



## The fundamental principles applied to the Constitutional Fifth

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### Summary

The Fifth Constitutional Amendment constitutes a rule that enables the democratization of the Courts and fosters decisions from diverse legal perspectives; its relevance in improving justice is uncontroversial. This study aims to analyze the principle-based foundation attached to the Fifth Constitutional Amendment rule, considering principles as mandatory legal norms. This is a qualitative study that uses the technique of bibliographic research, with a theoretical dialogue between research that addresses the topic and the examination of legal norms and jurisprudence related to the matter. The argument is mainly based on the studies of authors related to the topic in focus, such as Mendes and Branco (2023), Mazza (2023), Guasque (1999), Miranda ([n.d.]), Carvalho (2024), Ribeiro (2019), and Almada (2024). The research found that the Fifth Constitutional Amendment, when applied in accordance with its fundamental principles, transcends its formal function and assumes a strategic role in consolidating the Democratic Rule of Law. By fostering diversity and transparency in the Judiciary, the rule not only broadens the legitimacy of judicial decisions but also reinforces society's confidence in the justice system, ensuring that it acts as an instrument for realizing fundamental rights, rather than a mere bureaucratic appendage.

Its effectiveness therefore depends on strict adherence to the constitutional principles that underpin it, ensuring that it fulfills its democratizing and pluralistic purpose.

**Keywords:** constitutional fifth; principles; constitutional law; Public Prosecutor's Office; Brazilian Bar Association.

### Abstract

The Constitutional Fifth is established as a rule that enables the democratization of the Courts and fosters decisions based on diverse legal perspectives; its relevance in improving justice is unquestionable. This study aims to analyze the principled basis linked to the rule of the Constitutional Fifth, considering as binding legal norms. It is a qualitative study that uses bibliographic research techniques, engaging in theoretical dialogue between studies that address the topic and examining the legal norms and jurisprudence related to the subject. The argument is based mainly on the works of authors connected to the theme, such as Mendes and Branco (2023), Mazza (2023), Guasque (1999), Miranda ([nd]), Carvalho (2024), Ribeiro (2019), and Almada (2024). The research found that the Constitutional Fifth, when applied in accordance with its principled foundation, transcends its formal function and assumes a strategic role in consolidating the Democratic Rule of Law. By promoting diversity and transparency within the Judiciary, the rule not only enhances the legitimacy of judicial decisions but also strengthens society's trust in the justice system, ensuring that it operates as an instrument for the realization of fundamental rights rather than as a mere bureaucratic appendage. Its effectiveness therefore depends on strict observance of the constitutional principles that underpin it, ensuring that it fulfills its democratizing and pluralistic purpose.

**Keywords:** constitutional fifth; principles; constitutional law; Public Prosecutor's Office; OAB.

## 1 INTRODUCTION

The Fifth Constitutional Amendment is established as a rule that enables the democratization of Courts and fosters decisions from diverse legal perspectives, its relevance in

The improvement of justice is uncontroversial. The rule has its own historical trajectory and evolution, since from its inauguration in the 1934 Constitution to its provision in the current 1988 Constitution, guided by modifications related to the political contexts of Brazilian republican history.



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Mendes and Branco (2023) understand that the creation of the Constitutional Fifth represents its relevance in complex societies is due to the fact that it allows for a pluralistic formation of judicial bodies, that is, it is configured as an instrument for the democratization of the Judiciary, insofar as it allows that lawyers and members of the Public Prosecutor's Office with extensive professional experience can contribute for the "process of legitimizing judicial decisions".

Furthermore, this work aims to analyze the fundamental principles attached to the Fifth Rule, as set forth in the Federal Constitution of 1988 (CF/88). The Magna Carta, promulgated in 1988, consolidated principles as sources of law, understood as imperative legal norms, in the post-context... Positivist principles provide a foundational set of principles that are applied to various fields of law. (Happke, 2006).

The problem addressed by this research is: what are the principles that they underpin the reservation of the fifth of seats in Brazilian judicial bodies for lawyers and members. From the *Public Prosecutor's Office*? How does the application of these principles ensure that the Fifth Rule is implemented? In observance of the Democratic Rule of Law?

