LEGISLATIVE AND JURISDICTIONAL RETROSPECT OF THE JURISDICTION BY PREROGATIVE OF FUNCTION IN THE ACTION OF ADMINISTRATIVE IMPROBITY

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Abstract: This article analyzes the Federal Constitution, Federal Law No. 8,429, of June 2, 1992, Federal Law No. 10,628, of December 24, 2002, the Brazilian Criminal Procedure Code, decisions of various courts and the understanding of constitutionalist, penal, administrative and procedural indoctrinators with the purpose of verifying the incidence of the jurisdiction by prerogative of function in the action of administrative improbity. In the research, the historical and hypothetical-deductive method is used, with the launch of a conjecture that will be confronted by a series of arguments tending to deconstruct it for the verification or not of its veracity.

Keywords: Administrative improbity; Criminal nature; Civil nature; jurisdiction by prerogative of function.

1 Introduction

Article 37, paragraph 4 of the Constitution of the Federative Republic of Brazil, of October 5th, 1988, provides that administrative improbity will be punished with the loss of public service and with the suspension of political rights, regardless of the appropriate criminal sanction.

Despite not conceptualizing it, the Federal Constitution makes it clear through sanctions that the act of administrative improbity is extremely serious and its author must be removed from the State's business, also establishing the inconvenience of the individuals participation in voting.

Federal Law nº 8,429 was enacted on June 2nd, 1992, and regulated the aforementioned art. 37, paragraph 4, presenting the active and passive subjects of administrative improbity, the punishable acts, their subjective elements, the applicable penalties, and the procedural aspects of the action that requires the recognition of the unlawful act and the agent's punishment. However, neither the Federal Constitution nor the Law on General Administrative Improbity expressly stated which jurisdiction is competent for the assessment of administrative improbity actions.

Federal Law nº 10,628, enacted on December 24th, 2002, amended the Code for Criminal Procedure, among other things, adding paragraph 2 to art. 84, which determines that, in cases of jurisdiction by prerogative of function, the same court competent for the assessment of the criminal action would also be competent for administrative improbity actions.

However, Federal Law nº 10,628/2002 was declared unconstitutional by the Federal Supreme Court, in the context of concentrated constitutional review, in direct action of

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unconstitutionality nº 2797-2, producing *erga omnes* effects and binding the other organs of the Judiciary and the Executive Power.

Eventually, the Federal Supreme Court and the Superior Court of Justice have declared themselves competent for the assessment of actions of administrative improbity proposed against occupants of high public positions, such as ministers of Superior Courts and state governors.

Furthermore, considering the jurisdiction by prerogative of function in criminal actions, among which, according to the Federal Supreme Court and most of the doctrine, actions of administrative improbity are not included. The Supreme Court declared the existence of a constitutional mutation, which altered the jurisdiction of some authorities, which, according to this new understanding, has jurisdiction only as a function of authority in actions relating to alleged irregularities practiced during the current term and when the alleged irregularities are related to the position held. This decision of the Supreme Court presents subsidies for understanding the resistance of the Judiciary to recognize the jurisdiction by prerogative in actions of administrative improbity, although it does not specifically address the central theme of this article.

In legislative terms, the Proposed Amendment to the Constitution nº 358/2005 is being processed in the National Congress, which, if approved, will have the same content, but a different hierarchy, from Federal Law nº 10.628/2002, which provided for the jurisdiction by prerogative of function for actions of administrative improbity. In this context, this research questions whether there is a jurisdiction by prerogative of function in actions of administrative improbity.

The objective of this article is to investigate the incidence by prerogative of function in the actions of improbity analyzing the nature of the actions of administrative improbity and the legislative initiatives and the judicial decisions related to the determination of the competent jurisdiction to processing and judging actions of administrative improbity.

This work employed a historical research method and the hypothetical-deductive method, characterized by the exposure of an initial conjecture to a series of contrary arguments to verify whether it is sustained.

The conjecture, in this case, is that, although the Federal Constitution has expressly fixed the jurisdiction by prerogative of function for criminal actions and that it can be inferred for criminal actions, such as administrative improbity, even when expressly provided for in law, the jurisdiction by prerogative of function faces the resistance of the Judiciary Power because the public opinion to associates it with delay and impunity, not always correctly. It is a posture of judicial populism.

