

COMPETENCE TO JUDGE THE ACTS OF JANUARY 8:

An Analysis of the Tension between Common Jurisdiction and the Prevalence of Electoral Matters

THE JURISDICTION FOR THE JUDGMENT OF THE JANUARY 8TH ACTS: An Analysis of the Tension between Common Jurisdiction and the Prevalence of Electoral Matters.

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SUMMARY

This article analyzes the controversy over jurisdiction to process and judge the antidemocratic acts of January 8, 2023, examining the tension between the jurisdiction of the Common Courts, exercised by the Federal Supreme Court, and the specialized jurisdiction of the Electoral Court. Using a theoretical-analytical and documentary methodology, with a case study centered on Criminal Action No. 2,668/DF, the paper argues that the factual nature, chronology, and purpose of the events present a strong instrumental and teleological connection with the electoral matter. The main conclusion is that, in compliance with the Principle of the Natural Judge and the binding precedent established by the Supreme Federal Court in Inquiry No. 4,435/DF, maintaining the case in the Common Courts appears to violate the rules of jurisdiction, with the Electoral Court being the constitutionally appropriate forum for the unified assessment of the criminal plot, the essence of which, according to the terms of the complaint, was demonstrated to be a challenge to the election results.

Keywords: Acts of January 8th. Criminal Jurisdiction. Federal Supreme Court. Justice Electoral. Principle of the Natural Judge. Evidentiary Connection.

ABSTRACT

This article analyzes the controversy over the jurisdiction for the prosecution and judgment of the anti-democratic acts of January 8, 2023, examining the tension between the jurisdiction of the Common Justice system, exercised by the Supreme Federal Court, and the specialized jurisdiction of the Electoral Justice system. Using a theoretical-analytical and documentary methodology, with a case study centered on Criminal Action No. 2.668/DF, the paper argues that the factual nature, chronology, and purpose of the events show a strong instrumental and teleological connection with electoral matters. The main conclusion is that, in observance of the Principle of the Natural Judge and the binding precedent set by the STF in Inquiry 4.435/DF, maintaining the case in the Common Justice system appears to be a violation of jurisdictional rules, with the Electoral Justice system being the constitutionally appropriate forum for the unified assessment of the criminal plot, the essence of which, according to the complaint, was shown to be the contestation of the election results.

Keywords: January 8th Acts. Criminal Jurisdiction. Supreme Federal Court. Electoral Justice. Principle of the Natural Judge. Evidential Connection

1 INTRODUCTION

The filing of the **complaint¹** by the Attorney General's Office (PGR) in relation to the acts of January 8, 2023 serves as a framework for this research. In the indictment, the PGR justifies the submission of the case to the Supreme Federal Court (STF) with the argument that the complaint "depicts events of maximum relevance that must be exposed to the highest court in the country", describing a criminal organization led by the then President of the Republic and "structured to prevent the result of the popular will expressed in the 2022 presidential elections was fulfilled."

The premise presented—that the gravity of a crime and the position of the accused would determine the jurisdiction of the STF to judge a matter whose explicit purpose is the contesting an election result — raises a relevant debate. The issue becomes even more more pressing when considering the novelty of this specific discussion. While the competence *ratione personae* (by reason of the person) of the STF in the case has already been debated exhaustively, a case law search did not identify questions about incompetence *ratione materiae* (in terms of the matter) in favor of the Electoral Court, which highlights the originality and relevance of this study.

This debate is not merely academic. The definition of natural justice in this case entails immediate procedural consequences — such as possible cancellation and the need for ratification of procedural acts — and generates profound impacts that transcend the legal sphere. The uncertainty about the competent forum to judge an event of such magnitude directly affects democratic balance and legal certainty, with the potential to impact stability economic and the country's own sovereignty.

Given such implications, the central objective of this work is to analyze, based on the complaint and in consolidated jurisprudence, the tension between the jurisdiction of the STF, established in the prerogative of forum, and that of the Electoral Court, supported by the nature of the matter. The pacification this controversy by the Supreme Federal Court emerges, therefore, not only as a procedural necessity, but as an imperative for Brazilian institutional stability.