This study uses the bibliographic research technique, which allows for the analysis of the works. the most current information on the topic is used to develop a synthesis, through dialogue and problematization. the issues raised by various authors (Marconi; Lakatos, 2017). Furthermore, the following was used... Documentary research based on the analysis of normative and jurisprudential documents. It emphasizes... Given the importance of the proposed topic, it addresses an existing gap in academic production. contemporary.

Thus, the article was structured as follows: Section 1 contextualized the research, explicitly stating the problem, objective, and methodology adopted; in Section 2, it was explained... A brief overview of the historical trajectory of the Fifth Constitutional Amendment in Brazilian Magna Cartas. highlighting the current provisions of the Fifth Amendment in the 1988 Constitution and the jurisprudential discussions in the courts. superiors; in Section 3, the fundamental principles of the Fifth Constitutional Amendment were discussed. Brazilian legal system, addressing doctrinal and philosophical considerations regarding principles as legal norms and, finally, the constitutional principles applicable to were analyzed. Fifth Constitutional Amendment; Section 5 presents a summary of the research findings.

## 2. THE RULE OF THE CONSTITUTIONAL FIFTH

The Fifth Constitutional Amendment is established in the Brazilian legal system with the Promulgation of the Federal Constitution of 1934. In 1933, within the scope of the National Assembly. During the Constituent Assembly, the rule of the Fifth Constitutional Amendment was initially proposed by the politician João Mangabeira, then a federal deputy for Bahia, and, subsequently, the wording was modified by



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suggestion by jurist Levi Carneiro, both were members of the subcommittee for the preliminary draft of the Constitution of 1934 (Ribeiro, 2019) (Miranda, [n.d.]).

João Mangabeira's initial proposal, still in the preliminary draft stage, was that one-third of the Courts were proposed by the President of the State, indicated through a list composed of three names of jurists of notable expertise for the Court of Appeals itself to choose the new judge, the other two-thirds would be appointed by the Court from among the state's most distinguished judges. The discussion for drafting the preliminary bill revolved around freeing the Courts and the state magistracies are subject to the political influences and pressures of local powers (Miranda, [n.d.]).

Following discussions by the committees and subcommittees formed within the Assembly National Constituent Assembly, the final proposal confirmed the rule, establishing a new form of recruitment for the courts, with one-fifth of the vacancies reserved for filling members of other legal professions, chosen by their peers. Miranda ([n.d.], p. 18) points out that "Although the number of places reserved by the rule has decreased, it was specified that they..." should be filled by lawyers or members of the Public Prosecutor's Office, excluding the "Possibility of being filled by judges."

For Miranda ([n.d.]), accepting the rule without serious impediments meant the demarcation of the field and influence of lawyers and members of the Public Prosecutor's Office. In 2024, the professional bodies The Brazilian Bar Association (OAB) and the Public Prosecutor's Office celebrated the 90th anniversary of existence of the device.

## 2.1 The Fifth Constitutional Amendment in the 1988 Federal Constitution

In the Brazilian legal system, the Federal Constitution is established as the norm. foundational principle that grants validity to other sub-constitutional norms, in accordance with hierarchy of legal precepts. The provision of the Fifth Constitutional Amendment was present in all of them. Magna Carta, since its origin in the 1934 Constitution. The changes in the constitutional texts that The provisions regarding the rule were specific, but there were debates regarding the modifications.

The Curitiba Charter, approved during the 1st National Meeting of Attorneys General Meeting of Justice and Presidents of Associations of the Public Prosecutor's Office, held on June 21, 1986, and forwarded to The National Constituent Assembly was discussing the proposal for the selection of the Fifth (a term used to describe the appointment of a member of parliament) through a shortlist of three candidates. drawn up by the respective class representative bodies, but the list indication was maintained. sextuple in the 1988 CF (Ribeiro, 2019).

Judge Diaulas Costa Ribeiro (2019) points out that there have been other attempts to modify the process of choosing the Fifth, whether by proposing the end of the prerogative of the courts of Filter the lists or, conversely, delete the six-part list, returning to the list indication. three options: directly by the courts, as was the case in previous Constitutions, or, finally, by appointment.



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Single-member constituencies made directly by professional associations to the Executive Branch. None of these

Proposals to modify the Fifth Amendment were successful.

