

The End of the World Inquiry and the End of Due Process

The end of the world inquiry and end of due process of law

"Justice does not consist in being neutral between right and wrong, but in finding the right and upholding it, wherever that he may find himself, against the wrong."
Theodore Roosevelt

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SUMMARY

Every legal system, as we know, is conceived as a system and has the intrinsic objective of providing legal certainty. The Judiciary, in turn, has the state function of ensuring compliance with the principles, norms, and rules that comprise this system. Now, when we identify a phenomenon of relativization of these principles by the Brazilian Supreme Court (STF), the conclusion that a scenario of legal uncertainty is unavoidable. In this sense, the handling of STF Inquiry 4781 contradicts the entire principles governing the accusatory criminal system, where the roles of victim, accuser, and judge are intertwined, denying the exercise of the fundamental right to due process. Ultimately, this work aims to identify the various flaws in the conduct of STF Inquiry 4781, the failure to observe each principle of the accusatory system (principle of the natural prosecutor, the natural judge), and the potential impact on the legal certainty of the accusatory system and, ultimately, the democracy envisioned by the 1988 Constitution. The methodology adopted in this research was deductive, through a literature review, exploratory observation, and a qualitative approach.

Keywords: Doomsday inquiry. Legal certainty. Natural judge. Natural prosecutor. Federal Supreme Court

ABSTRACT

Every legal system, as we know, is conceived as a system and has the intrinsic objective of providing legal certainty. The Judiciary, in turn, has the state function of ensuring compliance with the principles, norms and rules that make up this system. Now, when we identify a phenomenon of relativization of these principles by the Supreme Court of the Brazilian Judiciary (STF), it is unavoidable to conclude that there is a scenario of legal insecurity. In this sense, the STF's processing of Inquiry 4781 goes against the entire principles governing the accusatory criminal justice system, where the figures of victim, accuser and judge are confused, denying the exercise of the fundamental right to due process of law. The work ultimately aims to identify the various flaws in the conduct of STF inquiry 4781, the failure to comply with each

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principle of the accusatory system (principle of the natural prosecutor, natural judge) and what the potential is to impact the legal security of the accusatory system and, ultimately, the democracy envisioned by the 1988 Charter of the Republic. The methodology adopted in this research was deductive, through a bibliographical survey, with exploratory observation and a qualitative approach.

Keywords: End of the world inquiry. Legal certainty. Natural judge. Natural promoter. Federal Supreme Court

1. Introduction.

The Democratic State of Law is based on principles essential, among which due process stands out. In Brazil, the growing instrumentalization of the Judiciary, nicknamed excessive judicial activism, and the expansion of their powers without due constitutional support, have raised questions about the legality of certain investigations, especially the established by inquiry no. 4,781, masterfully dubbed by Supreme Court Justice Marco Aurélio de Mello³ as the so-called "End of the World Inquiry". This article seeks to highlight the distance between the processing of the aforementioned investigation and due process of law constitutionally provided for, as well as the impacts of this precedent for the legal certainty of the Brazilian legal system.

It is understood that inquiry no. 4,781, as will be demonstrated, not only contradicts all the principles that regulate the accusatory system (Brazilian and worldwide) but it goes against common sense, not even resisting rhetorical questions like: can victim of a crime to be, at the same time, investigator and judge of those who – allegedly – are listed as their attackers? Can an investigation have no limits? of topic or time? Rhetorical and non-reflective questions, reiterate.