2 Administrative improbity and public-interest civil action

The Federal Constitution of 1988 and Federal Law nº 8,429/92 provide nothing on the competent jurisdiction for the assessment of administrative improbity. Most of the national

doctrine and jurisprudence usually applies Federal Law nº 7,347, of July 24th, 1985, which regulates public-interest civil action, to the action of administrative improbity, without explaining the reasons for doing so. Arnoldo Wald and Rodrigo Garcia da Fonseca (2006) deny the subsidiary application of the rite of the public-interest civil action to the action of administrative improbity.

Article 1 of the Law on Public-Interest Civil Action lists the assets of which compensation for material or moral damage can be promoted through the action it regulates, namely the environment; consumer rights; goods and rights of artistic, aesthetic, historical, tourist, and landscape value; any other diffuse or collective interest; the economic order, and; the urban order.

The general formula used in item IV of art. 1 of Federal Law nº 7,347/85, "any other diffuse or collective interest", would lead to the understanding that the regulatory rules of public-interest civil action should be applied in the alternative to the action for administrative improbity if its purpose was exclusively to repair the damage.

However, the penalties for administrative improbity are broader, encompassing, in addition to repairing the damage, the loss of public service, the suspension of political rights, the prohibition on contracting with public authorities, and the civil fine.

Disregarding the severity of these penalties, most jurisprudence and doctrine, such as Emerson Garcia and Rogério Pacheco Alves (2006), Marino Pazzaglini Filho (2009), Waldo Fazzio Júnior (2007), and Silvio Antonio Marques (2010), apply art. 2 of the Law on Public-Interest Civil Action to the action for administrative improbity that determines that the actions regulated by it will be proposed in the jurisdiction of where the damage occurs and its respective court will have the competent jurisdiction to prosecute and judge the cause.

Professor Marcelo Figueiredo (2004) presents the action of administrative improbity with objectives similar to that of public-interest civil action, even though he does not expressly mention the action regulated by Federal Law nº 7,347/85, stating that the "essential nature of the sanctions provided for in law is civil, not criminal. It can be noted that the legislator's every effort is to compensate and recover the damages caused by the conduct of the unlawful administrator" (p. 178, our translation).

According to this line of intellection, the judicial body competent for the appraisal and judgment of the action for administrative improbity would be the Court of Law of the district where the damage occurred. If there is interest from the Union, the competent body for judging the action would be the Federal Court of the Judicial Section or Subsection where the damage occurred.

This understanding was reinforced by the judgment of Direct Action of Unconstitutionality nº 2797-2, which stated that the action aimed at materializing the sanctions for administrative improbity is civil in nature. The decision was not unanimous, noting the unsuccessful divergences presented by Minister Gilmar Ferreira Mendes, who saw in the serious

political sanctions - the loss of public service and the suspension of political rights - the essence of administrative improbity.

3 Administrative improbity and criminal action

As previously explained, the practice of administrative improbity entails sanctions of which gravity impels its classification among the institutes of Criminal Law. The normative source of the institute of administrative improbity in the Brazilian legal system, art. 37, paragraph 4, of the Federal Constitution, provides that administrative improbity will be punished with the loss of public service and with the suspension of political rights.

As the same constitutional provision states that the penalties referred to above will be applied without prejudice to the appropriate criminal action, a substantial portion of the doctrine and jurisprudence sustains that its legal nature is civil or non-criminal, based almost exclusively on the formula "without prejudice to the appropriate criminal action" and without a thorough analysis focused on the administrative improbity institute itself.

Alexandre de Morais and Fábio Konder Comparato are among the respectable authors who support the civil or non-criminal legal nature of administrative improbity based on the expression "without prejudice to the appropriate criminal action". The last states that if "the Constitution distinguishes and separates the condemnatory action of the person responsible for acts of administrative improbity from the sanctions expressed by it, from the appropriate criminal action, it is, obviously, because that demand has no criminal nature" (COMPARATO, 1999, p. 6, our translation). The fist author states that

> The civil nature of acts of administrative improbity stems from the constitutional wording, which is quite clear when it confirms the independence of civil liability for an act of administrative improbity and possible criminal liability, derived from the same conduct, when using the formula "…. without prejudice to the appropriate criminal action".

On a contrary sense, a small portion of the doctrine sought to identify the legal nature of administrative improbity by considering the severity of its sanctions, not least because the device originating from administrative improbity in the Brazilian legal system, the multi-faceted art. 37, paragraph 4, of the Federal Constitution, points to the fact that the sanctions are part of the essence of the institute of improbity.