The 1988 Federal Constitution, currently in force, was promulgated as the conclusion of the process of

The political opening establishes the Fifth Constitutional Amendment in its article 94, with the following wording:

Article 94. One-fifth of the seats on the Regional Federal Courts, the State Courts, and the Courts of the Federal District and Territories shall be composed of members of the Public Prosecutor's Office with more than ten years of service, and lawyers of recognized legal expertise and unblemished reputation, with more than ten years of effective professional activity, nominated in a list of six by the representative bodies of the respective classes. (Brazil, 1988)

The changes to the composition of the Fifth Constitutional Amendment brought about by the 1988 Constitution solidified

The broad participation of representative bodies in the selection process, supporting understanding.

The Fifth Amendment as a means of democratizing the Brazilian Judiciary.

Thus, Article 94 of the 1988 Constitution determined that the rule of the Fifth Constitutional Amendment would apply.

to the Regional Federal Courts, the Courts of the States and of the Federal District and Territories, being

the positions are filled by members of the Public Prosecutor's Office with more than ten years of experience, and by

Lawyers of renowned legal expertise and impeccable reputation, with more than ten years of effective practice.

of the profession. The constitutional text also establishes that these must be indicated in a list of six.

by the representative bodies of the respective classes (Brazil, 1988).

The Constitutional Fifth rule applies to the Regional Federal Courts (TRFs) and the State Courts of Justice.

and the Federal District and Territories, as per article 94 of the 1988 Constitution. Subsequently, the Courts were included.

Regional Labor Courts (TRTs), established in Constitutional Amendment No. 45/2004, as set forth in art.

Article 115, paragraphs I and II, of the 1988 Federal Constitution, and the Superior Labor Court (TST), established by Amendment

Constitutional Amendment No. 92/2016, which amended Article 111-A, paragraphs I and II, of the 1988 Federal Constitution. To the Courts

Superior Courts: Supreme Federal Court (STF), Superior Court of Justice (STJ), Superior Court

Military (STM) and Superior Electoral Court (TSE) and to the Regional Electoral Courts (TERs) not

The rule of the Fifth Constitutional Amendment applies (Rodrigues, 2017).

The selection process is initially carried out by the representative bodies,

the Superior Councils of the Public Prosecutor's Office and the Federal Councils and Sections of the Brazilian Bar Association

Brazil (OAB), which form a list of six candidates through an election and with criteria defined by

respective institutions. In a second phase, it is up to the Courts, after receiving the list.

A shortlist of six candidates will be formed, forming a list of three that will be sent to the President of the Republic or the Governor.

(State Courts). Finally, the Heads of the Executive Branch are responsible for choosing one.

of the names on the shortlist and the appointment of the magistrate by decree (Mendes; Branco, 2023).

Therefore, the criteria listed in the 1988 Constitution must ensure the understanding of the Fifth Amendment.

as a constitutional right of members of the *Public Prosecutor's Office* and the Brazilian Bar Association (OAB), considering that



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They confirm the importance of these institutions for the jurisdictional function of the State and for the administration of justice (art. 127 and art. 133, CF/88). Ribeiro (2019, np) assertively points out that Instead of building walls, the Citizen Constitution expects us to be the bridge. The judiciary It must be inclusive. Speeches of secession, *apartheid*, and intolerance no longer have a place in the world."

## 2.2 Current Jurisprudential Discussions on the Fifth Constitutional Amendment

The jurisprudence of the Supreme Federal Court (STF) does not accept any distinction between the magistrates of the Courts who come from the career of judges or from the Constitutional Fifth, because, as Moraes (2023) highlights that such hierarchization implies 'desonomy', thus, lawyers and members of When MPs are chosen to fill the vacancies of the Fifth in the Courts, they become magistrates with the same rights, duties, and incompatibilities.

Mendes and Branco (2023, p. 1698) discuss the unconstitutionality of refusal by Courts form lists of three candidates with some or all of the names indicated in the lists of six candidates. without proper justification and motivation for the decision, in this sense, they emphasize that "because it is a matter of In a complex administrative act, the requirement for justification is a condition for its possibility. "validity of the decision itself." Also, the decision of the Courts is purely unconstitutional. Replace the six-person list with a list compiled by the judicial body itself.