To develop this analysis, the article is structured as follows:

Firstly, the construction of the STF's jurisdiction in the specific case is detailed; then,

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¹ BRAZIL. Attorney General's Office. **Petition No. 12,100/DF**. Complaint against Jair Messias Bolsonaro and others. Rapporteur: Min. Alexandre de Moraes. Supreme Federal Court, Brasília, DF, February 18, 2025.

the findings of the documentary research are presented, mapping the presence of electoral material in the prosecution's narrative and the Court's jurisprudence on the subject; finally, the conclusion systematizes the controversy into three analytical filters — qualification and connection, prevalence constitutional and democratic —, with the aim of deepening the debate on the natural judgment of cause.

2 THE CONSTRUCTION OF THE STF'S COMPETENCE TO JUDGE THE CASE

The establishment of the jurisdiction of the Supreme Federal Court to process and judge the events of January 8th did not arise from a single rule, but from a construction of two steps.

Firstly, the case was allocated to the Common Federal Court based on article 109, section IV of the **Federal Constitution**², which grants federal judges the power to judge "criminal offenses committed to the detriment of goods, services or interests of the Union." imputed crimes, such as violent abolition of the Democratic Rule of Law (art. 359-L, **Penal Code**³) and coup d'état (art. 359-M, Penal Code), directly affect the interests of the Federation.

However, the same constitutional provision that establishes the general rule contains a relevant reservation: the jurisdiction of the Federal Court is established "except for the jurisdiction of the Military Justice and Electoral Justice". This exclusion clause directs the interpreter to the verification of the nature of the matter before the final determination of the forum. Therefore, the existence of this constitutional exception for specialized jurisdictions is the central point that underpins the analysis of the prevalence of electoral matters, to be detailed in the sections following this work.

Once the federal nature of the crimes has been established, the case will be transferred to the Supreme Federal Court occurred by virtue of the evidentiary connection (*ratione connexitatis*). The Court established its jurisdiction to judge the executors of the acts — citizens without jurisdiction by prerogative of office — based on in the "evident connection between the reported conduct and that investigated in the broader context comprehensive review of procedures involving defendants with jurisdictional privileges." Thus, the The Supreme Federal Court (STF) acts in the case not with original jurisdiction over the facts, but as a judging body. of first instance of the Federal Common Court, on an exceptional basis.

² BRAZIL. **Constitution (1988)**. Constitution of the Federative Republic of Brazil. Brasília, DF: Federal Senate, 1988.

³ BRAZIL. **Decree-Law No. 2,848 of December 7, 1940**. Penal Code. Official Gazette of the Union, Rio de Janeiro, December 31, 1940.



3 ANALYSIS OF THE JURISDICTIONAL CONTROVERSY

The documentary research that followed sought to map the **points of contact** between the prosecution narrative, electoral legislation and the consolidated jurisprudence of the STF.

3.1 Mapping the electoral matter in the accusatory narrative

This analysis focuses strictly on the procedural document in question, refraining from using any elements external to its content. The objective is to promote a technical-legal interpretation of the accusatory narrative, focusing on possible points of intersection and conflict between Criminal Law, related to Common Justice, and Electoral Law, responsibility of the Specialized Court. Finally, it is emphasized that the facts and conduct here presented are a mere reproduction of the terms of the accusation, and therefore do not represent any assessment of the merits of the case.

3.1.1 The nature of criminal objectives: common and electoral

The PGR complaint describes a series of objectives attributed to the criminal organization, which can be classified according to the nature of the crimes to which they refer.

In summary, the accusation points to the existence of six objectives linked to the practice of **common crimes**. Such objectives were aimed at subverting the constitutional order and included preventing the regular functioning of the Powers, depose the elected government by the use of force, abolish the State Democratic Law, force a military intervention to justify a State of Exception, prevent the inauguration of the elected president and, finally, impose an alternative government regime.

