CITY COUNCILS AND DISPUTES FOR POSITIONS DURING THE BRAZILIAN FIRST REPUBLIC

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Abstract: This paper intends to analyze the judicial disputes for positions in the City Councils, which occurred during the Brazilian First Republic, through the Supreme Federal Court's decisions. The research adopts legal-exploratory methodology, focusing on jurisprudential study. The article especially seeks to determine which guidelines were drawn up by the Court to deal, through *habeas corpus*, with the situations related to the electoral investigations and powers checks, as well as the cases of duality of Chambers. The decisions demonstrate that, although the Court's performance was mainly casuistic, specific and restrictive criteria were, at last, created for assessing the merits of the *habeas corpus* in this context.

Keywords: The Legislative Branch; County; Positions disputes; Brazilian First Republic.

1 Introduction

The present study analyzes the judicial demands arising from altercations that occurred within the scope of the City Councils during the First Republic, centered on the decisions handed down by the Supreme Federal Court (STF). This is a fertile ground for research, given that, at the time, the Court considered numerous political disputes of a local nature. Among them, many Chamber duality episodes and discussions regarding the legitimacy of counting votes and verifying elected representatives.

The research uses a "legal-exploratory" methodology (GUSTIN, 2006, p. 28) aiming at diagnosing the jurisprudence of the Supreme Federal Court from primary sources included in the official repositories published during the First Republic, especially the journals "O Direito" and "Revista do Supremo Tribunal Federal" (RSTF). This paper especially seeks to determine which guidelines the Court has drawn up to address the imbroglios pointed out in *habeas corpus* (HC). Although the STF's performance was markedly casuistic, the precedents indicate that the Court developed specific - and, in the end, restrictive - criteria for assessing the merits of the actions in this context.

As for the script followed by the article, some of the Supreme Court's disputes in the period, which address disputes over elective offices, are commented in a panoramic manner. Subsequently, the quarrels that occurred at the local level are specifically addressed, almost always related to the City Councils' functions (and by the Councils, existing at the time). We follow addressing the Court's solutions to the most frequent cases of dual bodies and conflicts

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over the counting of votes and verification of powers. Finally, we present the criteria gradually outlined by the Supreme Court to address political issues in the context of *habeas corpus*.

2 The legal disputes for office in the First Republic

There was still no specialized electoral justice during the First Republic. It would only be created under the government of Getúlio Vargas through Decree nº 21,076 of 1932. Countless conflicts related to disputes over elective mandates provoked the Supreme Federal Court's action, whose creation was recent[2]. The Court was often called upon to arbitrate electoral disputes, assess the legitimacy of diplomats, and analyze situations of loss of office.

The episodes involved the most distinct factual situations and occurred in all public entities and levels of government. In the words of Lêda Boechat Rodrigues, "the most important constitutional issues, some of them entirely new, were raised" through *habeas corpus* from the beginning of the Republic (1991, p. 160, our translation).

Among the cases that emerged in this context, there are even picturesque situations. In 1921, the Court considered Habeas Corpus 6,880 and Appeal Petition 2,981, which were presented against the decision of the Piauí counting board, which qualified as a federal senator a person who supposedly received "decoration from the King of the Belgians". Regarding the discussion, the STF understood that, although article 72, paragraph 29, of the 1891 Constitution would punish those who received foreign noble commendations or titles with the loss of political rights, it would not be for the Court to ascertain this situation, but for the Senate itself (BRASIL, 1921; BRASIL, 1921).

The Court understood that there was no room for judicial interference in a political matter affecting the Legislature, under penalty of violating the separation of powers and disrespecting Parliament's autonomy.

