



Year V, v.2 2025 | Submission: November 27, 2025 | Accepted: November 29, 2025 | Publication: December 1, 2025

The role of the Judge of Guarantees in strengthening the accusatory system and preserving fundamental rights and guarantees.

The role of the guarantee Judge in strengthening the adversarial system and preserving fundamental rights and guarantees

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SUMMARY

This article examines the role of the Judge of Guarantees in promoting the adversarial system and in the realization of fundamental rights and guarantees in the Brazilian legal system. It traces the evolution of criminal procedural models – inquisitorial, adversarial, and mixed – confronting the historical tensions of Brazilian criminal justice, frequently marked by inquisitorial remnants and the worrying "cognitive contamination" of the judge. Law No. 13.964/2019, by instituting the Judge of Guarantees, aimed to establish a clear separation between the functions of investigation, prosecution, and judgment. In this way, it strengthened judicial impartiality and the protection of the investigated party. The article discusses the position of the Supreme Federal Court (STF) regarding Direct Actions of Unconstitutionality (ADIs) and the modulation of the effects of its decisions, which, although declaring the constitutionality of the institution, generated doctrinal debates about its application and possible mitigations to its original logic. It is concluded that the Judge of Guarantees represents a significant step forward in achieving a democratic and rights-based criminal process, although its full consolidation still depends on continuous interpretative and operational improvement.

Keywords: Judge of Guarantees. Accusatory System. Fundamental Rights. Judicial Impartiality. Criminal Procedure.

ABSTRACT

This article examines the role of the Judge of Guarantees in promoting the accusatory system and enforcing fundamental rights and guarantees in the Brazilian legal system. It traces the evolution of criminal procedural models - inquisitorial, accusatory, and mixed - confronting the historical tensions of Brazilian criminal justice, often marked by inquisitorial remnants and the worrying "cognitive contamination" of the judge. Law No. 13,964/2019, by establishing the Judge of Guarantees, aimed at establishing a clear separation between the functions of investigation, prosecution, and judgment, thereby strengthening judicial impartiality and protection of the investigated. The article discusses the position of the Federal Supreme Court (STF) in the face of Direct Actions of Unconstitutionality (ADI's) and the modulation of the effects of its decisions, which, although having declared the constitutionality of the institute, generated doctrinal debates about its application and possible mitigations to its original logic. It is concluded that the Judge of Guarantees represents a significant advance towards the realization of a democratic and guarantee-based criminal process, although its full consolidation still depends on continuous interpretative and operational improvement.

Keywords: Judge of Guarantees. Accusatory System. Fundamental Rights. Judicial Impartiality. Criminal Procedure.



1. Introduction

The Democratic Rule of Law imposes on Criminal Procedural Law the commitment non-negotiable with the guarantee of the fundamental rights of the investigated and the accused. In this context, the The Brazilian criminal procedure system has historically been marked by the coexistence of elements accusatory and inquisitorial remnants that compromise the necessary impartiality between the functions. of investigation, accusation, and trial. This reality weakened the accusatory structure foreseen in Federal Constitution of 1988.

In response to this doctrinal demand and in alignment with guarantor trends international developments led to the enactment of Law No. 13.964/2019, also known as the "Anti-Crime Package". The legislation introduced the figure of the Judge of Guarantees into the Code of Criminal Procedure (CPP). The institution, In determining the separation of judicial responsibilities, it assigns control of the matter to a magistrate. legality of the investigation and the safeguarding of individual rights, while another magistrate assumes the judgment on the merits of the criminal action. The relevance of this figure therefore lies in its capacity to strengthen the separation of powers and consolidate the adversarial system.

In this context of structural change, this article aims to analyze the role and effectiveness The contribution of the Judge of Guarantees to strengthening the accusatory system and preserving the... Fundamental rights and guarantees in the Brazilian Criminal Procedure.

Therefore, the research problem consists of analyzing to what extent the creation and the implementation of the Judge of Guarantees, after the necessary modulation by the Supreme Federal Court, promotes the implementation of the adversarial system and the full protection of fundamental rights in Brazilian criminal procedure.

