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The importance of Constitutional Remedies in the Brazilian legal system

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SUMMARY
The present study aims to address constitutional remedies and their forms of fundamental guarantees, which are ensured by the original constituent legislator. Showing the importance of these remedies for the Brazilian legal system. The method used to develop this research was a bibliographic review. Finally, it is possible to verify the possibility of correct filing in the 1988 federal constitution and in ordinary legislation. Providing individuals and citizens with the exercise of their guaranteed rights.
Key words: Federal Constitution, Legislation, Remedies.

ABSTRACT
This study aims to address constitutional remedies and their forms of fundamental guarantees, which are ensured by the original constituent legislator. Showing the importance of these remedies for the Brazilian legal system. The method used for the development of this research was a literature review.Finally, it is possible to verify in the 1988 Federal Constitution and in the originallegislation, the possibility of correct entry. Providing individuals and citizens with the exercise of their assured right.
Keywords: Federal Constitution, Legislator, Remedies.

1. INTRODUCTION

Broadly speaking, the types of constitutional remedies point directly to their legal basis in the Federal Constitution of 1988, which aims to considersuchtypes of fundamental guaranteesassuredby the original constituent legislator. The legal nature of these constitutional remedies that are part of the national legal system are, in a specific way, pointing to the essence of each of thesemedicines, presenting its historical origins welcomeof previous constitutions.

In addition to having a legal basis in the federal constitution of 1988, some types of constitutional remedies are based on the infra-constitutional legislation itself, including among these legislations, one prior to the one in force, but received by it, thus being in accordance with the current one, that is, the current one.

In order to move the judiciary and have effectiveness in what is claimed regarding various types of constitutional remedies, it is necessary to know the appropriate way to implement each type, thus presenting the path that should be used, it is necessary to first obtain these types of administrative denial so that success can then be obtained in court.

Taking the theme into account, this research aims to verify constitutional remedies and identify their importance in the Brazilian judicial system.

The method used to develop the research was a qualitative approach, based on a bibliographic study and legal and theoretical positivism method, bringing asanalysisdoctrine, constitutional legislation, jurisprudence and infraconstitutionalcorrelated.

2. KINDS OF CONSTITUTIONAL REMEDIES

Constitutional remedies ensure legal importance in the Brazilian legal system, in some cases guaranteeing, after their filing, the exercise of movement by the Judiciary, tocease impartialityof the State aiming to obtain the right or even ensure it.

Remedies are fundamental guarantees that individuals and citizens are guaranteed by the constituent legislator originating in the text of the 1998 CF, to ensure the minimum conditions for coexistence in society, imposing on the state and people primary limits established in the current Constitution.

In the 1988 CF, the following types of constitutional remedies are described:

The) Rightto obtainand petition for the certificate provided for in Article 5, Item XXXIV;
B) Habeas corpus provided for in Article 5, Item. LXVIII;
w) Writ of mandamus provided for in Article 5, Item. LXIX;
d) Collective writ of mandamus provided for in Article 5, Item. LXX;
It is) Writ of injunction provided for in Article 5, Item. LXXI;
f) Habeas date provided for in Article 5, Item. LXXII;
g) Popular action provided for in Article 5, Item. LXXIII.

Therefore, it is necessary to expose all types of constitutional remedies present in the Constitution, since they are provided for in Article 5, which deals with constitutional guarantees and rights, guaranteed by the legislator, constituting one of the essential clauses expressed in the 1988 CF, which establishes the inadmissibility of the reduction of rights, allowing the amplitude of the configuration penalty in prohibiting retrogression.

3 THE LEGAL NATURE OF THE CONSTITUTIONAL REMEDIES PRESENT IN THE ORDER LEGAL

Constitutional remedies have enormous relevance for the national legal system. There are countless species, and it is necessary to present their legal nature:

> José Afonso da Silva assures that the right to petition has its origins remote. It was born in England during the Middle Ages that resulted from the English revolutions of 1628, especially, but it had already found its way into the Magna Carta of 1215. It was consolidated with the revolution of 1689 with the declaration of rights (bill of rights). Consisting of the simple right of the Grand Council, and then Parliament, to ask the king to sanction laws (SILVA, 2014, p.445).

The right to petition is informative in nature, and ensures the individual's indirect participation in the supervision of public affairs, as the right in question is the defense of rights in situations where abusiveness or illegality is presented through public authorities.