The STF stopped responding to requests submitted by parliamentarians, who had lost their position by decision of the respective Legislative House, with the same legal reasoning - see the appeals filed at HCs 6,367 and 7,595 (BRASIL, 1921; BRASIL, 1922). Likewise, amid HCs 8,608, 4,032, and 8,598, the Court dismissed the requirement of state deputies who had been deprived of their mandate by the House as a punishment for the concomitant exercise of federal public positions incompatible with the legislative function (BRASIL, 1922; BRASIL, 1923; BRASIL, 1923).

The STF adopted an interventionist stance when it granted the order in HCs 7,649 and 4,323 in favor of political representatives, whose functions had been restricted not by the Legislative House, but by an individual decision of its president or vice president to give

[2] The Supreme Federal Court was created by the Constitution of 1891 (article 55 and following). Under the previous Constitution, of 1824, there was another form of Supreme Court of Justice, an organ that exercised more restricted functions and had no true institutional independence, due to the Moderate Branch, existing at the time.

concreteness to the same legislative autonomy (BRASIL, 1921; Brasil, 1923).

However, as the following sections will show, this guarantor stance was not always the keynote of the Supreme Court's decisions. There were cases in which the Court was silent in the face of political constraints on political actors and democratic institutions. Furthermore, there were serious obstacles for the STF to make its determinations effective. The present study addresses more closely disputes related to the municipal legislature's performance.

3 The conflicts within the municipal legislative and the actions of the Supreme Federal Court

Although article 68 of the 1891 Constitution ensured the Municipalities' autonomy in everything regarding their **specific interest**, the local authorities did not constitute an entity of the federation. Thus, the Municipalities' autonomy was not as expansive as that of the member states and the Union, which was reflected on their institutional guarantees and the safeguards of their political representatives.

So much so that the STF understood, when assessing HCs 2,629, 2,464, 4,267, and 8,517, that it would be possible that the Minister of the Navy did not grant the necessary availability for the military to assume the elective position of municipal councilor - and, sometimes, even threatened imprisonment for disobedience (BRASIL, 1909; BRASIL, 1909; BRASIL, 1917; BRASIL, 1923). Additionally, when analyzing HC 2,692, despite the broad scope of *habeas corpus* in the period, the STF considered that this remedy could not be handled to appreciate the act of President of State that removed the President of the City Council from office (BRAZIL, 1909).

There were also situations in which the local violence against councilors and other citizens was not cut short by the Court, because it was understood that there was no political nature in the offenses giving rise to federal jurisdiction. In HC 2,870, the Court indicated as one of the grounds for the annulment of the order of *habeas corpus* granted in the first instance, that, concerning the legislator, “the threats of violence, depriving only the respective patient from leaving his house (...), without, however, declaring the need to move to exercise his mandate as a councilor, does not involve an obstacle to the performance of his functions within the City Council” (BRASIL, 1910). In other words, the Court relied on a questionable, if not laughable, argument to deny the parliamentarian's request, which is perhaps one more indication of the much commented partiality of the Court's performance in this type of episode during the First Republic (SATO, 2016).

In several judgments, the Court found that the disturbing situation of the functional exercise of municipal or state parliamentarians and intendants was not adequately demonstrated, as it was in HCs 3,686, 4,559, 4,560, 4,723, and 5,075 (BRASIL, 1915; BRASIL, 1918; BRASIL, 1918; BRASIL, 1919; BRASIL, 1920). This is also the case at HC 8.871, from Vassouras-RJ, in

which the Supreme Court judged to be harmed the remedy filed by councilors - among them, Maurício de Lacerda, who is a frequent judge of the Court - who claimed the federal interventionist to be coercive to the functioning of the City Council (BRASIL, 1923). The Minister of Justice, in providing information, denied that he promoted any embarrassment to the legislative body and ensured the proper functioning of the Council, which was enough to convince the majority of the STF. Subsequently, the Court denied another HC to the same political group, which alleged the imminence of legislative changes of an authoritarian nature, elucidated by federal forces. Here, the STF defined that a bill in process, still subject to modification, could not be considered an illegal constraint (BRAZIL, 1923).