The Constitution grants class representation bodies the power to issue the first positive or negative judgment on the personal qualifications required by Article 94 for the formation of the six-person list. The Courts retain the power and duty to reduce the six candidates nominated by the Public Prosecutor's Office or the Bar Association to three, for the formation of the three-person list to be sent for final selection by the Head of the Executive Branch. In the event of non-compliance with the constitutional requirements of Article 94, the Court may refuse, with justification, to form the three-person list and, in this way, return the six-person list to the respective class body, which may then totally or partially remake the list or contest the return in court (MS No. 25,624/SP). (Mendes; Branco, 2023, pp. 1698-1699)

The Supreme Federal Court (STF) also declared unconstitutional a state law that, dealing with a matter already... established in Law No. 8.625/93, it determined the implementation of a new stage in the selection process. Prior to the CSMP drawing up the six-person list, this step would consist of forming a list. A broader preliminary vote by all active members of the Public Prosecutor's Office, based on the argument that to democratize the process. However, in this ruling, the Supreme Federal Court understood, by majority vote, that this choice A preliminary assessment would remove the initial value judgment from the CSMP, which is the constitutionally competent body. shifting it to an earlier moment (Mendes; Branco, 2023, p. 1699).

In this case, through the vote of the reporting judge Ricardo Lewandowski, the Supreme Federal Court's cognizance The problem was that the rule imposed by state law on the process of choosing the Fifth went beyond the limits. as set forth in the 1988 Constitution and, furthermore, since it is an institutional matter, it could only be regulated by National Organic Law of the Public Prosecutor's Office (LONMP). The reporting minister concluded that "with the



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Under the pretext of democratizing the process, the improper creation of a ten-person list limited the allocation.

from the Superior Council of the local Public Prosecutor's Office, significantly reducing the universe of eligible members by he." (Supreme Federal Court, 2022).

In another very important judgment (ADI-EI No. 1,289/1993), when analyzing the scenario in that there was a temporary lack of members of the *Public Prosecutor's Office* who met the requirement constitutional requirement of seniority (more than ten years of service) over the remaining candidates; others could compete. Regarding the vacancies for the Fifth in the Regional Labor Court, the Supreme Federal Court (STF) established a favorable understanding for such possibility, considering the balancing of constitutional principles of plural composition of judicial bodies, political pluralism and "respect for freedom of choice on the part of the Court and from the Executive Branch itself."

According to Mendes and Branco (2023, p. 1700), the understanding established by the STF It approached the integrity of the constitutional decision, seeking to respect the will expressed in Magna Carta, and through this decision:

[...] manages to realize the principles in eventual dialectical tension without compromising fundamental aspects of the complex constitutional decision, that is, it respects the constitutional fifth and the clause of the sextuple list, which, rather than revealing a cabalistic number, contains a definition in favor of the relative freedom of choice on the part of the Court and the Executive Branch.

Regarding the process of choosing the Fifth within the OAB (Brazilian Bar Association), a recent Supreme Court decision... The Federal Court (ADI 6.810) declared the constitutionality of the entity's rule that imposes on lawyers interested in competing for the positions allocated under the Constitutional Fifth requirement of Proof of at least five years of registration with the regional branch within the jurisdiction of Court, in accordance with Provision 102/04 of the Federal Council of the OAB (Leite, 2025).

The Supreme Federal Court (STF) had already discussed the matter previously in a different manner, in the judgment of... precautionary measure in ADI 759, understanding the unconstitutionality of the addition of requirements. not foreseen in article 94, demonstrating that this is not a settled issue. In the dissenting decision (ADI 6.810) determined that the criterion of adherence to the State or region should not be interpreted as peremptory, and may be disregarded in cases where it is objectively proven that absolute impossibility of filling the position, such as the total or partial lack of candidates. eligible to compete for the position (Leite, 2025).

After briefly presenting the origin of the Fifth Constitutional Amendment in the legal system Brazilian law, its provisions in the 1988 Federal Constitution, and the understandings consolidated by the Supreme Federal Court. which involve the constitutional rule, the fundamental principles of which will be analyzed in the next section. Fifth, based on the understanding of principles as legal norms that support and aggregate the national legal system, to understand how its fundamental principles support the State. Democratic Rule of Law.





