Tribunal Federal, "STF reconhece competência concorrente de estados, DF, municípios e União no combate à Covid-19", available at https://tipg.link/O4xk.

along the lines that the Constitution itself established in the SUS. 4. In relation to health and public assistance, the Federal Constitution establishes the existence of common administrative competence between the Union, States, Federal District and Municipalities (art. 23, II and IX, of the CF), as well as providing for concurrent competence between the Union and States/Federal District to legislate on health protection and defense (art. 24, XII, of the CF); allowing Municipalities to supplement federal and state legislation as appropriate, as long as there is local interest (art. 30, II, of the CF); and also prescribing the political-administrative decentralization of the Health System (art. 198, CF, and art. 7 of Law 8,080/1990), with the consequent decentralization of the execution of services, including with regard to health surveillance activities and epidemiological (art. 6, I, of Law 8,080/1990). 5. It's federal Executive Branch concerning to unilaterally set aside the decisions of state, district and municipal governments that, in the exercise of their constitutional powers, have adopted or will adopt, within their respective territories, important restrictive measures such as the imposition of social distancing or isolation, quarantine, suspension of educational activities, restrictions on commerce, cultural activities and the movement of people, among other mechanisms known to be effective in reducing the number of infected people and deaths, as demonstrated by the WHO recommendation (World Health Organization) and several technical scientific studies, such as studies carried out by the Imperial College of London, based on mathematical models (The Global Impact of COVID-19 and Strategies for Mitigation and Suppression, various authors; Impact of non-pharmaceutical interventions (NPIs) to reduce COVID-19 mortality and healthcare demand, several authors). 6. The constraints imposed by art. 3rd, VI, "b", §§ 6th, 6th-A and 7th, II, of Law 13,979/2020, to States and Municipalities for the adoption of certain sanitary measures to combat the COVID-19 pandemic unduly restrict the exercise of the constitutional powers of these entities, in the detriment of the federative pact (ADI 6343 MC, Orig. Rep.: Min. MARCO AURÉLIO, Judg. Rep.: Min. ALEXANDRE DE MORAES, Full Court, judg. em 05.06.2020, public. 11.17.2020).

This activist construction leads to a mischaracterization of the typical function of the judiciary, although it is still within its attributions and, depending on the intensity and importance of the decision taken, it can be considered as "exceeding the limits of the jurisdictional function" (Cittadino, 2002: 106). This was considered an excess in the case of the declaration that the issue of fighting the pandemic should be addressed in solidarity, through the principle of cooperation that is typical of the powers and that radiates to the federal entities and to the Union.

Equally important issues that have taken the social proportion in this period that permeates 2020 and 2021+, or even when the deleterious effects of the pandemic on Brazilian and world society last. Vaccines, early treatment, use of drugs without proven efficacy, use of masks, social distancing, health breakdowns, lack of supplies of all kinds, among other equally important issues, have been judicialized and ended up becoming examples of judicial activism.[4]

4. Jornal da USP, "'Tratamento precoce' e 'kit covid': a lamentável história do combate à pandemia no Brasil", 14/10/2021. Available at https://tipg.link/O4yH.

But the concern of the whole society is that there be a direction, that it be told which path to follow. Illusions, contexts rooted in purely political or ideological intentions, without the real objective that the entire population may enjoy the same rights to survive the pandemic period faced, irrigate the condition that these issues, since there is no consensus among the interlocutors, could not continue to be treated apart from their importance.

A constant climate of tension and friction has developed between the federal government and the states, some of which have become more pronounced, with the heads of the respective executives considering themselves to be political opponents. In the face of the health crisis and the need to open new intensive care beds, there have been many problems that have given rise to lawsuits before the Supreme Court, which is called upon to give the final word.

Temporary relief was granted in original civil actions, such as those of the States of Maranhão (No. 3473), Sao Paulo (No. 3474) and Bahia (No. 3475), in which the States claimed that they were suffering financial burdens that they could not bear, given the damage caused to the population by the deprivation of essential public health services. According to the authors, this is a violation of equal access to health measures and services, as provided for in the constitutional provisions of articles 6, 197 and 198.