Despite cases such as these, in which the Court did not accept requests submitted by local political actors, the Supreme Federal Court ensured on several occasions, by *habeas corpus*, that councilors could exercise their legally constituted functions, despite federal interventions enacted in the period, as in HCs 3,561, 3,570, 3,571, 3,572, 3,579, 3,592, 3,658 (BRASIL, 1914; BRASIL, 1914; BRASIL, 1914; BRASIL, 1914; BRASIL, 1915; BRASIL, 1915). In these cases, especially in the episodes originating in Ceará, great difficulties for executing the judicial decisions persisted. As the judges demonstrate, several *habeas corpus* were granted by federal judge Sylvio Gentio Lima, which were ratified by the STF. Despite this, the magistrate reported in an appeal filed in the course of HC 1,607 that "not one of the *habeas corpus* granted by this court to City Councils and confirmed in the Supreme Federal Court was respected, a fact that in itself characterizes the oppression, which takes place within the State" (BRASIL, 1916, our translation).

Furthermore, the STF determined that episodes of interference by the state executive in local powers should cease, in addition to police and militant threats, as well as preventing falsehoods in the election of the Chamber of Deputies, as observed in HCs 2,837, 3,501, 3,662, 4,026, and 4,477 (BRASIL, 1910; BRASIL, 1914; BRASIL, 1915; BRASIL, 1917; BRASIL, 1918). In HC 3,577, the Court notably ensured the members of a local body the freedom of movement, to meet for political purposes, which had been dissolved by determination of the President of the State. Due to municipal autonomy, the Court declared that the aforementioned authority would not be competent to "decree the loss of the mandate of the members of City Councils" (BRASIL, 1914).

In other conflicts, such as in HC 4,090, the Court understood that the mandate of councilors elected in the previous period would be extended until the new elected representatives were duly recognized (BRASIL, 1916). At the same time, it made it clear that this type of extension of mandates was something delicate and exceptional, which is why the Court declared the unconstitutionality of an act of the National Congress that extended the mandate of councilors - supposedly to vote the local budget law -, for disrespecting the autonomy of the Municipality to decide its directions, as can be seen in Petition 2,193 (BRAZIL, 1917).

From this, it is noted that it is not easy to extract clear guidelines from the Supreme

Federal Court's jurisprudence in cases of conflicts within the municipal legislative scope during the Old Republic. In some situations, the Court's performance was the guarantor of the local authorities, despite the difficulties it faced to enforce its decisions; in others, the Court omitted it in the face of excesses and coercions performed by different entities or powers.

The performance of the Supreme Court, in these situations, was excessively casuistic for several reasons, such as the very incipience of the work developed, the pressures exerted by the federal Executive (RODRIGUES, 1991, p. 19), and due to the criticized association of the Court to the "governors policy" (KOERNER, 1994, p. 69). Thus, extracting criteria from jurisdictional action, especially in the Republic's early years, is a complicated task. The episodes of the duality of City Councils and Chambers are also symptomatic of this reality - but, in these cases, we can already see more evident patterns in the decisions.

4 The dualities of City Councils

Often, two distinct groups of politicians disputed which would compose the legitimate and truly established organ by popular will. This is what would come to be known as power **duality**. Duplicates occurred both in the Executive and the Legislature, in Assemblies, State Senates, State Chambers, City Councils, Municipal Chambers, City Halls, Intendencies, Presidencies, and State Governments - the nomenclature of positions and state and local bodies varied widely from place to place, given the greater freedom that the entities and municipalities had to constitute the model of federation that was initially established in the Republic.

The conflicts extended for months, which generated intense national mobilization, with federal interventions, violence, disobedience, and, of course, many *habeas corpus* in the Supreme Federal Court. There were famous cases, especially during the government of the President Hermes da Fonseca. The dualities that occurred at the state level are especially well known, such as the events that took place in Rio de Janeiro, Bahia, Espírito Santo, Amazonas, and Ceará - which will be addressed in a specific article, due to the abundance and complexity of the facts to be commented. In the present study, we address only duplicates that occurred within the scope of the municipal legislative.