In this line of intellection, Vanderlei Anibal Junior and Sergio Roxo da Fonseca (2007, p. 1, our translation) maintain that:

> The action of administrative improbity has the legal nature of a criminal action, because, at its core, penalties are applied to the accused, subtracting the attributes of citizenship and honorable life, that is, the penalties applied are considered the most serious the legal system in force. It is the condemned post "ad metallum" with the suspension of political rights and a prohibition on entering into contracts with public agencies, in a longing for the medieval

penalties of Philippine law.

Some authors, such as André Pimentel Filho (2011, p. 25, our translation), prefer to deny the criminal nature of improbity based on the formula “without prejudice to the criminal action applicable”, despite perceiving the essentially criminal nature of the institute, perhaps due to the large predominance of the majority doctrine:

> Notwithstanding the doubts that in principle the ontological proximity to the criminal sphere may raise, we are also in the field of sanctioning law, currently its civil nature (rectius, non-criminal) is out of the question. The constituent legislator made this clear and wanted to do so by registering that the punishments applicable to the practitioner of the act of improbity are "without prejudice to the appropriate criminal action".

The unveiling of the legal nature of administrative improbity is not a whim of doctrinal preciosity, but a practical necessity, given the effects that this can have on people's lives and the routine of Public Administration.

If the administrative improbity is, on the face of the severity of its sanctions, an ontologically criminal institute, despite the formula “without prejudice to the appropriate criminal sanction”, which procedural rule should apply to it? If, where there is the same reason, there must be the same right, then the serious penalties for administrative improbity must be preceded by the broad guarantees of the criminal procedure that precede the serious penalties of criminal law.

4 Administrative improbity and the jurisdiction by prerogative of function

The Federal Constitution, of October 5th, 1988, shifts the original jurisdiction for the judgment of some authorities from the first degree of jurisdiction to the courts of justice, the federal regional courts, the Superior Court of Justice, and the Federal Supreme Court.

By virtue of item I of art. 102 of the Federal Constitution, it is incumbent upon the Federal Supreme Court to originally prosecute and judge: (i) for common criminal offenses, the President of the Republic, the Vice-President, the members of the National Congress, their own Ministers, and the Attorney General of the Republic , and; (ii) for common criminal offenses and crimes of responsibility, the Ministers of State and the Commanders of the Navy, Army, and Air Force, the members of the Superior Courts, those of the Federal Court of Auditors, and the heads of permanent diplomatic missions.

To the Superior Court of Justice, in turn, pursuant to item I of art. 105 of the Federal Constitution, it is incumbent to originally prosecute and judge, in common crimes, the State and Federal District Governors, and, in common crimes and crimes of responsibility, the judges of the Courts of Justice of the States and Federal District, the members of the State Courts of Auditors of the States and of Federal District, the members of the Regional Federal Courts, Regional Electoral Courts and Labor Courts, the members of the Audit Councils or Courts of the Municipalities, and the members of the Federal Prosecution Office that officiate before the courts.

Art. 108 of the Federal Constitution attributes to the Regional Federal Courts the original jurisdiction for the judgment of federal judges in the area within their jurisdiction, including those of Military Justice and Labor Justice in common and liability crimes, and members of the Federal Prosecution Office, apart from the jurisdiction of the Electoral Justice. Furthermore, item III of art. 96 privately attributes to the Courts of Justice the power to judge State and Federal District and Territorial judges, as well as members of the Federal Prosecution Office for common and liability crimes, also subject to the jurisdiction of the Electoral Justice.

Moreover, item X of art. 29 of the Federal Constitution determines that the organic laws of the municipalities provide for the mayor's judgment by the Court of Justice and the Superior Court of Justice. Numerous judgments such as the conflict of jurisdiction n° 105.227/TO, derived from art. 27, paragraph 1, have recognized the right of the state deputies being prosecuted and judged originally by the Courts of Justice.

Such a right of judgment by a higher court cannot be confused with personal privilege, but as a requirement that enables the exercise of public function. Guilherme de Souza Nucci (2007), Julio Fabbrini Mirabete (1997), Fernando Capez (1997), Fernando Tourinho Filho (1990), and Nestor Távora and Rosmar Rodrigues Alencar (2010) argue in this sense.