The methodology employed is bibliographic research, through the analysis of doctrine. specialized. In addition, documentary research was used, such as an examination of the Code of Criminal Procedure, Anti-Crime Package, Supreme Court jurisprudence, among other understandings useful to the topic. addressed. Furthermore, the development of the work is structured around four main subtopics, which aim to fully meet the specific objectives set out.

In this endeavor, the aim is to initially present the distinction between procedural systems. criminal (inquisitorial, accusatorial, and mixed). Subsequently, there is a discussion about the context of Brazilian Criminal Procedure before Law No. 13.964/2019 and the challenges to impartiality. Sequentially, there is a detailed explanation regarding the innovation of Law No. 13.964/2019 and the responsibilities of Judge of Guarantees. In order to finalize the development of the article, there is a relevant analysis. to the position of the Supreme Federal Court, with emphasis on the modulation of effects.

2. The judge of guarantees and the consolidation of the accusatory system

To understand the role of the Judge of Guarantees in strengthening the accusatory system and



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In order to preserve fundamental rights and guarantees, it is necessary to conduct an in-depth analysis of...

The figure of the Judge of Guarantees, from its genesis in the Brazilian legal system to its impacts and obstacles to its consolidation. Furthermore, it is essential to analyze the relationship between the Judge of Guarantees and the accusatory and democratic criminal process.

Therefore, it is relevant to analyze the fundamental differences between the accusatory and inquisitorial systems. and the mixed system, as well as understanding the contribution that the Judge of Guarantees can make in implementation of the accusatory system, understood by several scholars as the most aligned with democratic and constitutional ideals.

In this sense, Borges (2025, p. 76) defines the accusatory system as follows:

Inherent to democratic regimes, the adversarial system stands out for the complete separation of the functions of accusing, defending, and judging, which are assigned to different procedural actors. The term 'adversarial' is due to its essence, since no person can be brought to trial without an accusation that presents in detail the alleged illicit act along with all its circumstances. This occurs especially to guarantee the right to a full defense, since it is only possible to defend oneself if there is a clear and unequivocal accusation before an impartial judge.

It is noted that the adversarial system is a guarantee for the individual who is the defendant in criminal procedure, including strengthening other procedural guarantees, such as the right to a full defense, the contradictory, the impartiality of the judge, among others. For this reason, the present approach will be given in four subtopics, which correspond to the specific objectives of this work, seeking to elucidate the relevance of the Judge of Guarantees in strengthening the accusatory system, in the protection of fundamental rights and consequently the realization of constitutional ideals.

2.1. Criminal procedural systems: inquisitorial, accusatorial, and mixed.

Criminal procedural law, as a branch of law that governs the application of criminal law, It can be structured based on different systems. Such structuring possibilities, throughout the History, they brought different repercussions regarding the effectiveness of criminal prosecution and to Guarantee of individual rights. Understanding these models – inquisitorial, accusatorial, and mixed – It is fundamental for analyzing the evolution and characteristics of the contemporary criminal process.

Although historically they have not been adopted in a pure and complete way by a single entity. legal system, the combination of its elements, seeking to optimize the method of prosecution Criminal law is a constant reality.

The inquisitorial system, one of the oldest models, is characterized by the concentration of Power is concentrated in the hands of a single figure: the judge. In this system, the authority responsible for The investigation is also responsible for the accusation and judgment. According to the teachings of the author John. Mendes Júnior (1959, p. 250):

The inquisitorial system conducts investigations before any accusation, replaces the defense with the interrogation of the accused, and replaces oral and public debate with secret confrontations.



witnesses and, in general, written and secret instructions are given more weight than verbal information.

It is noted that the presumption of guilt is a prominent characteristic of the inquisitorial system.

According to Nucci (2023, p. 112):

The defendant's confession is considered the queen of evidence; there are no oral arguments, with exclusively written procedures predominating; judges are not subject to recusal; the procedure is confidential; there is an absence of adversarial proceedings, and the defense is merely decorative.

Therefore, although the inquisitorial system played an important role in combating abuses of feudal lords in the Middle Ages, by allowing judges to act against the powerful, such a system

The procedural process proved to be fertile ground for arbitrariness, the absence of adversarial proceedings, and... fragility of the defense, culminating in serious abuses (Nucci, 2023).