The right to petition is the only one of the constitutional remedies provided for from the Empire Constitution of 1824 to the Federal Constitution of 1988 in the Brazilian legal system (BRASIL, 1824).

Habeas corpus isassured fromthe constitution of 1891, it was only not recognized in the Constitution of the Empire of 1824 (BRASIL, 1891).

> The origin of habeas corpus is in the Magna Charta Libertatum, granted in England, on the fields of Runnymede, in 1215, by King John, son of Henry II, successor of Richard the Lionheart, who would later become the legendary John Without Earth. It was in Chapter XXIX of this Magna Charta Libertatum that, across the ages, the other achievements of the English people were put into practice for the practical, immediate and utilitarian guarantee of physical freedom (BULOS, 2014 p. 9).

The meaning of habeas corpus is striking and its purpose is to take the body and submit the patient to the judge so that the coercion can be examined. And if necessary, release him, therefore the 1988 federal constitution establishes that habeas corpus be granted whenever a person feels threatened or suffers violence or coercion in their freedom to move, due to abuse of power or illegality.

Habeas corpus is divided into two types that can be preventive to avoid a violation of freedom, in which case the magistrate must issue a safe conduct, preventing arrest from occurring for the alleged reason. The other is repressive, which aims to end the restricted right to Freedom to come and go and the judge in these cases must issue a release permit if the patient is in prison or issue a counter-warrant if an arrest warrant has been issued against the patient.

The writ of mandamus is a Brazilian creation, present since the Federal Constitution of 1934, with the exception of the Federal Constitution of 1937, it is a legal means to be used in a subsidiary manner, and must be filed when habeas corpus or habeas data do not fit (BRASIL, 1934 ; BRAZIL, 1937). It is also a constitutional remedy, which

aims to protect a liquid and certain right, thus admitting pre-constituted evidence, that is, there is no need to create evidence to ensure the right, or a writ of mandamus must be filed with already concrete evidence, to guarantee security legal, and establish the right and liquid law.

> By its own constitutional definition, the writ of mandamus has broad, comprehensive use of any and all subjective public rights without specific protection, as long as it is possible to characterize the liquidity and certainty of the right, materialized in the unquestionability of its existence, in the precise definition of its extension and fitness to exercise at the time of filing (MENDES, 2015, p 441).

The CF of 88, ensures two possible hypotheses for the filing of the writ of mandamus, it can be collective or individual, and its objective is expressed only in the text of the Law guaranteeing the right to file the collective type by political partyrepresentedin the National Congress trade union organization, Association legally constituted and in operation for at least one year, class entity, in defense of the rights of its associates or members.

The original constituent legislator provides for habeas data in the text of the 1988 CF, using the 1976 Portuguese charter as inspiration:

> Habeas data has a mixed or ambivalent legal nature. At the same time that it presents the face of an authentic mandatory action (granting the petitioner the clear and certain right to obtain information), it achieves the constitutive nature (allows the rectification of data). Due to its legal nature, habeas data qualifies as a constitutional action, with civil content intended to defend: (1) the right to obtain information relating to the petitioner, entered in public or private offices; (2) the right to recognize those responsible for the stored records; (3) the right to contest untrue data and eliminate it, taking appropriate legal measures; and (4) the right to update outdated data (BULOS, 2014, p. 794).

It is a civil action that is made available to legal entities or individuals, providing access, rectifying or making notes on information related to their person contained in government or public records or databases, thus being an action of a very personal character

About thewarrantof injunction, its antecedents are English from the 14th century, ensuring the judgment of Equity in cases where there are no legal norms for the law to be regulated. Owarrantof injunction, like habeas data, was a creation of the 1988 federal constitution and ensures that theWarrantof injunction due to its legal nature of a civil action, with a fundamentally mandatory character and having as its fulcrum, a specific procedure aimed at combating omissions by the constituent legislator derived in a manner in light of the constitutional text in relation to the rights guaranteed.

And then, the purpose of the injunction order is to ensure the exercise of rights in the face of the non-regulation of a right that is provided for in the State Constitution or the Federal Constitution, not regulated by the competent legislative power, “In addition to the systems and processes aimed at defense of individual positions, judicial protection can also be achieved through the use of instruments to defend the general interest, with civil action and popular civil action” (MENDES, 2015, p. 451).