In the case of jurisprudence, the fifth panel of the Superior Court of Justice, offered in the judgment of Habeas Corpus 99773/RJ, reported by Minister Napoleão Nunes Maia Filho, a brief explanation of the reasons for the existence of the jurisdiction by prerogative of function:

> The special jurisdiction by prerogative of function is not the personal privilege of its holder, but a necessary guarantee for the full exercise of public functions, typical of the Democratic State of Law: it is a technique of protection of the person who holds it, given the provisions of the Constitution, meaning that the holder submits himself to investigation, prosecution, and judgment by a judicial body previously designated, not to be confused, in any way, with the idea of impunity of the agent.

Understanding that the judgment of actions for administrative improbity may suffer the same influences and cause the same embarrassment as criminal actions, the National Congress and the President of the Republic edited Federal Law nº 10,628, of December 24th, 2002, changing the wording of the head provision of art. 84 of the Code of Criminal Procedure and adding two paragraphs.

With the change, paragraph 2 of art. 84 of the Code of Criminal Procedure determined that, in the case of jurisdiction by prerogative of function, the action of administrative improbity would be processed and judged by the same competent body as the assessment of the criminal action.

This legislative innovation suffered harsh criticism from the doctrine. Among the critics are Marino Pazzaglini Filho (2009), Waldo Fazzio Júnior (2007), Silvio Antonio Marques (2010), and Emerson Garcia and Rogério Pacheco Alves (2006).

In the opposite direction, even before the express legislative provision, Arnoldo Wald and Gilmar Ferreira Mendes (1998) maintained the jurisdiction by prerogative of function for the action of administrative improbity, on the grounds that the same reason that authorizes the privileged jurisdiction for the action criminal law imposes its application in the action of administrative improbity, given the gravity of the consequences of this coming, and that this solution is implicit in the constitutional text.

In an intermediate position, Professor Hugo Nigro Mazzilli (2003) argued that only actions of administrative improbity with a request for loss of public function and suspension of political rights should be judged by the bodies competent for judging the crime of responsibility.

The National Association of Members of the Federal Prosecution Office brought the matter to the attention of the Federal Supreme Court, through the direct action of unconstitutionality nº 2797, an occasion in which Federal Law nº 10.628/2002 was declared formally unconstitutional under the argument that ordinary law would have the power to extend the original jurisdiction of the courts, which could only be done through an Amendment to the Constitution.

The Proposed Amendment to Constitution nº 358/2005 is currently being processed in the National Congress with a view to inserting a provision in the Federal Constitution with the following wording: “The action of improbity referred to in art. 37, paragraph 4, regarding the crime of the responsibility of political agents, will be proposed, if applicable, before the court competent to criminally prosecute and judge the official or authority in the event of a prerogative of function”.

This attempt to extend the jurisdiction by prerogative of function for actions of administrative improbity has also received criticisms of the doctrine that reveal other reasons underlying the declaration of formal unconstitutionality of Federal Law nº 10,628/2002 by the Federal Supreme Court.

The President of the Association of Federal Judges of Brazil, Walter Nunes da Silva Júnior (2007), criticizing the Proposed Amendment to the Constitution nº 358/2005, maintains that the courts have operational difficulties to instruct the processes, which generates slowness and a feeling of impunity. Among the ailments of the jurisdiction by prerogative of function, the aforementioned Federal Judge states that there is no record in history that any Brazilian court has ever condemned any politician.

The appearance of privilege and impunity that corporatism often provides, make the privileged jurisdiction a solution with little social acceptance - which, in some way, is reflected in doctrine and jurisprudence - even in the cases expressly authorized by the Constitution. Due to application weakness, the privileged jurisdiction has been identified as immunity to the practice of socially harmful conduct by occupants of high public positions.

Regardless of this feeling, the Federal Constitution recognizes the jurisdiction by

prerogative of function as an important instrument of viability of public function, without which it would be exposed to the turmoil of political pressures that most easily incline a first-degree judge.

Despite the decision handed down in the context of concentrated constitutional review, perhaps even due to corporatism, the Federal Supreme Court has changed its position on the subject.