### 3. The Fifth Constitutional Amendment and its Principled Basis

#### 3.1 Principles as Legal Norms: Doctrinal Notes

Legal principles function as legal norms in a broad sense. Although formulated in concise statements, they express scientific concepts and fundamental premises that They underpin and form part of the national legal system. Legal principles constitute how essential guidelines, which, on the one hand, emerge from the legal system itself and, on the other hand, exert a feedback influence on him (Dias, 2022).

Acting as the structural foundations of the system, the principles are simultaneously derived from it and guiding its application. In addition, Dias (2022) points out that they should be in accordance with the rules and other principles expressly provided for in the legal system. current.

The 1988 Brazilian Constitution (CF/88) clearly recognized principles as imperative legal norms. establishing rights and obligations, as well as legal rules. According to Happke (2006), The Magna Carta, promulgated in 1988, consolidated principles as sources of law, understood... As binding legal norms, in the post-positivist context, they provide a principled basis that is applied to various fields of Brazilian law.

Its principled dimension is manifested, first and foremost, in Title I, when dealing with principles that underpin the Federative Republic of Brazil, including the Democratic State of Law among fundamental principles. According to Dias (2022), this configuration represents, According to German doctrine, a democratic legitimation of the rule of law and, from the perspective of Italian doctrine, a constitutional democracy.

This intertwining of the principles of the rule of law and the democratic state reveals a constitutional system that prioritizes democracy — that is, political power emanating from and legitimized by the people—, as well as the limitation of state power through legal norms (Dias, 2022).

The 1988 Constitution expressly uses the term "principles" in several of its provisions. norms, scattered throughout the constitutional text. They are listed, for example, in article 4, or They receive specific names, such as the principles governing public administration (art. 37). and the principle of motivation (items IX and X of article 93), which requires the justification of decisions. jurisdictional. In addition to these, articles 125, 127 (§ 1), 170 and 226 (§ 7) also stand out (Dias, 2022).



## 3.2 The Constitutional Principles Applicable to the Fifth Constitutional Amendment

### 3.2.1 On the Plural Composition of Judicial Bodies

Brazilian legal doctrine frequently asserts that the rule of the Fifth Constitutional Amendment was... created with the aim of promoting political and technical pluralism or the plural composition of Courts, which would no longer be composed solely of career judges, but would include... representatives of other legal classes who would bring varied perspectives on Justice (Miranda, [sd]).

Regarding the guarantee of the principle of plural composition of judicial bodies, Almada (2024, np) emphasizes that the entry of career professionals from these institutions imprints on us. National courts bring diverse knowledge and experience to the practice of the judiciary, which contributes to balance decisions, "strengthening the relevance of the Judiciary and ensuring society "fairer decisions."

The 1988 Constitution maintained the principle of plural composition of judicial bodies, even in cases... not covered by the Constitutional Fifth rule, for members of the legal profession and the Public Prosecutor's Office. Public (Mendes; Branco, 2023). The 1988 Constitution designated the representative bodies of these classes to responsibility in forming the lists of six candidates that are sent to the Courts, which They are summarized in a shortlist of three candidates, which is then forwarded to the Executive Branch for final selection.

To determine the number of reserved seats, when the number of occupied seats is... If the fraction in the Court is not a multiple of five, the understanding is that the fraction should be rounded up to the nearest whole number. The highest integer. If an odd number is obtained, one of the vacancies will be filled alternately. by members of the legal profession and the Public Prosecutor's Office, successively, in accordance with article 100, § 2nd, of the Organic Law of the National Judiciary (LOMAN) (Mendes; Branco, 2023).

Therefore, pluralism, guaranteed by the Constitutional Fifth rule, corroborates with the Democratic Rule of Law (Article 1 of the 1988 Constitution), therefore, expands social representation in judicial decisions, avoiding closed corporatism and strengthening democratic legitimacy. of the Judiciary. The diversity of perspectives enriches the judgment of complex cases. promoting decisions more aligned with social reality, a reflection of the Democratic Rule of Law. material (not just formal).