Popular action that occurs through a historical connection with Roman Law, protecting the rights of the people. It is provided for in the constitution of the empire of 1824 and its instrument is popular criminal action, as it does not constitute an institute of political participation, and is not accepted by the constitution of 1891, appearing only once more in the respective constitutions of 1934, 1937, 1967 and in the Federal Constitution of 1988.

Unlike other types of medicineconstitutional, the actionpopular guarantees citizens only the ability to use it before the Judiciary, as a way of nullifying acts harmful to public property or entity with state participation, administrative morality, the environment and historical cultural heritage.

Therefore, popular action is an instrument of political participation with consequences for popular sovereignty, certifying the citizen as a partlitigantIt islegitimatein accordance with the parameters set out in the 1988 federal constitution.

4 INFRACONSTITUTIONAL AND CONSTITUTIONAL LEGISLATION: ABOUT THE KINDS OF CONSTITUTIONAL REMEDIES

On the afternoon of October 5, 1988, Ulysses Guimarães, president of the National Constituent Assembly, promulgated the 1988 Federal Constitution, delivering his speech to the National Congress, stating that the constitution would certainly not be perfect. Also stating that the constitution cannot be discovered or challenged, as the individual is considered

traitor to the Fatherland allowing reform in relation to aspects of disagreement and divergences.

The constituent legislator derived from the reform is the only and main competent to change the constitutional text, he is also given the competence to approve and discuss infra-constitutional legislation, always using the text of the Constitution as a parameter.

Therefore, the 1988 federal constitution ensures individual guarantees and rights that are established in the clauses stonenot allowing them to be suspended under any circumstances.

> The Constitution includes among individual guarantees the right to petition, habeas corpus, the writ of mandamus, the writ of injunction, habeas data, popular action, which have been given, in doctrine and jurisprudence, the name of remedies of Constitutional Law, or constitutional remedies, in the sense of means made available to individuals and citizens to provoke the intervention of the competent authorities, aiming to remedy, correct, illegality and abuse of power to the detriment of individual rights and interests. Some of these remedies turn out to be ways of provoking jurisdictional activity, and, therefore, have the nature of action: they are constitutional actions (SILVA, 2014, p. 445).

The art. 5th of the Federal Constitution of 1988, provides for the types of constitutional remedies, ensuring that everyone is equal before the law, without any type of distinction, guaranteeing Brazilians and foreigners residing in the country the inviolability of the right to freedom,life,security, equality, property, in the following terms:

a) Right to petition and obtain a certificate provided for inArticle5th, item. XXXIV; XXXIV - everyone is guaranteed, regardless of payment of fees: a) the right to petition Public Authorities in defense of rights or against illegality or abuse of power; b) obtaining certificates from public offices, to defend rights and clarify situations of personal interest.

It is a right that must be made available to everyone, with the specific objective of obtaining from public authorities compliance with the principles of morality, legality, efficiency, and must have as a parameter the law to bind their acts and the convenience and opportunity for their discretionary acts, needing to comply with the ethical precepts of public administration, providing a quality service to society, guaranteeing the efficiency of public activity when informed or not about illegality or abuse of power, as “The right to petition qualifies as a prerogative of constitutional extraction, subjective Public Law of an essentially democratic nature, guaranteed to most people by the Political Charter” (BULOS, 2014, p. 733).

b) Habeas corpus provided for inArticle5th, item. LXVIII:

> LXVIII - habeas corpus will be granted whenever someone suffers or feels threatened with suffering violence or coercion in their freedom of movement, due to illegality or abuse of power

The 1988 CF, considered as a citizen, has as one of its main objectives to establish the freedom to come and go, establishing legal parameters to guarantee this right, stipulating hypotheses to restrict the individual's movement and ensure the safety of society, determining compliance with the legality, “Habeas corpus is the remedy to be used against illegality or abuse of power regarding the right of movement, which encompasses the individual’s right to come, come and stay” (PAULO; ALEXANDRINO, 2017. p. 201).

c) Writ of mandamus provided for in art. 5th, inc. LXIX;

> LXIX - a writ of mandamus will be granted to protect a clear and certain right, not supported by habeas corpus or habeas data, when the person responsible for the illegality or abuse of power is a public authority or an agent of a legal entity exercising public authority duties . The liquid and certain Law is the one that is proven, documented, right in the initial petition. A search of the STF's jurisprudence shows that the terminology is linked to pre-constituted evidence, to facts documented in the exordial. It doesn’t matter if the legal issue is difficult, complex or intricate (BULOS, 2014, p. 757)

Article 5, inc. LXIX of the Federal Constitution of 1988 establishes the writ of mandamus, it may be filed by any citizen, with the aim of demonstrating judicial power, that is, it does not depend on legitimacy active to file via actionsjudicial.

d) Collective writ of mandamus provided for in Article 5, item LXX:

> LXX - the collective writ of mandamus can be filed by: a) political party with representation in the National Congress; b) trade union organization, class entity or association legally constituted and in operation for at least one year, in defense of the interests of its members or associates.