Petition 3211/DF, with Minister Gilmar Ferreira Mendes as part, raised a point of order before the Federal Supreme Court regarding its competent jurisdiction to prosecute actions of administrative improbity brought against its ministers. On this occasion, it was decided that the court would be competent, as set out below:

> Question of order. Public-interest civil action. Act of administrative improbity. Minister of the Federal Supreme Court. Impossibility. Competent jurisdiction of the Court to prosecute and judge its members only for ordinary criminal offenses.
>
> 1. It is incumbent upon the Federal Supreme Court to judge actions of improbity against its members.
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> 2. Filing of the lawsuit regarding the Minister of the Supreme Court and referral of the case file to the Court of 1st degree of jurisdiction regarding the others.

After this precedent, the Superior Court of Justice also changed its understanding and decided, among others, the interlocutory appeal in Special Appeal nº 1,216,168-RS, by the rapporteur of Minister Humberto Martins, recognizing himself competent for the judgment of the governor of Rio Grande do Sul Yeda Crusius for an act of administrative improbity.

In the judgment of the aforementioned interlocutory appeal, there is an excerpt from the vote of Minister Teori Zavascki that deserves to be transcribed:

> It is verified, therefore, that, even regarding the rules on jurisdictional powers, the provisions of the Constitution include broader interpretation, to fill gaps and encompass certain implicit, but undeniable, powers of the system. From the constitutional perspective, it is therefore justifiable to preserve the jurisdiction by prerogative for the action of administrative improbity, an understanding that, as well as based on good doctrine (eg: WALD, Arnoldo; MENDES, Gilmar Ferreira. Competência para julgar ação de improbidade administrativa. Revista de Informação Legislativa, v. 35, n. 138, p. 215; TOJAL, Sebastião Botto de Barros; CAETANO, Flávio Crocce. Competência e prerrogativa de foro em ação civil de improbidade administrativa. In: BUENO, Cássio Scarpinella; PORTO FILHO, Pedro Paulo de Rezende (coord.). Improbidade administrative; questões polêmicas e atuais, p. 399), received the endorsement of the Federal Supreme Court, in the aforementioned precedent (QO na Pet. 3.211-0, rel. P/ acórdão Min. Menezes Direito, DJ 27.06.2008) and of the Superior Court of Justice, in Complaint 2115, previously mentioned.
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> In the case of a State Governor, the Constitution ensures them, in common offences, the jurisdiction by prerogative of function before the Superior Court of Justice (art. 105, I, a) and, in the case of responsibility, before the respective Legislative Assembly (Law 1.079/50 , articles 77 and 78). The recognition of the competence of a first degree of jurisdiction to prosecute and judge public-interest civil action for administrative improbity, which may result in the loss

> of office for which the individual was elected by popular vote, the primary source of legitimacy of power (CF, art. 1, sole paragraph). It is to be recognized that, due to unavoidable symmetry with what occurs regarding common offences, in such cases, there is an implicit complementary competent jurisdiction of the Superior Court of Justice.

Given the similarity of the severity of the sanctions, the accused in an action of administrative improbity deserves the same guarantees as the accused in criminal proceedings - among them, the jurisdiction by prerogative of function.

5 Popular dislike against the jurisdiction by prerogative of function

The Federal Constitution, in art. 102, item I, subitem b, established that the Federal Supreme Court should judge, in ordinary criminal offenses, the President of the Republic, the Vice-President, the members of the National Congress, their own Ministers, and the Attorney General of the Republic.

The constitutional text makes no reservations and does not say, for example, that the Federal Supreme Court is only competent to judge those authorities when the crime in question is related to the position held or when the crime has been committed during the time the person on trial held public office.

In the judgment of a question of order in criminal action nº 937, the Federal Supreme Court modified its previous understanding to restrict the scope of the jurisdiction by prerogative based on the collective feelings of slowness, impunity, and inequality, which bring social indignation and discredit against the Supreme Court.

The minutes of the judgment on the aforementioned question of order reveals a great concern of the Supreme Court ministers with the prestige of the Court, perhaps a greater concern than that of extracting its exact content from the Constitutional Text.

At the trial in question, Minister Barroso, who acted as rapporteur, stated that “here at the Supreme Court, according to data from the Strategic Management Advisory Board, more than 200 cases have been prescribed since the Supreme Court began to act in this matter. Therefore, this statistic brings embarrassment and disrepute to the Federal Supreme Court", "I believe there is a problem of non-vocation; there is a problem of discredit, because we are unable to play this role well; and there is a legal issue", "the system is poor; the system works badly; the system brings disrepute to the Supreme Court; the system brings impunity”, “the negative results are too obvious for us to deny, which are the impunity and the discredit that this brings to the Supreme Court”, “all that makes Justice work badly, all that discredits what we symbolize and do should be reviewed. Therefore, if it is malfunctioning, we have to do something, within the limits the Constitution allows”.