There were multiple episodes of duality that occurred at the local level throughout Brazil. It is worth verifying, for example, the legal repercussion of these political facts through Electoral Appeal 44 and HCs 3,005 and 3,714 (BRASIL, 1900; BRASIL, 1912; BRASIL, 1915). On the subject, the Court has built, as a rule, the jurisprudence that the definition of the elected constituted a political function, whose jurisdiction did not fall on the STF, and that should be exercised by the respective House, with the possibility of appeal to other Branches, depending on the legislation. Therefore, it would be the Supreme Court's responsibility to grant HC not in the face of real duplicity of chambers or assemblies, but when this duality was only apparent, and it became clear to the Court that one of the groups in dispute was demonstrably the holder of the

mandate.

This guideline was, above all, of judicial self-restraint, but it allowed the Court to avoid arbitrariness in contexts in which factual elements did not raise doubts. In this line, when assessing HC 6,490, from the Municipality of Soure-PA, the STF granted HC to intendants, who lost their respective positions due to the State Congress's determination, which had arbitrated the supposed occurrence of duality. The Court found that there had been no duality and noted that the election of the patients had been recognized by the two political groups in dispute, and confirmed by the properly constituted board. Moreover, the Court indicated that the annulment carried out by the State Congress was not made based on its own appeal, as determined by local legislation. For these reasons, the order was granted (BRASIL, 1922).

Until this decision pattern became more apparent and recurrent, decisions were identified in which the Supreme Court did not recognize the political rights pleaded in court because of the duality of Councils and Chambers. The Court understood that the claimants were part of irregularly constituted groups, or whose legitimacy was disputed, and the stir would have to be addressed to the proper body - HCs 3.508, 4,003, 3,910, 4,097, 4,113, 4,258, and 4,485 (BRASIL, 1914; BRASIL, 1916; BRASIL, 1917; BRASIL, 1917; BRASIL, 1917; BRASIL, 1917; BRASIL, 1918). There were several cases in which the Court recognized the legitimacy of one of the groups in dispute and granted an order of *habeas corpus* to ensure that patients exercised their functions, when evaluating factual specificities - see HCs 3,534, 3,988, and 4,845 (BRASIL, 1914; BRASIL, 1917; BRASIL, 1919).

Among the cases of duality effectively recognized by the Supreme Court at the municipal level, we highlight a more distinctive event for illustrative purposes.

When judging appeal HC 2,793, filed in favor of a group of intendants from the State Capital, the STF validated a decree issued by the President of Brazil, who removed the Council of the Municipality due to unlawfulness in its formation, determining that the Mayor exercise his functions, "regardless of the Council's collaboration", until the National Congress decided on the matter (BRAZIL, 1911). Appreciating the same dispute three days later, the Court again declared the aforementioned constitutional decree as "fully valid". However, it granted the order of *habeas corpus*, this time requested by the rival political group, through HC 2,794, to enable patients to enter "the city council building to exercise, without rights, hindrance or damage, the rights arising from their diplomas, continuing in the process of verification of powers" (BRASIL, 1911).

In other words, in the face of two political groups of diplomats, the STF declared that one of them would be instituted according to the law because it had been correctly organized under the presidency of the eldest. Therefore, it could continue to exercise its functions, despite the presidential determination, which, according to the exegesis of the Court, would not have to be applied to the case since there was no reason for the dissolution of the regularly instituted Council ("the formation of an illegal Council alongside a legal one does not constitute a force majeure to

impede the work”).