Through the principles of solidarity and cooperation, the states emphasized the joint competence of the federated entities "to develop policies aimed at promoting, protecting and restoring health (Article 23, item II), claiming that the Union must provide autonomy and funding to subnational entities in the implementation and formulation of health policies".

On another occasion, on March 26, 2021, the Supreme Court reported that it had issued more than 9,500 decisions and orders in nearly 8,000 cases related to Covid-19, numbers that express the vigorous performance of the court and the inevitable judicialization of the policy, in many moments. Not only the administrative and legislative incapacity, but also a lot of partisan negligence and politicization were responsible for the general discredit of the population in the governments, in addition to a wave of misinformation in society.

It is undisputed that the excessive judicialization of various segments of politics, especially public and social, is an effect of the pulverized inefficiency of public administration. The point that the Supreme Court, an inert court, would act in an activist way, has its true bias, but it widens the margin of possibility that the citizen can see his rights protected, in the last instance and word, given the impossibility of success of the necessary institutional and constitutional dialogues.

## Conclusion

The conditions for the validity and continuity of processes that seek the conclusion, protection and enforcement of rights do not only depend on the exercise of the right of access to justice, they seek to overcome obstacles and recognize that without them,

society would be orphaned from the support of the State. The confidence that the omitted powers could review their conduct and fulfill the institutional role assigned by the Constitution could lead to contexts of gradual suppression of rights, given their violation and lack of effectiveness.

Once the dialogical links resulting from the constitutional context are operationalized, it is added to the cooperation initiative of each of the powers and institutions, which must understand that this fragmentation of attributions was necessary and will continue to be necessary to avoid an exacerbated concentration, so fought against throughout history. The superimposition of the democratic idea offered by the scenario of the composition of a superpower or a "supremocracy" violates the constitutional principles, but at the same time it reflects an exacerbated imbalance between the powers.

It radiates the instability of the process of democratic conjunction, and observance of constitutional contexts. This work has shown that this problem is becoming chronic, as the crises intensify and drag on over time, given the number of pronouncements made by the Supreme Court in times of pandemic, from 2020 to the present. Virtually all matters affecting society have been settled, reflecting the absence of the institutional dialogue, cooperation and harmony so celebrated in the Constitution.

It is expected that this state of overestimation of the judiciary, with regard to the exercise of justice, does not persist in activist attitudes that go beyond the conditions for exercising the preservation, enforcement and protection of fundamental rights.

## References

Araújo, Luiz Henrique Diniz (2017). *O ativismo judicial e seus limites*. Belo Horizonte: Arraes Editores.

Abboud, Georges and Gilmar Ferreira Mendes (2020). "A jurisdição constitucional da crise: pacto federativo, preservação dos direitos fundamentais e o controle da discricionariedade". *Revista dos Tribunais*, 1022 (2): 103-124.

Barbosa, Antonio Ezequiel Inácio and Martonio Molt'alverne Barreto Lima (2018). "Influência das teorias dos diálogos institucionais e da última palavra provisória no pensamento constitucional brasileiro contemporâneo". *Revista de Investigações Constitucionais*, 5 (1): 109-128.

Barroso, Luís Roberto (2010). *Curso de Direito Constitucional contemporâneo: os conceitos fundamentais e a construção do novo modelo*. São Paulo: Saraiva.

Benvindo, Juliano Zaiden (2014). "A 'última palavra', o poder e a história O Supremo Tribunal Federal e o discurso de supremacia no constitucionalismo brasileiro". *Revista de Informação Legislativa*, 51 (201): 71-95.

Brandão, Rodrigo (2019). *Supremacia Judicial versus Diálogos Constitucionais: a quem cabe a última palavra sobre o sentido da constituição?* Rio de Janeiro: Lumen Juris.

Campos, Carlos Alexandre de Azevedo (2016). *Estado de Coisas Inconstitucional.* Salvador: JusPodivm.

Cittadino, Gisele (2002). "Poder Judiciário, ativismo e democracia". *Revista da Faculdade de Direito de Campos*, 2/3 (2/3) (2002): 135-144.

Dallari, Dalmo de Abreu (2014). *Elementos de Teoria Geral do Estado*. São Paulo: Saraiva.

Godoy, Miguel Gualano de (2015). *Devolver a constituição ao povo: crítica à supremacia judicial e diálogos interinstitucionais.* Tese de doutoramento em Direito do Estado. Curitiba: UFPR.