In contrast, the adversarial system represents a fundamental pillar of the ideals. democratic principles in the criminal process. Its main characteristic is the clear separation between the functions of to accuse, defend, and judge. Mendes Junior (1959, p. 250) highlights that "the accusatory system admits, in In general, an accusation formulated at the beginning of the investigation, adversarial proceedings, free defense, and debate. "Public relations between the accuser and the accused." The presumption of innocence of the accused, the publicity of the acts. Procedural principles, respect for the right to a fair hearing and full defense, and freedom in the production of evidence are... pillars of this model.

Regarding the relationship between the adversarial system and the strengthening of a criminal process Democratic, Marcos Zilli's lessons indicate that:

The adversarial model of procedural relations is the one that best reflects democratic ideals, precisely because it assumes a balanced division of power among the various parties. (...) But overcoming an inquisitorial pattern does not imply abandoning investigative powers. As mentioned, the criminal process is the path chosen by the State to realize its punitive power-duty, so an adequate construction of the facts being judged becomes essential. This construction, in a modern conception, must be done primarily by the parties. This is because they are the ones in a position of confrontation and, therefore, they are the ones interested in the outcome of the process. The judge does not have a procedural interest, but rather a duty to perform the function that the State grants him and, to that end, he must be equipped with the power to clarify any points related to the evidence produced (Zilli *apud* Rascoviski, p. 168, 2012).

Between these two extremes, the mixed system emerged, which aims to reconcile the advantages of... both. According to Nucci (2023), the mixed system emerged after the French Revolution and... It is organized into two distinct phases: a first phase, of preliminary instruction or investigation, which It incorporates elements of the inquisitorial system (it can be secret, written, and without adversarial proceedings); and a second phase, of trial, which adopts the characteristics of the adversarial system (orality, advertising, contradiction, among others).

In short, the criminal procedural systems – inquisitorial, accusatorial, and mixed – represent distinct approaches to conducting criminal proceedings. While the inquisitorial approach, with its The centralization of power and secrecy, the accusatory system, with its separation of power and secrecy, proved prone to abuses.



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Individual functions and guarantees have become established as a democratic ideal. The mixed system, in turn, It emerges as a pragmatic solution, attempting to balance the efficiency of the investigation with the protection of rights in court.

2.2. The Brazilian Criminal Procedure before Law 13.964/2019: inquisitorial roots and challenges to impartiality.

Brazilian Criminal Procedural Law, throughout its history, has been characterized by a Constant tension between the inquisitorial and accusatorial models. The Federal Constitution of 1988 He established the adversarial system as a fundamental pillar, listing the separation of functions between accusation (Public Prosecutor's Office), defense (lawyer), and judgment (Judicial Branch). However, the Judicial practice has often been permeated by remnants of the inquisitorial model.

This is because, despite the separation of functions typical of the accusatory system, it is not uncommon for the same magistrate responsible for authorizing and overseeing investigative measures in the preliminary phase – The police investigation – was also, subsequently, the judge of the merits of the criminal controversy. This The mixing of responsibilities generated persistent discussions about the judge's true impartiality and the Compliance of the criminal process with constitutional precepts.

The main criticism of this accumulation of functions centered on what the doctrine It has become known as "cognitive contamination." The judge who, during the investigation phase, was exposed unilateral information, produced without the scrutiny of adversarial proceedings and the right to a full defense – such as Police reports, confidential testimonies, requests for wiretapping, and other measures.

coercive —, This ultimately led to the formation of a preconceived judgment about the facts and the guilt of the person under investigation.

This in-depth and early contact with informational elements, which often already They indicated an "accusatory thesis," compromising the transparency expected of a trial. impartial. Prior knowledge, even acquired in good faith, could influence perception and The judge's conviction when analyzing the evidence presented in court makes it difficult to... overcoming an initial impression that, more often than not, was unfavorable to the accused.