Additionally, the complaint describes two objectives of **an electoral nature**:

- **2. Ensure continuity in power, contrary to the election results:**

Analyzed in isolation, the act of "contradicting the election results" is an attack on the main legal asset protected by the Electoral Court: the sovereignty of the popular will expressed at the polls. Actions that seek to nullify or disrespect the official result of an election claim, without the use of violence against the State, fall within the sphere of illicit acts electoral.

- **4. Delegitimize the election result to create conditions for the deposition of the**

government: This objective is described as having a mixed nature. The first phase, electoral nature, consisted of "delegitimizing a possible electoral result that was unfavorable" through systematic attacks on the ballot boxes and the dissemination of misinformation to undermine confidence in the voting process. The second phase, of **crime**

common, reveals that the electoral action was a "strategic step to enable the crime common for a coup d'état, creating a social climate that justified the rupture institutional".

3.1.2 Investigation of the relationship between electoral crimes and crimes against the state

The complaint from the Attorney General's Office states that the criminal plot was built on a basis of electoral crimes, describing examples that correspond to specific criminal types. The narrative first points to the planning of a discourse against the ballot boxes, in which "the group registered the idea of 'establishing a discourse on ballot boxes electronic voting' and to replicate this narrative 'again and again'" (page 9). He then describes the instrumentalization of the Federal Highway Police, which "was taken to carry out operations there, aiming to hinder the timely access of registered voters to these electoral zones" (page 14). Finally, it reports the use of legal action with false data, in which "the group decided to take legal action to convey the false message to its supporters that evidence had emerged of the unsuitability of several electronic voting machines" , even knowing about "data falsification" (pages 149-150).

To establish the link between these electoral conducts and common crimes, the structure of the complaint applies the methodology of causality, based on the theory of *conditio sine qua non*. This method, also known as Thyrén's hypothetical elimination, is established in the *caput* of article 13 of the Penal Code, which considers "cause to be an action or omission without which the result would not have occurred." The methodology consists of mentally suppressing a conduct to verify whether the criminal outcome would still have occurred.

The complaint describes electoral conduct as indispensable links in the causal chain that led to crimes against the state. The narrative establishes that the disinformation campaign was the cause for the attempted rupture, as it was planned "in order to delegitimize possible an electoral result that was unfavorable to him and create conditions that would lead to the deposition of the elected government" (page 9). Similarly, the indictment points out that the persistence in "false narrative of ballot box fraud" after the election had the "objective" of "maintaining mobilization popular" to pressure the Armed Forces to "impose a regime of exception" (page 15). Thus, the complaint claims that the electoral conduct was not incidental, but rather a cause necessary and legally relevant in the *iter criminis* (path of crime) of common crimes.

3.2 Mapping of STF Jurisprudence

3.2.1 Connection between common crimes and electoral crimes - **INQ 4.4354**

The issue of jurisdiction in cases of connection between common and electoral crimes was extensively discussed and pacified by the STF Plenary in the trial of the **Inquiry 4,435/DF**. On that occasion, the Court established the thesis that "**It is the responsibility of the Electoral Court to judge electoral crimes and common crimes related to them.**"

As taught by Gilmar Ferreira Mendes and Paulo Gustavo Gonet Branco (2024), this understanding is based on the historical interpretation of the Brazilian Constitutions and on infraconstitutional legislation (art. 78, IV, of the CPP and art. 35, II, of the Electoral Code), which establish that, in the competition between common and special jurisdiction, the latter will prevail, exerting an attractive force (*vis attractiva*) on related crimes. Jurists such as Guilherme de Souza Nucci and Aury Lopes Jr. corroborate this position, stating that the Electoral Court attracts all crimes to its forum.

In subsequent trials, the Second Panel of the STF has rejected attempts to bypass this jurisprudence, as in cases where the Public Prosecutor's Office *promotes* the archiving of electoral crimes or failing to include them in the complaint in an attempt to maintain the investigation of common crimes in the Common Courts.

3.2.2 The essence of facts as a determining vector

The determination of jurisdiction is not linked to the legal classification given by accusation (*nomen iuris*), but to the intrinsic nature of the facts narrated. The principle of *mihi factum, dabo tibi jus* ("give me the facts and I will give you the right") requires the judge to analyze the essence of events.