Just four days later, giving consistency to its interpretation, the Court granted *habeas corpus* to the members of the opposing political group, to ensure them, also, “free entry into the house where the City Council works and the exercise of their mandates”, noting only that the Council would be chaired by the oldest of the diplomats, as found in the last trial. However, in HC 2,797 (see also HC 2,799), the Court registered that the presidential decree that prevented the Council from functioning would be illegal, contrary to what it determined in the two previous settlements (BRASIL, 1910; BRASIL, 1911).

It so happens that the Federal Government did not accept the decision (RELATÓRIO, 1911). It understood that its determination remained valid and counted on the National Congress's approval, which generated a serious institutional conflict. This conflict unfolded in several chapters, including (i) the approval budget law by the City Council, later vetoed by the mayor; (ii) ratification of the veto by the Federal Senate, according to the legislation of the period; (iii) publication of yet another presidential decree, which dissolved the Council and determined the holding of new elections; and (iv) the filing of another *habeas corpus* (HC 2,990) before the Supreme Federal Court, whose order was granted to ensure intendants individual freedom to “enter the City Council building and exercise their functions until the term of the mandate expires, prohibiting any constraint” (BRASIL, 1911). Moreover, this determination was not fulfilled by the newly installed President of Brazil, Hermes da Fonseca, who sent a message to the National Congress justifying his stance (MENSAGEM, 1911), which, although firmly contested by the STF ministers Amaro Cavalcanti and Pedro Lessa, was endorsed by the Constitution and Justice Committee of the Chamber of Deputies, resolving the issue (COMENTÁRIOS, 1912).

This event was a cold shower in the Court's pretensions to exercise effective jurisdiction and certainly contributed to undermine its pride in the following years, especially during the Hermes da Fonseca government and in cases where there was confrontation between the Court decisions and the political aspirations of the Federal Executive (COSTA, 2006, p. 51)[3].

5 Counting of votes and verification of powers

In the First Republic, it was common for local electoral issues to take place in the course of counting votes and verifying powers, especially when the composition of municipal chambers and councils was at stake. Not infrequently, it was exactly the problems that arose at these stages of the electoral process that led to persistent dualities of power. This occurred because there was no uniform and well-established procedure for defining the winners of the elections. Worse, there were no exempt arbitrators with widely recognized legitimacy to resolve conflicts.

[3] It is also recalled that the government under Hermes da Fonseca intervened authoritatively in several states that experienced problems related to power duality. The fear of the Supreme Federal Court of opposing the President of Brazil was therefore not meaningless.

Some of the Supreme Court's greatest difficulties revolved around this issue, both in terms of the significant number of actions and because of the intricate political contingencies of the demands. Hence, many conflicts and all kinds of coercion and violence ensued, as documented in Criminal Appeal 476, in which the Supreme Court defined the culprits for the shooting and death that occurred in São Paulo City Council (BRASIL, 1923).

As explained, there was no electoral justice to define the rules of the democratic game, and each State and Municipality created its mechanisms for counting votes and verifying powers. The political and social intricacies of this poorly civilized history are already well known, notably from the studies conducted by Victor Nunes Leal (2012), who unraveled the fraudulent elections during the café-au-lait policy. At the same time, it is worth commenting more directly on the Supreme Court's guidance to resolve the disputes that have taken place in court.

When considering these cases, the STF voted almost always divided. There was great legal uncertainty and the positions adopted were conflicting. In general, the Court marked a relevant distinction between the two mentioned conclusive phases of the election: **counting votes** and **verifying powers**. The counting would be a previous phase of simple arithmetic counting of the votes, while the verification of powers, in turn, would be the last phase for the diplomation of the elected, in which the "merit" of the votes and the legality of their election would be investigated, and the cases of incompatibility and ineligibility of the plaintiffs, examined.

As a result of this distinction, the vote counting would be primarily conducted by the House - the respective Municipal Chamber or City Council. The counting could also be conducted by a plural "board" since the Supreme Court considered it possible that the suffrage was determined by a board composed of members of the instituted powers and civil society on several occasions, as in HCs 4,141, 5,451, and 6,648, which would be responsible for counting and adding the votes. At the end of this process, the result would then be sent to the Council or Chamber to exercise due verification and declare the elections' validity or invalidity (BRASIL, 1918; BRASIL, 1920; BRASIL, 1921).