Aury Lopes Jr., one of the leading figures in this criticism, states that the impartiality "of the body Jurisdictional procedure is a 'supreme principle of the process' and, as such, essential for its normal functioning. "Development and attainment of a fair judicial distribution." Therefore, it is clear that, for the author, impartiality This is not a favor the judge does for the parties, but a fundamental right of the accused and a functional duty of the magistrate (Lopes Junior, 2025, p. 27). Furthermore, according to the aforementioned author:

(...) the configuration of the "procedural system" must consider the guarantee of the "impartiality of the judge," the effectiveness of the adversarial system and other rules of due process, all in light of the Constitution. It ensures the impartiality and psychological tranquility of the judge who will sentence, guaranteeing dignified and respectful treatment of the accused, who ceases to be a mere object and assumes their position as a genuine passive party in the criminal process. Ultimately, it is the separation of functions and, consequently, the management of evidence in the hands of the parties and not the judge (judge-spectator), that creates the conditions for impartiality to be achieved. Only in the accusatory-democratic process, in which the judge...



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It is by keeping the judge separate from the sphere of activity of the parties that we can have the figure of the impartial judge, the foundation of the procedural structure itself (Lopes Junior, p. 20, 2025).

Luigi Ferrajoli (2006), in his work "Law and Reason", corroborates this view by arguing that

The judge must be a "third party" in relation to the parties, a "passive" subject in the search for truth, whose

Their primary function is to apply the law and not to interfere in the evidentiary process on their own initiative.

For this reason, when the magistrate assumes an active stance in the pre-trial phase, he acquires a

biased knowledge, which makes it impossible to weigh the arguments of the prosecution and the defense against the...

The necessary distance and equanimity.

Eugênio Pacelli (2023), in turn, when analyzing the magistrate's performance, acknowledges that

The urgent need for a judge to safeguard legality and fundamental rights in the pre-trial phase.

In other words, a judge who does not get involved in the typical evidentiary production of the prosecution or the defense.

This perspective illustrates the pressing need for a figure who exerts control over

Legality without becoming a "judge-investigator," preventing contamination. The absence of this division.

This functional approach therefore creates an environment conducive to relativizing the presumption of innocence and to...

weakening of due process, weakening democratic and rights-based principles that

The Federal Constitution itself presupposes this.

3. Law No. 13.964/2019 (Anti-Crime Package) and the innovation of the judge of guarantees

In response to the growing demand for a criminal justice system more aligned with

Based on accusatory principles and guaranteeing fundamental rights, Law No. 13.964/2019, known as

As part of the "Anti-Crime Package," it promoted a structural innovation by introducing the figure of the Judge of...

Guarantees in the Code of Criminal Procedure.

The intention of the aforementioned law was to distance the magistrate who will deliberate on the merits of the case.

without any prior contact with the evidence collected during the investigative phase, ensuring a

more robust impartiality. In other words, Law No. 13.964/2019 aimed for a clear delimitation between the

spheres of investigation, accusation and judgment; and, consequently, aimed to strengthen the system.

The accusatory system and the preservation of the fundamental rights and guarantees of the accused.

According to Borges (2025, pp. 87-88):

The introduction of the Judge of Guarantees is diametrically linked to the principle of due process in criminal law. By separating the functions of the judicial authority from those of investigation and judgment, the aim is to guarantee maximum impartiality of the magistrate who will judge the merits of the indictment. The intention is to reduce the risks of prejudgments and influences arising from decisions made during the investigation.

In this effort, the figure of the Judge of Guarantees was included in articles 3-A to 3-F of the Code.

of Criminal Procedure. This new system originally assigned to a specific magistrate the

exclusive responsibility for judicial oversight of the investigation phase. The Judge's jurisdiction...



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Guarantees extend until the receipt of the complaint or grievance.

Thus, according to the Anti-Crime Package, another judge would be responsible for the trial.

Regarding the merits of the criminal action. The duties of the Judge of Guarantees, according to article 3-B of the CPP, are vast and outline a new profile for judicial action, strengthening the accusatory system and preserving

Legality in the pre-trial stage.

Among the most important responsibilities is ensuring the legality of the investigation.

criminal (article 3-B, items I and XVIII of the Code of Criminal Procedure). According to these provisions,

The Judge of Guarantees oversees the entire development of the investigation, ensuring that the actions

Investigative processes must respect the individual rights and guarantees of the person being investigated. This includes monitoring...

legality of evidence and the possibility of declaring its inadmissibility if it has been obtained

through illegal means.

Furthermore, according to Article 3-B, sections II to VII, IX to XII and XV of the CPP, the Judge of Guarantees

It also has the authority to decide on precautionary measures that restrict rights.