The STF has reiterated this understanding. In **Complaint 45.6775**, the Court understood that the "lack of mention or even the **failure to investigate electoral crimes in the face of evidence clear evidence of its existence constitutes a violation of objective good faith.**" The Court classified the deliberate omission as a "strategic action, true *Forum Shopping*", practice considered "**intolerable in the context of due process.**" The decision concluded that the attempt to not recognize the "eminently electoral nature of some crimes" aimed to maintain jurisdiction in the state courts, in violation of the Natural Judge of the Electoral Court.

⁴ BRAZIL. Supreme Federal Court. **Inquiry 4,435 AgR-Quarto/DF**. Rapporteur: Min. Marco Aurélio. Judgment: March 14, 2019. Plenary.

⁵ BRAZIL. Supreme Federal Court. **Complaint 45,677/SP**. Rapporteur: Min. Gilmar Mendes. Judgment of the Procedural Appeal: August 25, 2023. Second Panel

In **Complaint 49,7396**, the STF reaffirmed that, once the jurisdiction of the Electoral Justice due to the connection, the subsequent request to file the electoral crime does not change jurisdiction, in compliance with the rule of *perpetuatio jurisdictionis* (art. 81 of the CPP). The Court considered the maneuver an attempt to "circumvent" the precedent of Inq 4,435.

It can be inferred, therefore, that the recent jurisprudence of the STF consolidates the prevalence of substance over form in defining jurisdiction. By applying the maxim *of mihi factum, dabo tibi jus*, the Court not only reaffirms that the nature of the facts narrated is the vector decisive, but also actively rejects procedural maneuvers, such as *Forum Shopping* and attempts to circumvent *perpetuatio jurisdictionis*. These decisions, taken together, demonstrate a deliberate effort to protect the principle of Natural Justice by ensuring that the analysis of the substantive matter — and not the convenience of the accusation — dictates the competent forum, especially in cases with clear electoral connotations.

3.2.3 Harmonization of subject-matter jurisdiction and forum prerogative

The primacy of the Electoral Court to prosecute and judge electoral crimes has based on the Constitution itself, which in its art. 109, IV, expressly excludes such crimes the jurisdiction of the Federal Court, establishing a rule of absolute jurisdiction based on of the subject. When this specialized competence intersects with the competence by prerogative of forum, the legal system does not create a conflict to be won by one of the institutes, but rather a harmonization rule.

The logic of this harmonization consists in applying both criteria in a simultaneous: the nature of the crime defines the competent Court (Common, Federal or Electoral), while the prerogative of forum defines the hierarchical level of the court of origin within that specialized justice. Thus, the prerogative is maintained, but exercised before the court corresponding specialized. STF Summary 702, which deals with the jurisdiction to judge mayors, exemplifies this system by determining that, in cases of crimes that are not within the jurisdiction of the common state justice system, the original jurisdiction will fall to the respective court of second degree, such as the Regional Electoral Court (TRE) or the Regional Federal Court (TRF).

⁶ BRAZIL. Supreme Federal Court. **Procedural Appeal in Complaint 49,739/RJ**. Rapporteur: Min. Gilmar Mendes. Judgment on June 28, 2024.

The Supreme Federal Court itself has already applied this exact reasoning by analogy. In trial of Criminal Action 890/RR7, Minister Dias Toffoli analyzed the case of a Vice-Governor, whose jurisdiction for common crimes would be the state Court of Justice. However, the crime charged involved the misappropriation of federal funds, a matter within the jurisdiction of the Federal Court. Instead of nullifying one of the criteria, the decision harmonized them: it maintained the prerogative to be tried by a court, but shifted jurisdiction to the court hierarchically equivalent in specialized justice. Invoking Summary 702 by analogy, the STF ordered the transfer of the case to the Federal Regional Court of the 1st Region, and not to the Court of justice.