In the desire to resolve situations that the Federal Supreme Court considers problematic, the solutions adopted are often not within the limits the Constitution allows. In other words, under

the justification of doing what it is supposed to be fair, the Federal Supreme Court is not embarrassed to descard what is written in the Constitution.

The Federal Supreme Court acted as such, disregarding what is written in the Federal Constitution to meet an alleged social outcry, in this case, when it restricted the jurisdiction by prerogative of function, when it began to admit the execution of the prison sentence before the *res judicata*, and when it denied, to other authorities, with the exception of its own ministers, the jurisdiction by prerogative of function in the actions of administrative improbity.

6 Conclusion

Despite most doctrinal and jurisprudential understanding, the seriousness of the sanctions for administrative improbity recommends their classification among the institutes of criminal law.

In this context, the analogous application of the regulation of public-interest civil action to the action of administrative improbity is not appropriate since the former intends primarily to repair the damage, while the latter intends to punish the unlawful agent, temporarily removing him/her from state affairs. Therefore, it is not appropriate to apply the action of administrative impropriety to institutes, such as, by default, applicable in public-interest civil action.

While it is acceptable to condemn someone to repair damage they potentially did not cause just because they did not defend themselves in public-interest civil action, it is not condemning someone to the loss of civil service (possibly elective) and the suspension of political rights for the same reason - the non-attendance to the procedure. On the other hand, the reasons that authorize the jurisdiction by prerogative of function in the criminal action also authorize it in the action of administrative improbity.

Just as it is inconvenient for a first-degree judge to hinder the exercise of a warrant issued by the people through the prosecution of a criminal case, the loss of public function and the suspension of the political rights of a high state dignitary by a first-degree magistrate in an action of administrative improbity is also inconvenient.

The jurisdiction by prerogative of function is not a personal privilege or a safe-conduct for the practice of crimes for occupants of high public positions, but a necessary instrument for political activity, which somehow shields legal attacks for merely electoral purposes. This is also why there is no need to discuss about breaking isonomy.

The resistance of the doctrine and jurisprudence to envisage the application of the jurisdiction by prerogative of function to the action of administrative improbity is also the result of a feeling of impunity resulting from the slowness and omission of many courts in the judgment of contemplated criminal actions in its original competent jurisdiction.

Therefore, it is not the jurisdiction by prerogative of function that is inconvenient, but the lengthy and silent posture of some courts, as well as the recognition by prerogative only for some authorities, such as Ministers of the Federal Supreme Court, authorizing a systematic

interpretation of the Federal Constitution in some cases and denying it in others, without any distinction.

Regarding these discrepancies in the Constitutional interpretation, it is worth mentioning the teachings of Lenio Luiz Streck (2014, p. 1) on Katchanga's Theory:

> Discutiendo sobre el papel del "des-aniversario", para el que existían 364 días de recepción de regalos en general, y sólo uno de cumpleaños, Humpty Dumpty dice a Alicia: "la gloria es para ti". Ella responde: "No sé qué quieres decir con la gloria", a lo que él con desdén, replica, "Seguro que no lo sabes... hasta que yo te diga. Quiero decir 'es un bello y devastador argumento para usted'" Pero, dice Alicia, "la gloria no significa 'un argumento hermoso y devastador'". Y Humpty Dumpty concluye: "Cuando yo uso una palabra, significa exactamente lo que yo quiero que signifique, ni más ni menos". Tengamos en cuenta esa última frase del personaje nominalista de Lewis Caroll... La palabra "gloria" significa lo que él quiere que signifique... Es el "demoledor" corolario a todo posible argumento. Como así también lo es la Katchanga (Real).

The Federal Supreme Court cannot argue that the action of administrative improbity is civil in nature without violating the laws of logic and common sense or using "katchanga" (Streck, 2014, p.1); that, therefore, the jurisdiction does not fit the prerogative of function; but declare itself competent for judgement when the defendant is one of its ministers.

As with the Ministers of the Federal Supreme Court, all authorities whose competent jurisdiction to judge criminal actions the Federal Constitution removes from the first level of jurisdiction to assign to a collegiate body composed of more experienced magistrates, for the same reasons, are entitled to the prerogative of function in actions of administrative improbity.

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