Fernandes, Fernando Manuel Bessa and Assis Luiz Mafort Ouverney (2022). "Decisões do Supremo Tribunal Federal no início da pandemia de Covid-19: Impactos no federalismo brasileiro?" *Saúde Debate*, 46 (1): 48-61.

Hachem, Daniel Wunder and Eloi Pethechust (2020). "Supremacia judicial no constitucionalismo brasileiro: riscos à democracia e as alternativas das teorias dos diálogos constitucionais". *Revista Brasileira de Estudos Políticos*, 2 (121): 203-250.

João, Ana Manuela Silva (2019). "Weak-form judicial review: o encontro entre os diálogos institucionais e o controle de constitucionalidade". Belo Horizonte: Casa do Direito Letramento.

Leite, Gisele (2021). "Judicialização da política ou ativismo judicial em face da pandemia de Covid-19". Available at https://acortar.link/GyjdjF.

Levitsky, Steven and Daniel Ziblatt (2018). *Como as democracias morrem.* Traduzido por Renato Aguiar. Rio de Janeiro: Zahar.

Longo Filho, Fernando José (2015). "A última palavra e diálogo institucional: relações com as teorias democráticas em Dworkin e Waldron". *Cadernos do Programa de Pós-graduação em Direito* (PPGDir/UFRGS), 10 (3): 90-111.

Nery, Ana Rita de Figueiredo (2015). "Supremo Tribunal Federal e solução de conflitos federativos em serviços públicos: Porto de Suape". Available at https://tipg.link/O4xa.

Ramos, Elival da Silva (2010). *Ativismo judicial: Parâmetros dogmáticos*. São Paulo: Saraiva.

Ramos, Edith Maria Barbosa, Paulo Roberto Barbosa Ramos and Laísse Lima Silva Costa (2020). "Pandemia e federalismo: reflexões sobre as decisões do supremo tribunal federal na apreciação de conflitos de competência entre os entes federativos no enfrentamento à COVID-19". *Revista Ciências Jurídicas e Sociais* (IURJ), 1 (1): 46-61.

Silveira, Daniel Barile da (2014). *O poder contramajoritário do Supremo Tribunal Federal*. São Paulo: Atlas.

Souza Neto, Cláudio Pereira and Daniel Sarmento. *Direito constitucional: teoria, história e métodos de trabalho*. Belo Horizonte: Fórum.

Vieira, Oscar Vilhena (2018). *A batalha dos poderes: da transição democrática ao mal-estar constitucional.* São Paulo: Companhia das Letras.

Waldron, Jeremy (2003). *A dignidade da legislação*. São Paulo: Editora Martins Fontes.

## About the authors

Emerson Ademir Borges de Oliveira is a lawyer. D. in Law from the University of São Paulo. Professor at the Law School of the University of Marília. His e-mail address is emerson@unimar.br. https://orcid.org/0000-0001-7876-6530.

Lidiana Costa de Sousa Trovão is a lawyer. D. and Master's Degree in Law from the Postgraduate Program in Law of the University of Marília. Post-doctorate in progress at the University of Marília. https://orcid.org/0000-0003-2688-0029.

Lara Guimarães Piacenti is a lawyer. Master's Degree in Law from the Postgraduate Program in Law at the University of Marília. Legal consultant in England. https://orcid.org/0000-0002-7900-7234.

## REVISTA DE DERECHO PÚBLICO

La *Revista de Derecho Público* es publicada desde 1963 por el Departamento de Derecho Público de la Facultad de Derecho de la Universidad de Chile. Aparece dos veces al año. Su propósito es la difusión de los avances del derecho público nacional e internacional y la socialización de artículos de investigación inéditos de la comunidad académica nacional e internacional.

DIRECTORA
Ana María García Barzelatto

SECRETARIO DE REDACCIÓN
Felipe Peroti Díaz
fperoti@derecho.uchile.cl

SITIO WEB
revistaderechopublico.uchile.cl

CORREO ELECTRÓNICO
publico@derecho.uchile.cl



La edición de textos, el diseño editorial
y la conversión a formatos electrónicos de este artículo
estuvieron a cargo de Tipográfica
www.tipografica.io