Beyond the rhetorical questions mentioned above, how to conceive of exemption and security of an accusatory system, when: the investigation is coordinated by the judging body; when there is direction to a Minister – without any draw as is the rule in every collegiate body – to be the reporting investigator; confidentiality is the rule throughout the procedure. There is, therefore, a phenomenon of relativization of a series of principles such as the natural judge, the natural prosecutor, the adversarial system on the part of the Supreme Court of the Brazilian Judiciary, all contributing to the inevitable construction

³ NEVES, Márcio. It's a doomsday investigation, says Minister Marco Aurélio. On June 18, 2020. R7. Available at < <https://noticias.r7.com/brasil/e-um-inquerito-do-fim-do-mundo-diz-ministro-marco-aurelio-29062022/>> Accessed on 03/15/2025.



of a scenario of legal uncertainty in the Brazilian judicial system. Now, these the same procedures can be adopted by the ordinary instances of the Judiciary, since the reference should always be the Supreme Court's rulings? Chaos would ensue.

2. The End of the World Inquiry: Characteristics.

Inquiry No. 4,781, named by Minister Marco Aurélio de Mello as the "End of the World Inquiry", was instituted on March 14, 2019 by Federal Supreme Court (STF), through Ordinance GP No. 69, issued by the then President of the Court, Minister Dias Toffoli.

The primary purpose of this inquiry was to investigate offenses, threats and fraudulent news (fake news) circulating on social media against ministers of STF and his family members. To this end, he was appointed as rapporteur-investigator-judge, without any drawing of lots, Minister Alexandre de Moraes. The investigation concluded in 2025 six years, with a practically unlimited scope of action and, more seriously, without any estimated completion date.

One of the main criticisms of its processing lies in the affront to separation of powers and the principle of the natural judge, violating article 5, item LIII, of the Federal Constitution (MORAES, 2021). By allowing the STF to conduct the investigation in which he appears, at the same time, as victim and judge, all without criteria clear and confidential procedures, the basis for social insecurity was established and, in especially the legal one.

Furthermore, a controversial point is the extensive interpretation of the article 43 of the Internal Regulations of the STF (RISTF), which served as the basis for the initiation of the investigation. The undue expansion of the jurisdiction of the Supreme Federal Court allowed the investigation of crimes that, in theory, were not directly related to their jurisdiction, directly affecting the principle of the natural judge and the guarantee of procedural impartiality.

Another worrying aspect is the concentration of functions in the STF, in which the ministers act simultaneously as victims, investigators and judges. This accumulation of paperwork compromises impartiality and procedural equality, fundamentals essential elements of the Democratic Rule of Law. Former Minister Marco Aurélio Mello, in

interview with the program Roda Viva⁴, called the inquiry the "End of the Inquiry" World" precisely because it is conducted without the knowledge of research institutions regular and without due constitutional support.

The ironic thing is that this entire procedure – typical of an exceptional court – is conducted by the highest body of the Brazilian Judiciary, known as “guardian of the Constitution”, which ends up deconstructing the entire security of the system Brazilian legal system. How can we talk about respect and obedience to the Constitution when its “guardian”, in this case, systematically ignores its dictates and principles?

The affront to the principles that govern the accusatory system is blatant, as will be seen below.

3. Due process of law and guiding principles of the accusatory system.

Due process is a fundamental principle of the legal system Brazilian, established in article 5, item LIV, of the Federal Constitution of 1988. This principle ensures that no individual shall be deprived of his liberty or property without a fair process, with respect for the adversarial system, full defense and impartiality of the judge (BARROSO, 2015).

Among the principles related to due process, linked to the accusatory system, the principle of the natural judge and the principle of the prosecutor stand out natural. The first ensures that no individual will be judged by a court of exception, while the second ensures that the criminal action will be conducted by a member of the Public Prosecutor's Office regularly designated by previously established rules. The violation of such principles compromises the legitimacy of the accusatory criminal system and undermines legal certainty.

According to Luigi Ferrajoli (2006, p. 473):

The principle of the natural judge imposes, on the contrary, that it be the law that pre-constitutes such criteria in a rigid and binding manner, so that any *post-factum* choice by the judge or panel to which the cases are entrusted is excluded; and further requires that such pre-constitution also refers to the bodies of the Public Prosecutor's Office, so that not even the functions of prosecution are maneuvered or in any way conditioned by bodies outside the process.