Leaving a little from the premise of very personal actions or the personality of actions where the will of the person and the author to reduce litigation in the judiciary prospers,warrantof collective security protests about the legitimacy of litigating, of its political representatives transversally or by those responsible and by their parties in the representation before the interests and in the Exercise of the collective of a category, “in the collective writ of mandamus,

the invoked interest belongs to a category, with the petitioner – political party, trade union organization, class entity or association – acting as a procedural substitute in the legal relationship" (PAULO; ALEXANDRINO, 2017, p. 215).

e) Writ of injunction provided for inArticle5th, item. LXXI;

> LXXI - a writ of injunction will be granted whenever the lack of a regulatory standard makes the exercise of constitutional rights and freedoms and the prerogatives inherent to nationality, sovereignty and citizenship unfeasible.

One of the institutes that guarantees the right constitutionally is the writ of injunction, which is ensured by the lack of competent legislative regulation in the regulation and institution of ordinary law or in the complement, if the constitutional text defines it, "It is an instrument of the constitutional process aimed at defending subjective rights in the face of omission by the legislator or other body entrusted with regulatory power" (MENDES; BRANCO, 2015 p. 449).

f) Habeas date provided for in Article 5, item. LXXII;

> LXXII - habeas data will be granted: a) to ensure knowledge of information relating to the person of the petitioner, contained in records or databases of governmental or public entities; b) for the rectification of data, when it is not preferred to do so through a confidential, judicial or administrative process.

Habeas data guarantees the judiciary the reduction of limits, determining the right when legal and convincing, of access to information obstructed by the State or by legal entities established by it, "Habeas data is the constitutional instrument made available to individuals or legal entities, Brazilian and foreign, so that they can request the Judiciary to exhibit or rectify of data contained in public or private records" (BULOS, 2014, p. 793).

g) Popular action provided for inArticle5th, item. LXXIII.

> LXXIII - any citizen is a legitimate party to propose popular action aimed at canceling an act harmful to public property or entity in which the State participates, to administrative morality, to the environment and to historical and cultural heritage, with the author remaining, unless proven bad -faith, exempt from legal costs and the burden of succumbing.
>
> It is a constitutional remedy by which any citizen is vested with legitimacy to exercise a power of an essentially political nature, and constitutes a direct manifestation of popular sovereignty embodied in art. 1st, sole paragraph, of the Constitution: all power emanates from the people, who exercise it through their elected representatives or directly. In this aspect, it is a political constitutional guarantee (SILVA, 2014, p. 466).

Therefore, popular action is one of the ways that citizens can use to take care of public affairs, as a kind of property inspectorpublic, fittingalso dependingofspecific case, move the judiciary to take all necessary measures within the law.

In addition to being part of the 1988 federal constitution, some types of constitutional remedies contain their own regulations that are guaranteed in various laws and. As in the case of habeas corpus, which has a legal provision in the code of criminal procedure created through a decree law and received by the constitution as an ordinary law, due to its original normative type not guaranteed in article 59. Habeas corpus is provided for in article 674 ,1 Chapter X and followingof this code, secures the medicine under analysis and its legal process.

The writ of mandamus is provided for in constitutional legislation and in infraconstitutional legislation in law 2016 of August 7, 2009, period, this law regulates the possibility of filing a petition inwarrantindividual and collective security.

Owarrantinjunction is an adequate constitutional means to consider oneself harmed by the omission of the legislator. pain in the elaboration of a regulatory norm that makes the exercise of money and constitutional freedoms unfeasible.

It's the constitutionfederal law of 1988, ensures thewarrantof injunction, being only individual. Already in law 13,300, of July 23, 2016.