### 3.2.2 Justification of Judicial Decisions

The principle of providing reasoned justification for judicial decisions is set forth in Article 93, item IX, of the... CF/88, determining that:

[...] all judgments of the organs of the Judiciary Power shall be public, and **all decisions shall be reasoned**, under penalty of nullity, and the law may limit attendance at certain acts to the parties themselves and their lawyers, or only to the latter, in cases where the preservation of the right to privacy of the interested party in secrecy does not prejudice the public interest in information; (Brazil, 1988, emphasis ad





The national legal system has embraced the principle that establishes the motivation of  
In this sense, judicial decisions require judges to present the factual and legal reasons that...  
They based their decisions on a rationale, justifying the measures adopted in contrast to other possible measures.  
The motivation behind decisions is also provided for in other sub-constitutional norms, such as...  
LONMP, in its article 15, § 1. This legal principle directly interacts with the principles of  
Publicity and transparency, legitimacy and legal certainty of judicial acts.

Mendes and Branco (2023, p. 1698) discuss the unconstitutionality of refusal by  
Courts form lists of three candidates with some or all of the names indicated in the lists of six candidates.  
without proper justification and motivation for the decision, in this sense, they emphasize that "because it is a matter of  
In a complex administrative act, the requirement for justification is a condition for its possibility.  
"validity of the decision itself."

The authors also understand that the appointment, which is the responsibility of the Executive Branch, "is an act  
complex, which is only completed with a decree from the President of the Republic, or the Governor,  
who effectively appoints the magistrate" (Mendes; Branco, 2023, p. 1697).

### 3.2.3 Impersonality, Morality, Publicity and Efficiency

The constitutional principles of Legality, Impersonality, Morality, Publicity and  
Efficiency governs the actions of the Public Administration in all three spheres of power and in  
direct and indirect public administration, with the objective of serving the public interest (principle of  
supremacy of the public interest) and were condensed into the acronym LIMPE (Pinto, 2008).

The *opening paragraph* of Article 37 of the 1988 Federal Constitution expressly establishes that:

The direct and indirect public administration of any of the branches of government of  
the Union, the States, the Federal District and the Municipalities shall comply with  
the principles of legality, **impartiality, morality, publicity and efficiency** [...] (BRAZIL, 1988, emphasis added).

It should be noted that Article 37 is not exhaustive, meaning that the list of constitutional principles that are...  
The application of Administrative Law does not end with the aforementioned provision, so that other principles also apply.  
Constitutional principles also guide administrative action, even if not explicitly stated in the provision.  
(Mazza, 2023).

#### 3.2.3.1 Principle of impersonality

It was the 1988 constitutional text that innovatively established, using this  
In the Brazilian legal system, the principle of impersonality is defined as a principle.  
The basic principle of Public Administration, enshrined in Article 37 (Di Pietro, 2023). The principle of  
Impartiality has become one of the pillars of the democratic rule of law and should be discussed.



starting from its complexity and its relationship with other principles, as can be seen when analyzing the contemporary doctrine of Administrative Law (Carvalho, 2014).

In practice, impartiality requires that state action be neutral and objective, prohibiting privileges or personal persecutions. Guasque (1999) highlights that the National Organic Law of The Public Prosecutor's Office (LONMP) establishes the seniority and merit criteria for promotion and removal of its members, in accordance with the precepts of the 1988 Federal Constitution, among which It establishes the principle of original provision.

These objective criteria take into account seniority in the career, in the assessment of transfers and Merit-based promotions, as the main regulator. Subjective criteria, such as "conduct, Diligence and dedication in the performance of duties, promptness and confidence in their actions. procedural" (article 61, item II, of Law 8.625/93), must be regulated, "so that their analysis do not shy away from determining merit based on objective criteria, such as the law dictates." (Guasque, 1999, p. 77)

The monitoring of compliance with objective criteria is governed by the Constitution, as per article... 37 imposes the principles of LIMPE, as a general rule, on the direct and indirect Public Administration or foundational and to all Powers (Guasque, 1999). The author assesses that constitutional norms They provide transparency in administrative decisions, including the Public Prosecutor's Office, which, by Through its Organic Law, it aligns with the basic principles governing Public Administration. within the context of the Democratic Rule of Law. Therefore, it is analyzed that the actions of the OAB and the *The decisions of the Public Prosecutor's Office* must be linked to constitutional norms, encompassing administrative principles. because these enable their members to carry out their work by prioritizing the defense of the interests of the community. public (Guasque, 1999).