⁴ Available at < https://cultura.uol.com.br/noticias/27092_marco-aurelio-mello-chama-inquerito-das-fake-news-de-inquerito-do-fim-do-mundo.html > . Accessed on 15.03.25

It should be reiterated that the guarantee of the natural judge aims to ensure the existence of a previously determined competent court (prohibition of exceptional courts) and the non-derogability of the rules of jurisdiction. In this way, the natural judge expresses himself as a guarantee for the accused to submit himself only to a competent and impartial judge, according to the pre-established rules of jurisdiction.

In the end of the world investigation, the STF does not follow the established rules by the Constitution, only innovates according to its convenience. If not, let's see what the Magna Carta says about the jurisdiction of the STF regarding the trial of crimes (art. 102):

Art. 102. The Supreme Federal Court is primarily responsible for safeguarding the Constitution, being responsible for:

I - to process and judge, originally:

(...)

b) in common criminal offenses, the President of the Republic, the Vice-President, members of the National Congress, their own Ministers and the Attorney General of the Republic;

c) in common criminal offenses and crimes of responsibility, the Ministers of State and the Commanders of the Navy, Army and Air Force, except as provided in art. 52, I, the members of the Superior Courts, those of the Federal Court of Auditors and the heads of permanent diplomatic missions.

Thus, the crimes under the jurisdiction of the Supreme Federal Court are outlined in the 1988 Federal Constitution, so that the determination of jurisdiction based on of the forum by prerogative of function (*ratione personae*), for example, is the responsibility of the STF prosecute and judge members of the National Congress who commit common crimes. This is the forum by prerogative of function enshrined by the original Constituent.

It turns out that the STF's justification for opening Inquiry No. 4,781/DF does not indicate any authority subject to its jurisdiction, on the contrary, it is expressed by stating that the Inquiry is intended to determine the existence of news fraudulent (*fake news*), slanderous accusations, threats and infractions covered by *animus calumniandi*, *diffamandi* and *injuriandi*, which reach honorability and



security of the STF, **its members and their families**⁵, all based on art. 43 of the Internal Regulations of the Supreme Federal Court⁶.

Now, art. 43 of the Internal Regulations of the Supreme Federal Court, which it is not even a law in the strict sense, it cannot be invoked to investigate any person and/or any crimes. If this were the case, the discussion about the natural judge and the jurisdiction conferred on the STF by Article 102 of the CRFB would be futile. In short, we are in the face of one of the most precious guarantees of a Democratic State of Law, because, according to article 5, item XXXVII, of the CRFB, it is forbidden to judge or exceptional court, which has unfortunately become the investigation in vogue.

Inquiry 4,781 also does not respect the principle of the natural prosecutor. Historically, the confusion between accuser and judge is a characteristic linked to phenomenon of the Inquisition and authoritarianism. In this sense, when the judge begins to seek confirm the accusatory hypothesis, due process loses its characteristic primordial, that is, the clear separation of the functions of investigating, accusing and judging.

In this way, seeking to avoid authoritarianism on the part of the judging State and ensure a fair trial, the Brazilian legal system enshrined the system accusatory, since article 129, paragraph I, provides that it is the exclusive responsibility of the Public Prosecutor's Office to promote public criminal action. Furthermore, in its article 144, The Constitution expressly establishes the list of public security bodies, responsible for in the mission of safeguarding public order and social peace. In turn, article 144, §4°, of the Federal Constitution, establishes that the civil police are responsible for the functions of judicial police and investigation of criminal offenses, except military ones. In the case of crimes against political and social order, as well as to the detriment of the assets and interests of the Union and other offenses whose practice has interstate or international repercussions and requires repression uniform, the Constitution granted the federal police the power to conduct investigations. The investigation was initiated and promoted completely distanced from the authority police or even the Public Prosecutor's Office. In this sense, Minister Marco points out Aurelio⁷:

⁵ BRAZIL. Supreme Federal Court. Ordinance GP No. 69, of March 14, 2019. Available at: <https://www.conjur.com.br/dl/comunicado-supremo-tribunal-federal1.pdf>. Accessed on: March 15, 2025.