Regarding the verification of powers, the STF drew the thesis that the Municipality had autonomy of **function,** not **organization**, which was subjected to the member state. Thus, the Court came to understand, for the most part, that the verification of the powers of the elected representatives for the Chambers and Councils could be subject to supervision and control by other Branches, especially the State Legislature and in appeal, as observed from HCs 3,714, 4,714, and 4,718 (BRASIL, 1915; BRASIL, 1922; BRASIL, 1922). This attribution would not affect the municipal autonomy because it would be a matter related to the "organization" of the locality, which could be delimited by the state Constitutions and laws, which could establish the appeal of the Legislature of the respective federative unit in situations of verification of powers of those elected for municipal office. In this regard, see HCs 4,703, 4,713 and 4,715 (BRASIL, 1919; BRASIL, 1923; BRASIL, 1923).

The STF has even expanded the possibilities for state legislation, especially the respective Constitution, to establish that any of the state bodies (Judiciary, Legislature, or Executive) is responsible for verifying the powers of the members of the City Councils (sometimes not only on appeal but originally) - see RE 599 and HCs 4,876, 4,708, and 5,092 (BRASIL, 1912; BRASIL, 1919; BRASIL, 1920; BRASIL, 1921). When the appeal for verification of powers was, according to the legislation, destined for local justice, the STF generally understood that the Supreme Court could not revisit the merits of the mentioned decision through *habeas corpus*, as demonstrated by HCs 4,009 and 4,318 (BRASIL, 1918; BRASIL, 1918).

However, this frequent orientation did not mean, as explained, that the Court had a firm and unanimous position. When considering electoral disputes for the positions of Councilor and Mayor in the Municipality of Antonina-PR, when judging HCs 6,358 and 6,408, the STF understood that it would be constitutional for a representative board of local authorities, composed of members not only of the City Council to count the votes (BRASIL, 1921; BRASIL, 1921). So far, there is nothing new in the face of what has already been commented. The most important thing is that the conducting vote of the Court held an important summary of the period, emphasizing that, in the case of the verification of powers - a specific circumstance that was not analyzed in that settlement - the Court would be divided into three distinct groups: a) those who considered the appeal directed to another power to resolve any dispute unconstitutional; b) those who admitted the appeal to any of the Branches; and c) those who considered only the appeal to the Judiciary to be valid.

In other words, it was natural that, regardless of the most frequent guidelines already explained, contradictory understandings would arise at all times, depending, even, on the composition of the Court on the day of the judgment. Thus, the STF, when judging RE 600, declared null the state law that conferred to the justice of the state the attribution of recognizing the election of the members of City Councils, for violating local autonomy, to prevail “the verification of the powers of its members by the City Council” (BRAZIL, 1912).

On another occasion, when assessing HC 5,519, the Court declared “evident and unquestionable the unconstitutionality of the Pernambuco law, which mandates that the election results of City Councilors and deputy Councilor, and of Mayors and deputy Mayors, with appeal to the President of the State”, insofar as it would enable the State Executive to “intervene in the autonomous life of the Municipalities” (BRASIL, 1920, our translation). In the same sense, see HCs 5,514 and 5,515 (BRASIL, 1920; BRASIL, 1920). There are also cases in which the STF understood that the analysis of the verification of the powers of the members of the City Council by the state Legislature, on appeal, would not be appropriate since such supervision would only occur, according to the respective local legislation, in cases of duplicity, which, according to the Court, was not what happened in the specific case - in this line, HCs 5.066 and 5.162 (BRASIL, 1920; BRASIL, 1920).