In this way, the Judge of Guarantees is the magistrate competent to decide on the decree, extension

or revocation of pre-trial detentions (preventive, temporary), precautionary measures other than imprisonment,

search and seizure, telephone and telematic interceptions, as well as breaches of confidentiality (banking,

fiscal, data).

In this area of criminal procedure, it is noted that after notification of the arrest, it is the responsibility of...

The Judge of Guarantees is responsible for analyzing the legality of the arrest in flagrante delicto. In this act, the Judge of Guarantees...

assesses the need for and appropriateness of maintaining the detention, ensuring the physical and moral integrity of the individual.

The person is being held in custody and a decision is being made regarding their provisional release or the conversion of their detention into preventive custody.

The receipt of the Arrest Report and the holding of the Custody Hearing is

One of the competencies of the Judge of Guarantees that has made the institution more popular in Brazil.

Aury Lopes Jr (2025, p. 244), in explaining the custody hearing, summarizes it as follows:

The holding of a custody hearing is a subjective right of the arrested person, and its realization is essential under penalty of illegality of the arrest. This is an imposition stemming from Article 7.5 of the American Convention on Human Rights, Article 9.3 of the International Covenant on Civil and Political Rights, and Resolution No. 213/2015 of the CNJ (National Council of Justice), which was finally incorporated into the CPP (Code of Criminal Procedure) with the enactment of Law No. 13.964/2019. The magistrate cannot fail to hold it, except in duly justified exceptional circumstances (CNJ Recommendation No. 62/2020), under penalty of incurring triple liability. In the judgment of the ADIs (Direct Actions of Unconstitutionality) of the anti-crime package (...) the STF (Supreme Federal Court) understood that the judge, in case of urgency and if the means proves suitable, may hold the custody hearing by videoconference.

The author, in his work, also points out the fundamental importance of the Custody Hearing.

² Although the Anti-Crime Package established the jurisdiction of the Judge of Guarantees up to the point of receiving the indictment, the Supreme Federal Court (STF) later modified this jurisdiction, stating that the Judge of Guarantees' jurisdiction extends only until the indictment is filed. The STF's position is evidently the one that prevails. However, considering that this topic seeks to provide a chronological overview of the Judge of Guarantees, it was decided to present the legal position first, since the complete jurisprudential analysis will be carried out in the next section of the article.



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It has the means to prevent arbitrary arrests. According to him, when analyzing precedents from the Inter-American Court.

Regarding Human Rights, it was noted that simply communicating with the Judiciary was not sufficient for this.

intent. It was necessary for the Judge of Guarantees to personally hear the detainee, to assess the

circumstances of the arrest, in order to then decide whether to proceed with release or maintain deprivation of liberty.

individual freedom (Lopes Junior, 2025).

Finally, among other responsibilities pertaining to the Judge of Guarantees, the following stand out:

Approval of non-prosecution agreements, ensuring compliance with investigation deadlines,

to decide on incidents involving confidentiality, to determine the closure of the police investigation when

There is clear illegality, and to decide on the early production of evidence, when justified.

due to urgency and relevance, ensuring the preservation of evidence without prejudice to its subsequent evaluation by the investigating judge, among others.

These responsibilities outline a magistrate who, instead of interfering in the search for evidence...

For the judgment on the merits, the focus is exclusively on ensuring the legality of the acts.

Investigative duties and the protection of the fundamental rights of the person under investigation. He acts as a guarantor.

of constitutional precepts from the initial stages of criminal prosecution, seeking a

more robust impartiality for the judge who will actually decide the case.

4. The position of the Supreme Federal Court (STF): analysis of ADIs 6.298, 6.299, 6.300, 6.305 and the modulation of application.

The introduction of the Judge of Guarantees by the Anti-Crime Package, although aligned with a strong

The doctrinal current and international models generated intense debate and a period of great...

uncertainty regarding its applicability and, above all, its constitutionality.

Law No. 13.964/2019 was enacted with vetoes and, subsequently, several provisions.

They were suspended by a preliminary injunction issued by Minister Luiz Fux, then president of the Supreme Court.

Federal (STF), in January 2020. This suspension was motivated by concerns regarding

feasibility of implementation and the alleged encroachment on the legislative powers of the States.