Following this same intelligence, when an authority with the prerogative of jurisdiction in a Superior Court, such as the STF, commits a common crime connected to an electoral crime, jurisdiction is transferred to the specialized justice at its highest level, that is, the Court Superior Electoral Court (TSE). This interpretation rejects the idea of a hierarchy between the STF and the TSE, treating them as top bodies that exercise their respective powers constitutional, harmonized by the nature of the criminal offense.

It is essential to clarify that, although there is no formal hierarchy between the Federal Supreme Court (STF) and the Superior Electoral Court (TSE), both top bodies of the Judiciary (art. 92 of the Federal Constitution), a functional supremacy is recognized of the Supreme Federal Court in its role as guardian of the Constitution. This supremacy manifests itself in practice when the STF acts as a reviewer of decisions issued by the Electoral Court that, perhaps, violate constitutional precepts, generally through Extraordinary Appeal. However, this assignment of constitutionality control does not grant the STF the competence to invoke or replace the specialized jurisdiction of the TSE.

In other words, the role of the STF as constitutional reviewer does not imply a displacement of competence to process and judge the matter of specialization, such as electoral crimes, whose exclusive jurisdiction lies with the Electoral Court (article 121 of the Federal Constitution). The action of the STF is limited to ensuring that the electoral decision complies with the Magna Carta, preserving intact the authority of the TSE as the highest authority for analyzing the merits of electoral issues and crimes.

⁷ BRAZIL. Supreme Federal Court. **Criminal Case 890/RR**. Rapporteur: Min. Dias Toffoli. Single-judge decision of March 2, 2015.

3.2.4 Limiting the Scope of **HC 232.6278**: Expanding the Forum Ratione Personae

It is crucial to distinguish the present discussion from the recent jurisprudential shift that took place in judgment of Habeas Corpus 232.627/DF, which redefined the temporal scope of the forum by prerogative of office. The thesis established in that habeas corpus established that the prerogative subsists even after removal from office, provided that the crimes have been committed during the exercise and due to the functions.

This decision, although relevant to the case of the acts of January 8, was limited to providing an additional layer in the competence ratione personae (by reason of the person). In practice, it solidified the STF's jurisdiction to prosecute and judge not only parliamentarians in the exercise of the mandate, but also the high authorities of the Executive Branch — such as the former President of the Republic, former Ministers of State and former Military Chiefs — who, in this case concrete, had already left their positions. However, this extension of the temporal scope of the forum does not interfere with the issue of prevalence between jurisdictions, already decided in INQ 4,435/DF.

3.3 Emblematic Cases: Electoral Illegalities in Criminal Complaints

The complaint filed by the Attorney General's Office portrays facts that, in addition to comprising the plot of an alleged coup attempt, are of an extremely electoral nature evident, in some cases already recognized and judged by the Specialized Court. Qualified acts as electoral offenses are presented in the complaint as part of the preparatory events for the institutional rupture, which demonstrates the overlap of the criminal and electoral spheres.

- **The Case of the Meeting with Ambassadors (AIJE No. 0600814-85):** The Superior Court Electoral Court (TSE) declared the former President ineligible for abuse of political power and misuse of the media. The decision was later ratified by the STF itself. The overlap between the scenario described in the complaint — the discrediting of the electoral system to legitimize a rupture — and the one analyzed in AIJE is almost total. The core of the electoral offense, already defined by the TSE, consisted of the use of a official meeting with heads of diplomatic missions on July 18, 2022, at the Palace da Alvorada, to disseminate false information about the electronic voting system.
- **Case of the former Director-General of the Federal Highway Police:** He was accused of the crimes of an armed criminal organization, an attempt at the violent abolition of the Democratic State

⁸ BRAZIL. Supreme Federal Court. **Habeas Corpus 232,627/DF**. Rapporteur: Min. Gilmar Mendes. Judgment: May 15, 2024. Plenary.

of Law and coup d'état, for having coordinated the use of the PRF structure to obstruct the functioning of the electoral system in the second round of the 2022 elections. The facts supporting the charge include the conduct of "targeted policing", especially in the Northeast Region, after meetings with the then Minister of Justice and the change of operational plans to intensify monitoring of the transport of passengers, with the aim of making it difficult for voters to access the polls and, thus, trying to keep the then president in power illegitimately.