As demonstrated in the documented judgments, the vast majority of cases were heard by the STF through *habeas corpus*. The 1891 Constitution, until it was amended in 1926, presented a comprehensive original text on the role of HCs, which did not limit its application to cases related to freedom of movement and made possible the establishment of the so-called **Brazilian doctrine of *habeas corpus*** (NOGUEIRA, 1984, p. 138). This perception initially expanded the application of *habeas corpus* during the First Republic (RODRIGUES, 1991a, p. 198). Therefore, the Court's action was frequently to ensure the legitimate exercise of political functions. However, the STF began restricting the scope of the legal remedy in the last decade of the Old Republic.

6 The restriction of the scope of *habeas corpus* at the end of the First Republic

With its wide range of admissibility, the Brazilian doctrine on *habeas corpus* allowed the frequent, though not very judicious, action of the Supreme Court to ensure the legitimate exercise of political functions. However, in the last decade of the First Republic, the jurisprudential orientation began to change. From the chronological reading of the period's case law magazines, the STF established demanding screens for the granting of order in *habeas corpus*, especially when dealing with political episodes, escaping an often erratic functioning.

Thus, the Court built the requirement that the demand should address **liquid**, **certain**, and **indisputable** rights (as easily verified, this formula would become the matrix of the writ of mandamus[4]). In this line, the Court avoided interfering in many conflicts in which there were electoral duplicates, as in HCs 6,856 and 8,387 (BRASIL, 1921; BRASIL, 1923), as well as in questions about the counting of votes and recognition of powers, as in HCs 8,115 , 5,210, 8,264, 8,388 and 8,883 (BRASIL, 1922; BRASIL, 1923; BRASIL, 1923; BRASIL, 1923; BRASIL, 1923). The Court also avoided other disputes between local and state powers, such as when the STF denied HC to councilors who rebelled against the governor's decree that suspended the execution of the Chamber's internal regulations. In this context, the Court understood that, when analyzing HCs 8,059 and 8,108, the right was not liquid, certain, and indisputable, and that the state Constitution made the measure possible (BRASIL, 1921; BRASIL, 1922).

In another attempt to establish admissibility requirements for *habeas corpus*, the Court unanimously revoked the order in HC 8,895, granted by a lower court. It had declared unconstitutional a state law that it had created to determine the deputy and senator elections. The STF understood that the law could not be declared unconstitutional in HC. At the settlement, the Court gave no definitive word on the legal text's constitutionality, understanding that it was not a manifestly unconstitutional law (BRASIL, 1923). The same case gave rise to two more decisions by the STF in sequence, through HCs 8,897 and 8,961, which, in the end, ratified the conclusion

[4] The current 1988 Constitution establishes that the writ of mandamus protects “liquid and certain rights, not supported by *habeas corpus* or *habeas data*, when the person responsible for the illegality or abuse of power is a public authority or agent of a legal entity in the exercise of Governmental powers” (article 5, LXIX).

already reached (BRASIL, 1923; BRASIL, 1923).

The restrictions established for the fitting of *habeas corpus* later became even more pronounced. When assessing the situation of municipal intendants of Manaus-AM, in HC 8,878, who were insurgent on the theme of electoral counting, the STF changed the jurisprudence, through a split decision, and stated, in its menu, the following statement: "*habeas corpus* is an unsuitable means of ensuring any other right other than unrestricted freedom of movement" (BRASIL, 1923, our translation). Thus, the Supreme Court began to create the specific format that would stabilize with time and come to define the legal remedy. According to this perception, the HC would no longer protect the exercise of liquid, certain, and indisputable political functions in the absence of proven coercion regarding the **movement** of patients.