The Direct Actions of Unconstitutionality (ADIs) 6,298, 6,299, 6,300 and 6,305 were the

main demands that guided the discussion before the Supreme Court. After a complex and

lengthy trial process, which included public hearings to listen to civil society,

Representatives from the Public Prosecutor's Office, the judiciary, the legal profession, and other sectors, the Supreme Federal Court, in

In 2023, the understanding regarding the constitutionality of creating the Judge of Guarantees was consolidated.

This decision reaffirms the proposal for a restructuring of the role of the magistrate, especially

in the initial phase of criminal prosecution. The Court recognized the legitimacy of the figure in

Brazilian legal system, considering it a civilizational advance towards full

consolidation of the accusatory system and consequently of a democratic criminal process and



committed to preserving fundamental rights and guarantees.

It is worth noting that Direct Actions of Unconstitutionality (ADIs) constitute one of the principal instruments by which the Court exercises concentrated control of constitutionality, assessing the compatibility of laws or normative acts with the Constitution. In However, the complexity of legal relationships and the social impact of decisions sometimes demand... that the Supreme Federal Court transcends the mere declaration of constitutionality or unconstitutionality, employing mechanisms such as "interpretation in accordance with the Constitution" and "modulation of "effects" of their decisions.

The case of the establishment of the Judge of Guarantees by Law No. 13.964/2019 (Anti-Crime Package), The subject of extensive analysis in ADI 6298, serves as a paradigmatic example of the approach. The Supreme Federal Court's multifaceted approach sought to balance legislative innovation, legal certainty, and... need for institutional adaptation.

Law No. 13.964/2019, as explained in previous subtopics, by introducing the Judge of Guarantees in the Code of Criminal Procedure (CPP) sought to improve the criminal prosecution system, aligning it with an accusatory model. The figure of the Judge of Guarantees, responsible for controlling the legality of the criminal investigation and safeguarding the individual rights of the person under investigation, It represented a significant structural change.

However, its implementation generated a series of doubts and questions, which culminated in several Direct Actions of Unconstitutionality (ADIs), among them ADI 6298, in which the Supreme Federal Court... It focused on the constitutionality and practical application of this legal principle. The Supreme Court's decision in the Direct Action of Unconstitutionality (ADI). 6298 did not limit itself to a binary "all or nothing" judgment, but revealed a constructive stance, making extensive use of interpretation in accordance with the Constitution and modulation of effects for To make reform feasible in a sustainable way.

One of the cornerstones of the Supreme Federal Court's decision in ADI 6298 was the declaration of the constitutionality of *The opening paragraphs* of articles 3-A and 3-B of the CPP (Brazilian Code of Criminal Procedure) confirm the establishment of the Judge of Guarantees as a step forward. legitimate within the Brazilian criminal procedure system. This statement validated the essence of the new institution, reinforcing the separation of the functions of accusing, defending, and judging, and the centrality of the judge in protection. of the fundamental rights of the person under investigation in the pre-trial phase.

However, the Court also recognized specific instances of unconstitutionality that threatened The autonomy and organization of the Judiciary. For example, it was declared that... formal unconstitutionality of the sole paragraph of article 3-D of the CPP, which mandated the creation of a "Judge rotation system" in districts with only one judge. The Supreme Federal Court understood that this provision It constituted an "unreasonable invasion of administrative autonomy and the power of self-organization." of the Judiciary", violating article 96, I, of the Federal Constitution (Brazil, 2023).

Furthermore, the partial unconstitutionality, by extension, of article 20 of Law 13.964/2019,



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which set a 30-day deadline for the installation of the judges of guarantees, as well as

unconstitutionality of article 3-D of the CPP itself (*main clause* and sole paragraph), which dealt with the

The disqualification of the judge who acted in the investigative phase demonstrates the meticulousness of the analysis.

constitutional (Brazil, 2023).

Without a doubt, this was one of the aspects decided by the Supreme Federal Court that was most criticized by legal scholars.

Why allow the magistrate who acted in the investigative phase to also act in the subsequent phase?

procedural, that is, in the analysis of the merits, it is something that contradicts the entire logic of the institution of the Judge of

Guarantees. This is a provision that compromises the impartiality of the judge and increases the risk.

of "contamination" that the institute aims to prevent.