⁶ Art. 43. If a violation of criminal law occurs at the headquarters or dependency of the Court, the President shall institute an inquiry, if it involves an authority or person subject to his jurisdiction, or shall delegate this responsibility to another Minister.

⁷ Available at https://cultura.uol.com.br/noticias/27092_marco-aurelio-mello-chama-inquerito-das-fake-news-de-inquerito-do-fim-do-mundo.html Accessed on 03/15/2025.



"I cannot imagine the victim herself provoking the opening of the investigation. And it was the what happened. The president of the Supreme Court at the time, Dias Toffoli, not only established without provocation from the police and the accusing state, as well as handpicked who would be the rapporteur," explained the minister.

In addition to criticizing the way it was opened, Mello also questioned the results of the complaint. According to him, after two years of investigation, the investigations are still uncertain. In this way, he calls the inquiry of fake news about an "end of the world investigation".

The legal security of the Brazilian accusatory system was, in the investigation 4,781, compromised by the STF itself.

4. The Impact of Inquiry 4,781 on Legal Certainty.

The absence of external control and the expansion of the powers of the STF without constitutional provision indicate a failure to comply with due process, putting legal certainty at risk. Some scholars warn of the danger of excessive judicial activism, which may compromise the balance between the powers of the Republic (CANOTILHO, 2019).

The conduct of STF inquiry 4781 directly violates principles structuring elements of the accusatory criminal system, as already observed elsewhere, notably the principles of the natural prosecutor and the natural judge. This non-observance poses a risk significant to institutional stability and the democracy envisioned by the Constitution of 1988, as it compromises the right to defense, adversarial proceedings and procedural equality, making gestures towards a worrying authoritarianism.

Article 5 of the 1988 Federal Constitution ensures rights and guarantees fundamental, among which the following stand out: due process of law, full defense, adversarial system and the natural judge. However, the processing of Inquiry No. 4,781 by the STF directly conflicts with these principles.

According to jurist Ives Gandra Martins, the fake news investigation constitutes a deviation from constitutional legality, as it violates the separation of powers and



concentrates in the Supreme Court functions typical of the Public Prosecutor's Office and the police judiciary. Furthermore, Martins argues that the investigation violates freedom of expression, provided for in article 5, paragraph IV, by enabling restrictions without due legal process and without the participation of independent prosecutorial bodies. In this sense, asserts⁸ :

The fake news inquiry, in my view, ultimately represents a rewriting of the Constitution, with the replacement of natural judgment, the entry of everything that is considered fake news, and effectively causing Congress to lose importance, given that, as Minister Fux said, the Legislative is the most important Power of the Republic, as it is the only one that represents the entire population.

Therefore, the fake news inquiry, despite all due respect and admiration, as I have written books, participated in countless conferences, participated in television programs with Minister Alexandre Moraes, and written books with Minister Toffoli, giving lectures with him, and he gave a lecture at the book launch he attended in honor of my distant 80th birthday, which touched me greatly. I must disagree, at this moment, with the continuation of this inquiry and support what Minister Marco Aurélio de Mello said, understanding that the fake news inquiry, instead of strengthening democracy, weakens it greatly, and, sadly, it limits what is extremely important in a democracy: freedom of expression.

In this sense, within the scope of ADPF 572, although it remains defeated, the Minister Marco Aurélio, ruled in favor of the request made in the ADPF to put an end to the inquiry. He argued that the inquiry was created by an individual decision of the president of the STF, without going through the collegiate review. Furthermore, the ordinance that gave The beginning of the investigation was based on art. 43 of the RISTF, which was not received by the Federal Constitution of 1988, which enshrined the accusatory system. Furthermore, the Minister rightly emphasized that, in law, the means justifies the end, but never the end justifies the means used.