It is also interesting to note that, on the same day of the judgment of HC 8,878, the Court considered two more *habeas corpus* with similar exegesis: HC 8,907, originally from Santo Antônio de Pádua-RJ, which addressed the recognition of powers of members of the municipality (BRASIL, 1923), and HC 8,906, from Pederneiras-SP, of which patients were councilors who alleged disturbance to the exercise of their functions and power duplicity (BRASIL, 1923). In the case of Pederneiras, the Supreme Court ruled on two other actions. When analyzing HC 8,967, the Court maintained the previous reasoning (BRASIL, 1923). In judging HC 9,065, a few days later, the Court, in a new split decision, understood - in a surprisingly unprecedented fluctuation in the Court's division on the subject - that it would be possible for *habeas corpus* to safeguard certain, liquid, and indisputable political functions, without requiring the criterion of constraint to movement (BRASIL, 1923). However, it agreed that this would not be the situation under examination (in the end, the three *habeas corpus* on the case were denied).

Anyway, despite the subsequent fluctuation of understandings regarding the fit of the *habeas corpus*, the most relevant thing to note is that the restriction of the HC's scope, which began with the STF jurisprudence, took shape in the following years, until it was crystallized by the Constitutional Amendment of September 3rd, 1926. The new wording enshrined the formula that *habeas corpus* would be applicable "whenever someone suffers or is in imminent danger of suffering violence through imprisonment or illegal constraint on their freedom of movement" (article 72, paragraph 22, of the 1891 Constitution).

In this context, the cases of disputes regarding the counting of votes and the verification of local powers, as well as situations of duality, only became adequately addressed and resolved much later, with the advent and stabilization of a specialized electoral justice, instituted at the federal level and under uniform rules, capable of arbitrating disputes.

7 Conclusions

After conducting the jurisprudential research, focused on the performance of the Supreme Federal Court during the First Republic, it is clear that the Court appreciated numerous political

disputes at the local level, notably disputes over municipal legislative positions, involving duality of Chambers and discussions regarding the counting of votes and verification of powers.

Especially in the early years of the Old Republic, the Supreme Federal Court's jurisprudence is quite casuistic and without marked guidelines. In some situations, the Court's performance was the guarantor of the local authorities, despite facing resistance to make its decisions concrete; in others, the Court omitted it in the face of excesses and coercions carried out by different entities or powers.

Over the years, concerning cases of duality, the STF has, as a rule, constructed the jurisprudence that the Court should be able to grant *habeas corpus*, not in the face of real duplicity of Chambers, but when this duality was only apparent and it became clear to the Court that one of the groups in dispute was evidently the holder of the mandate.

Regarding the counting of elected representatives and the verification of powers, the Court drew the thesis that municipal autonomy - inscribed in article 68 of the 1891 Constitution - meant the autonomy of “function”, and not of “organization”, in which the Court would be subject to the member state and would therefore be liable to be delimited by state constitutions and laws. Thus, the STF came to understand, for the most part, that the legislative body, or possibly a specific board, would be responsible for counting the votes if provided in legislation. At the same time, state normative acts could establish the Legislature of the respective federative unit's appeal in the verification of powers. There have even been cases in which the STF has expanded the possibilities for state legislation, especially the respective Constitution, to establish that any state bodies (Judiciary, Legislature, or Executive) are responsible for verifying the powers of the members of the City Councils.

Aside from that, the Supreme Federal Court began to restrict the scope of *habeas corpus* at the end of the First Republic, until then the remedy responsible for bringing to the Court most of the constitutional issues due to the wide range of admissibility that characterized the Brazilian doctrine of *habeas corpus*.

With the new limiting bias, the STF defined, in principle, that only the liquid, certain, and indisputable rights would be liable to HC, foreshadowing what would become the requirements for writ of mandamus. In the end, and more relevant to constitutional jurisdiction, the Court inaugurated the formula that the action would be appropriate only to protect constraints on freedom of movement, which, years later, was enshrined in the Constitutional Amendment of September 3rd, 1926 and hindered the use of *habeas corpus* regarding broad political issues. These demands would, in the future, be addressed to the Electoral Justice, created during the Vargas government - a plot that, due to the wealth of facts and characters involved, deserves its own study.

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