In the words of Reis and Gonçalves (2024), such a provision contradicts the constitutional postulate.

Regarding the effectiveness of judicial protection, the principle of proportionality (especially in its aspect

(of the prohibition of deficient protection). Furthermore, it also presents insurmountable obstacles to

protection of the fundamental rights of society; guarantee of full defense (article 5, LV, of the Federal Constitution).

since elements obtained in the investigation that could potentially be beneficial to the accused would also be

withheld from the knowledge of the trial judge.

The technique of "interpretation in accordance with the Constitution" was exhaustively employed by

The Brazilian Supreme Court (STF) in ADI 6298 to preserve the validity of legal provisions, adapting their meaning to the Constitution.

Magna. For example, the Court gave a conforming interpretation to Article 3-A of the CPP, to establish

that the judge, "specifically, within the legally authorized limits, may determine the performance of

supplementary investigations, in order to resolve doubts about a matter relevant to the judgment of

merit" (Brazil, 2023).

This jurisprudential provision was also heavily criticized by legal scholars, because

to distort the logic of the Judge of Guarantees. In the words of Reis and Gonçalves (2024, p. 125):

Although the legislator, with the purpose of eliminating remnants of an inquisitorial nature from the procedural system, has prohibited any and all initiatives by the judge in the investigation phase and the substitution of the evidentiary role of the prosecution (Article 3-A), the Supreme Federal Court, when assessing the constitutionality of the legal provision, gave it a conforming interpretation, to establish that the judge, specifically and within the legally authorized limits, may order the carrying out of supplementary investigations in order to resolve doubts about a matter relevant to the judgment on the merits.

Another relevant point was the interpretation in accordance with items IV, VIII and IX of article 3-B of

CPP, establishing that "all acts performed by the Public Prosecutor's Office as conductor of

criminal investigations are subject to judicial control" (Brazil, 2023). This determination reinforces the

The central role of the Judge of Guarantees in controlling the legality of the investigative acts of the Ministry.

Public.

The Court also modulated the understanding of several other provisions. The competence of

The Judge of Guarantees, for example, was interpreted accordingly to cease offering the



complaint, in contrast to the original wording of the CPP which mentioned the "receipt" of the complaint.

Similarly, the provisions relating to the referral of a person arrested in the act or by force of provisional arrest warrant to the presence of the Judge of Guarantees within 24 hours (Art. 3º-B, § 1º) received a conforming interpretation, exceptionally admitting the use of videoconferencing "by decision of the competent judicial authority, provided that this means is suitable for verifying the prisoner's integrity and guaranteeing all of their rights," and including the caveat of "factual impossibility" (Brazil, 2023).

Furthermore, the interpretation in accordance with § 2 of article 3-B of the CPP clarified that non-compliance The expiration of the legal deadline does not imply the "automatic revocation of pre-trial detention," it being up to the court to decide. competent to assess the reasons that gave rise to it, in accordance with the principle already established in ADI 6581. Such interventions demonstrate the Supreme Federal Court's ability to refine the legal text to guarantee its Operability and constitutionality.

The modulation of effects, a tool provided for in Article 27 of Law No. 9,868/99, was relevant. to manage the transition and mitigate abrupt impacts. In ADI 6298, the STF adopted a "rule of "Fundamental transition": "regarding criminal proceedings already initiated at the time of effective implementation Regarding the judge of guarantees by the courts, the effectiveness of the law will not entail any modification of the judgment. competent" (Brazil, 2023). This measure aims to preserve legal certainty and avoid paralysis. or the annulment of thousands of ongoing processes.

Additionally, the Court set a deadline of 12 months, extendable only once. same period, "so that the necessary legislative and administrative measures may be adopted to The suitability of different laws governing judicial organization, for effective implementation and effectiveness. functioning of the judge of guarantees throughout the country" (Brazil, 2023). This temporal modulation is a a clear example of how the Supreme Federal Court (STF) weighs the immediate application of the rule against the structural capacity and operational aspects of the judicial system.