Under current legislation, the formation of six-person and three-person lists must observe the following criteria. established in the Constitution in accordance with the fundamental principles of Public Administration, However, given that these criteria are objective, the prevalence of the criteria and their impacts on the... The actions of both classes are guided by the principle of impartiality, in its senses of equality and impartiality. The relationship between guaranteeing the right to the Fifth (a specific portion of the Brazilian parliamentary allowance) and the principle of impartiality must... to prioritize prudent analysis and the pursuit of solutions that value equality and justice throughout the process.

In a recent regulation, the special body of the Court of Justice of Rio de Janeiro approved Resolution 07/2025, modifying article 176 of the Court's Internal Regulations. Castro (2025, np) He explains that, following the change, "they will no longer be able to compete for the positions allocated to the Constitutional Fifth." the lawyers who, in the three years prior to the opening of the vacancy, have been part of the composition of "Regional Electoral Court." The author of the article points out that this restriction is based on the principles constitutional principles of impartiality and morality, and that "the measure reinforces republican ethics and



democratic, aligning itself with the constitutional values that should guide the entire justice system"

(Castro, 2025, np).

### 3.2.3.2 Principle of Morality

According to Mazza (2023), the principle of administrative morality requires that agents  
Public officials must act with probity, ethics, and loyalty to public purposes. It's not just about...  
common morality, but with a legal-administrative ethic, linked to the collective interest.

This principle is intrinsically linked to Article 37, § 4, of the 1988 Brazilian Constitution, which addresses administrative misconduct.  
administrative decisions constitute a violation of the duties of honesty and impartiality.  
The formation of lists of six and three candidates for nominations must observe impartial criteria and  
transparent, avoiding favoritism or misuse of funds.

### 3.2.3.3 Principle of publicity

According to Mazza (2023), advertising is essential for the democratic control of  
Public Administration. In addition to ensuring transparency, this principle allows society to...  
to oversee state actions, as provided for in Article 5, XXXIII, of the Federal Constitution of 1988 (right to information).

The Organic Law of the Public Prosecutor's Office, Law 8.625/93, art. 15, § 1, requires justification for...  
decisions and publicity, ensuring that the criteria adopted are accessible and rational. This  
This requirement aligns with the democratic rule of law, as it prevents shady dealings and strengthens the...  
institutional legitimacy (Guasque, 1999).

The principle of publicity (article 37, caput, CF/88) assumes a central role in the process of  
selection of members of the Fifth Constitutional Quota, acting as a mechanism of democratic control.  
against arbitrary actions. In practice, this principle requires that the entire procedure, from the summons onwards, be conducted fairly.  
Until final approval, the process must be conducted with absolute transparency, prioritizing broad dissemination of information.  
of the calls for applications and selection criteria, unrestricted access to the resumes and legal publications of the candidates,  
Transparency in electoral processes and justified public disclosure of decisions made by professional councils.

### 3.2.3.4 Principle of efficiency

The principle of efficiency was added to the list of principles provided for in Article 37 of the 1988 Brazilian Constitution.  
through Constitutional Amendment No. 19/1998. This arises as a corollary of the Democratic Rule of Law, demanding  
that the Judiciary act with procedural speed, technical quality, and effectiveness in its service.  
jurisdictional.

In the context of the Fifth Constitutional Amendment, this principle is materialized through a process.  
A rigorous selection process that ensures the choice of legal professionals with proven technical excellence and experience.  
relevant forensic expertise, capable of contributing to the optimization of court work. The inclusion of

lawyers and members of the Public Prosecutor's Office in the Courts, when guided by objective criteria and transparent, it enriches the jurisdictional debate with practical views of the law, mitigating the risk of a jurisprudence that is excessively theoretical or detached from social demands (Didier, 2022).

Studies show that courts with mixed composition (career judges and Members of the Fifth (group) tend to exhibit higher productivity rates and more efficient decisions. aligned with factual reality, precisely because they combine judicial technique with knowledge. diversified forensic (CNJ, 2023).