These examples demonstrate that events central to the narrative of the complaint in the STF have already been prosecuted and judged as serious crimes by the TSE. This scenario reinforces the thesis that the importance of the positions involved — including the Presidency of the Republic and the management of federal agencies — and the systemic gravity of the conduct motivated the Federal Public Ministry to choose the Supreme Federal Court as the appropriate court for criminal investigation unified case, as it covers all crimes and agents with prerogative jurisdiction of function.

4. CONCLUSION

The decision on jurisdiction to judge the acts of January 8 is not trivial and involves a deep consideration of constitutional values. The analysis of the facts narrated in complaint and the consolidated jurisprudence of the STF, especially the precedent of the Inquiry 4,435/DF, lends great strength to the thesis of the Electoral Court's jurisdiction. Far from intending to present a single way and resolve the issue, this documentary research seeks to open an unprecedented debate in this specific case.

In the Exception of Incompetence 27/STF9, which exclusively questioned the competence *ratione personae* of the STF, the Rapporteur Minister stated that the topic had already been debated more 1,300 times and pacified in Plenary. In contrast, an exhaustive search did not identify no questioning of the incompetence *ratione materiae* in favor of the Electoral Court in the case of the acts of January 8, which highlights the relevance and originality of this research.

To organize the reader's reading and conclusion, the controversy can be structured in three filters. The first two address the controversy between the results of this study and the premise

⁹ BRAZIL. Supreme Federal Court. **Exception of Incompetence 27/DF**. Rapporteur: Min. Alexandre de Moraes. Monocratic decision of April 13, 2025.

used by the STF itself in establishing its jurisdiction, the binomial common crime x jurisdiction by prerogative of forum:

1st Filter - Factual-Legal: Does the factual narrative of the complaint attract electoral jurisdiction? Are there any reported electoral crimes that have not been listed? If so, are they related to the crimes? common? The objective of the criminal organization — "to prevent the result of the popular will expressed in the 2022 presidential elections was fulfilled" — requires the qualification of the plot as electoral?

If the answer is positive, we move on to the second filter:

2nd Filter - Constitutional Prevalence: Competence based on the subject matter (*ratione materiae*), provided for in article 109, IV, of the Constitution is, in some way, harmed by jurisdiction by reason of the person (*ratione personae*), initially invoked on account of investigated with jurisdiction by prerogative of office?

If, after overcoming the previous filters, the conclusion is that the Court has jurisdiction Specialized, society and the justice system will necessarily have to face the third filter, which is the hypothesis put forward by *Parquet*:

3rd Filter - Democratic: The severity of the crime ("facts of maximum relevance") and the position of the author ("starring a President of the Republic") authorize the relaxation of the Principle of the Natural Judge, obliging (*preventing*) the "highest Court in the country" (STF) to deal with matters outside its constitutional jurisdiction?

The application of the first two filters has a broad interpretative spectrum. The complexity of the issue can, at any time, bring facts and interpretations that force us to revisit our premises. Questioning the third filter is merely rhetorical, the constitution does not provide for such a hypothesis. Its acceptance, without prior validation by the first two filters, leads the process to a Judgment of Exception, which in Alexander's lessons de Moraes (2021) "**implies a mortal wound to the Rule of Law**". On the other hand, the confirmation of the jurisdiction of the Specialized Court after critical analysis of the issue may lead the country to a historical self-correction, redefining the denunciation itself:

"This complaint portrays events of maximum relevance that **DO NOT** require exposed to the highest court in the country. Here we report facts involving a President of the Republic who forms a criminal organization with other civilian and military figures structured to prevent the outcome of the popular will expressed in the elections

2022 presidential elections were fulfilled, implying continuity in Power without the consent regular universal suffrage. **For this reason, it is urgent to transfer jurisdiction to the Specialized Electoral Justice, specifically, the Court of Democracy."**

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