Furthermore, another significant modulation point was the determination that the Representatives of the Public Prosecutor's Office shall forward, within a period of up to 90 days, "all PICs and other criminal investigation procedures" to the respective natural judge, regardless of whether the Judge of Guarantees have already been implemented (Brazil, 2023). This guideline aimed to organize the transition of investigation management and judicial control. It is also important to note that the Supreme Federal Court, in ADI 6298, It expressly defined the situations in which the rules relating to the Judge of Guarantees do not apply. to the proceedings within the original jurisdiction of the courts, in the proceedings within the jurisdiction of the court of jury, in cases of domestic and family violence and in minor criminal offenses. (Brazil, 2023). These exclusions, while not temporal modulations, represent a Defining the scope of the law, adjusting its application to avoid conflicts or disproportions in specific contexts of criminal law.



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In short, the actions of the Supreme Federal Court in ADI 6298, concerning the Judge of Guarantees represent a complex and strategic balance between legislative progress and stability. institutional. Through the declaration of constitutionality, interpretations in accordance with Regarding the Constitution and the modulation of its effects, the Court not only validated the new institute in its essence, but it also shaped it in a way that ensured its applicability and compatibility with the principles. Constitutional principles and the reality of the Brazilian judicial system.

The modulation of deadlines, the preservation of acts already performed, and the exclusion of certain matters. The scope of the Judge of Guarantees demonstrates a deep commitment to legal certainty and Minimizing disruptions.

However, it is impossible to ignore some aspects of the STF's position. They were harshly criticized by many legal scholars and practitioners, especially regarding... Regarding the inapplicability of the Judge of Guarantees to proceedings under the original jurisdiction of courts, cases under the jurisdiction of the jury court, domestic and family violence, and juvenile offenses. offensive potential.

The possibility of the judge ordering supplementary investigations is also a Regarding the most sensitive points concerning the criticisms of what was decided by the Supreme Federal Court. Finally, another aspect The issue, which has been the subject of intense questioning by legal scholars, consists of allowing the magistrate to... The criminal process must have access to the evidence produced during the investigative phase.

5. Final Considerations

This analysis sought to elucidate the complex role of the Judge of Guarantees in strengthening of the accusatory system and in the preservation of fundamental rights and guarantees in the legal system Brazilian. Throughout the study, it was demonstrated that the institution of this figure demonstrates a legislative movement towards overcoming inquisitorial remnants that historically They permeate the Brazilian criminal process.

The distinction between inquisitorial, accusatorial, and mixed criminal procedure systems revealed that inherent tension between the efficiency of criminal prosecution and the safeguarding of individual rights. In this scenario, the Judge of Guarantees, introduced by Law No. 13.964/2019, emerges as a mechanism. intended to guarantee the impartiality of the judge on the merits, preventing "cognitive contamination" arising from contact with the informational elements of the investigative phase. Their responsibilities, which including the control of the legality of the investigation and the management of precautionary measures, they consolidate it. as a guarantor of constitutional principles from the initial stages of criminal prosecution.

However, despite the relevance of the innovation, the implementation of the Judge of Guarantees was marked by intense debates and questioning, which culminated in the Supreme Court's consideration. Federal Court (STF) in the context of concentrated constitutional review.



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The decisions rendered in the Direct Actions of Unconstitutionality (ADIs) represented a
The effort to reconcile legislative progress with legal certainty and institutional adaptability.
modulation of effects and interpretations in accordance with the Constitution, although they aimed to
Operationalizing the institute also generated criticism from legal scholars regarding its potential.
Mitigation of the original logic of separation of duties.

A prime example of such criticism was the declaration of unconstitutionality of article...
Article 3-D of the CPP (main clause and sole paragraph), which prevented the judge acting in the investigative phase from...
would act in the procedural phase. This was a clear attempt to strengthen the accusatory system and the
impartiality was mitigated by the Supreme Federal Court.

In summary, the Judge of Guarantees is a fundamental element for the consolidation of
A truly adversarial and democratic criminal process in Brazil. Its implementation, however,
It remains a constantly evolving field, demanding critical vigilance on the part of
from legal professionals so that the guarantee-oriented scope that underpins it is fully achieved,
ensuring judicial impartiality and the full protection of fundamental rights and guarantees of
citizens. The dialectic between legal text, judicial interpretation, and doctrine will continue to shape the
practical application of this important institute.

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