Furthermore, the efficiency of the Fifth Constitutional Amendment is related to the quality of selection process. The absence of objective parameters and pre-defined technical criteria in Several stages of the process can generate legal uncertainty and even corporate capture by interest groups.

The application of the principles of impartiality, morality, publicity, and efficiency ensures that the Public Administration acts with equality, ethics, transparency, and in accordance with the State. Democratic Rule of Law. In the specific case of the Fifth Constitutional Amendment, these principles require that Appointments and promotions should adhere to objective criteria, avoiding distortions and ensuring effectiveness. of public interest.

#### 3.2.4 Equality

The principle of equality (article 5, *caput*, CF/88) guarantees that everyone should be treated equally. before the law, prohibiting arbitrary discrimination. Regarding the Fifth Constitutional Amendment, this principle... establishes that the selection of lawyers and members of the Public Prosecutor's Office to serve on the Courts satisfy objective and transparent criteria, avoiding privileges or personal persecution. or politics.

In this case, substantive equality is not limited to mere legal formality, but demands... Equal opportunities for candidates, ensuring that the selection takes merit into account. professional and technical qualification, in accordance with the principles of impartiality and administrative morality (MAZZA, 2023).

Furthermore, equality in the Fifth Constitutional Amendment should not be confused with uniformity, because recognizes the functional differences between career judges and those appointed by the Brazilian Bar Association and the [court/organization]. Public Prosecutor's Office. However, this distinction cannot lead to unequal treatment or what Moraes (2023) calls it 'desonomy' within the Courts.

The LOMAN (Organic Law of the Judiciary) and the internal regulations of the Courts must, therefore, balance the... specific career paths without creating privileges or marginalization, ensuring that everyone... judges perform their duties with equal authority and legitimacy. This harmonization is fundamental to preserving the credibility of the Judiciary and ensuring that recruitment by



The Fifth Constitutional Amendment should fulfill its democratizing role.

#### 4. FINAL CONSIDERATIONS

The rule of the Fifth Constitutional Amendment, established since the 1934 Constitution and maintained in the Charter. The 1988 Constitution represents an essential mechanism for the democratization of the Judiciary. to reserve one-fifth of the seats in the courts for lawyers and members of the Public Prosecutor's Office, the The device promotes a plurality of perspectives, enriching judicial decisions and strengthening... The democratic legitimacy of the Brazilian Judiciary. Historical review revealed that, despite the Despite modifications throughout the constitutions, the core of the rule remained unchanged, highlighting... as an instrument for inclusion and diversification within the judiciary.

The fundamental principles of the Fifth Constitutional Amendment are based on principles. fundamental constitutional principles, such as the plural composition of judicial bodies, the justification of decisions and the principles of impartiality, morality, transparency, efficiency, and equality. These The principles ensure that the application of the rule occurs in a transparent, ethical, and equitable manner, avoiding distortions and prioritizing the public interest. The jurisprudence of the Supreme Federal Court reinforces this interpretation. demanding adequate justification in court decisions and rejecting practices that distort the selection process, such as the improper replacement of the six-person lists.

The discussion regarding the principles applicable to the Fifth Constitutional Amendment highlighted its relationship. intrinsic to the Democratic Rule of Law. Impartiality and equality, for example, They ensure that the selection of candidates follows objective criteria, while advertising strengthens Democratic control over the process. Efficiency, in turn, requires that the rule be... implemented in order to optimize the work of the Courts, combining technical expertise and Practical experience. When harmonized, these principles contribute to a more... representative and aligned with social demands.

Finally, it is concluded that the Fifth Constitutional Amendment, when applied in accordance with its Based on fundamental principles, it transcends its formal function and assumes a strategic role in consolidation. of the Democratic Rule of Law. By fostering diversity and transparency in the Judiciary, the rule It not only enhances the legitimacy of judicial decisions, but also reinforces public confidence. society within the justice system, ensuring that it acts as an instrument for achieving its goals. Fundamental rights, rather than a mere bureaucratic appendage. Their effectiveness therefore depends on... strict observance of the constitutional principles that underpin it, ensuring that it fulfills its purpose. A democratizing and pluralistic purpose.

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