The lack of observance of the principle of legality and the creation of a investigative mechanism without direct constitutional provision poses risks to the legal certainty and the stability of the Democratic Rule of Law. In this way, the analysis of the investigation in light of Article 5 of the Federal Constitution reinforces the need for a review

⁸ MARTINS, Ives Gandra. *On the fake news investigation*. Available at: <https://www.conjur.com.br/2024-dez-19/sobre-o-inquerito-das-fake-news/>. Accessed on: March 15, 2025

criticism of its processing and its institutional impacts. Either that, or we are facing death throes of due process in Brazil.

Conclusion.

The "End of the World Inquiry" symbolizes true instability, insecurity, even, to the Brazilian accusatory legal system, practically pointing for the purpose of the constitutionally provided due process.

It is not conceivable in the accusatory system, constitutionally provided for, that ministers act simultaneously as victims, investigators and judges.

This accumulation of paperwork compromises impartiality and procedural equality, essential foundations of the Democratic Rule of Law. Former Minister Marco Aurélio Mello, in an interview with the program Roda Viva⁹, called the inquiry "End of the World Inquiry" precisely because it was conducted without the knowledge of the institutions of regular investigations without due constitutional support.

Inquiry 4,781 has no constitutional basis. Period. Contrary to the principles of the natural judge and the natural prosecutor head-on. Historically, the confusion between accuser and judge is a characteristic linked to the phenomenon of the inquisition and to authoritarianism. In this sense, when the judge begins to seek to confirm the hypothesis accusatory, due process of law loses its primary characteristic, that is, the clear separation of the functions of investigating, prosecuting and judging.

The conduct of STF inquiry 4781 directly violates principles structuring elements of the accusatory criminal system, as already observed elsewhere, notably the principles of the natural prosecutor and the natural judge. This non-observance poses a risk significant to institutional stability and the democracy envisioned by the Constitution of 1988, as it compromises the right to defense, adversarial proceedings and procedural equality, making gestures towards a worrying authoritarianism. The Supreme Court's actions in this investigation establishes true legal uncertainty in the Brazilian legal system.

⁹ Available at < https://cultura.uol.com.br/noticias/27092_marco-aurelio-mello-chama-inquerito-das-fake-news-de-inquerito-do-fim-do-mundo.html > . Accessed on 15.03.25



In a concatenated set of unconstitutional acts, the Inquiry

4,781/DF became alien to the Constitution and the laws, article 43 of the Internal Regulations of the The Supreme Federal Court was used as legal support, in order to confer legitimacy to an investigation riddled with legal defects, that is, in ADPF 572, it became clear that the normative force of the Constitution does not have the power to eliminate the the willingness of the Supreme Court Ministers to punish these alleged disseminators of *fake news*

Thus, there are non-delegable constitutional parameters and indispensable for the survival of a democracy, above all, through the establishment jurisdictional competence, the assignment of the investigative function to the civil police, as well as the ownership of Public Criminal Action conferred to the Public Prosecutor's Office. In this In this sense, in order to avoid abuses and guarantee fundamental rights, it is essential to archiving of Inquiry No. 4,781/DF and conducting investigations into possible crimes be attributed to the Judicial Police, with the supervision of the Judiciary, since that there is nothing that can be used for the purposes of *criminal prosecution*, all the evidence produced in the course of this investigation are riddled with incurable and congenital defects of unconstitutionality, that is, from its inception, since it was created by an organ incompetent.

The absence of external control and the expansion of the STF's powers without constitutional provision indicate a failure to comply with due process, putting legal certainty at risk. Thus, the analysis of inquiry 4,781, in light of Article 5 of the Federal Constitution, reinforces the need for a critical review of its processing and its institutional impacts. Either that, or we are facing the death throes of due legal process in Brazil.

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