The legislator ensures the possibility of 100 filing a collective injunction and discipline also in aforementioned law, the project and judgment ofwarrantscollective and individual disjunction

Thus, it is possible to verify that the CF of 1988, guarantees the injunction in its text and the specific law of the aforementioned remedy regulates the possibilities to file, which can be in a collective or individual manner, as long as in the collective form there are in the active pole the legitimized determined by law.

Habeas data, on the other hand, has a constitutional provision, however there is also a specific law in force that

regulates the right of access to information and discipline in the procedural rite during habeas data.

Law 9,507 of November 1997 defines the public character as databases and records containing information that is or can be transmitted to third parties, and is not for the exclusive use of the entity that produces or deposits the information.

And finally, there is popular action that aims to cancel an act harmful to public property or an entity that has state participation, the environmentto moralityadministrative and historical and cultural heritage. Popular action is constitutionally provided for and has a specific law, law 4717/1965, which regulates popular action, with relevant information that must beanalyzedwhen filing the action.

The law that regulates popular action dates back to 1965, but is in full force, approved by the federal constitution of 1988. Through this it is clear that not all constitutional remedies have a specific law, ensuringto which They have their own law for application in necessary cases where there is a confrontation between infra-constitutional norms and the applicability of the principle of specialty.

5 CONSTITUTIONAL REMEDIES AND THEIR APPROPRIATE WAY OF IMPETATION

Just like any other type of action that aims to move the judiciary, upholding rights and affirming them, it is necessary for the constitutional remedies that are part of the Brazilian legal system to know the appropriate route and the right time to enforce these guarantees. Through this, it would achieve effectiveness in the analysis of the law, ensuring the study of the matter and the judgment of the state-judge on what is requested in the actions, as without the principle of impartiality it is necessary for the state to be manifested in determined actions to take the appropriate measures in the process guaranteeing a legal process and procedural speed.

Among the constitutional remedies discussed, there is a type that has a non-jurisdictional character, the right to petition, where there is the power to guarantee everyone, legal entities and individuals, the right to petition the powers of the Republic to defend their rights and, requesting the appropriate measures that are necessary against Illegal acts or abuse of power.

Therefore, the right to petition must be exercised only in theviaadministrative, as its purpose is to keep the public authorities informed about what is happening, it is essential the presence of a lawyer to act as a defender in informing thecitizento public authorities.

On the other hand, the collective and individual writ of security,warrantIndividual and collective injunction and habeas corpus are actions that must be filed with the judiciary through an initial petition, to obtain the petitioner's right to be claimed. Regarding the collective writ of mandamus and collective injunction, it is necessary to comply with the legitimized legal parameters and, so that there are no terminations of the process, due to the lack of postulatory capacity of the legitimized person active in the litigation

No writ of mandamus, individual or collective, there is a need for a lawyer because unlike the right to petition, the remedies mentioned above must be filed through the courts, thus ensuring the presence of a lawyer to act in the process.

Habeas data also has the appropriate route to the judiciary, but it must be remembered that it is an action with a personal nature, different from the other actions mentioned. Therefore, the person who wants to obtain the information of the legitimized asset must not be allowed another person as holder of the action to obtain data for third parties

However, the jurisprudence of the STJ admits that people such as spouses, ascending descendants or siblings also have the legitimacy to actively participate in habeas data,

> SUMMARY: HABEAS DATA No. 147 - DF (2006/0224991-0) CONSTITUTIONAL. HABEAS DATA. WIDOW OF AIRLINESS MILITARY. ACCESS TO FUNCTIONAL DOCUMENTS. PASSIVE AND ACTIVE ILLEGALITY. OCCURRENCE. CHARACTERIZED ADMINISTRATION OMISSION. ORDER GRANTED (STJ, 2006).

Even if the petition is admitted by the descending spouse, brother or ascendant, the presence of a lawyer is necessary, activating the judicial power to collect information, depending on the preparation of an initial petition, with reports of points and rights to obtain from the Judiciary a determination of retain information determined by the State

Finally, popular action that aims to annul an act harmful to public property or entity that has the participation of the state, the environment, administrative morality and historical and cultural heritage. Also filed through the courts, but unlike other constitutional remedies and, to be configured as the active pole of this action requires being a citizen. As a result, the 1988 federal constitution gave citizens the legitimacy to file the action, requiring the author todemonstratetheir citizenship through their actions, such as the right to vote and be voted for.

Popular action, as well as other types of constitutional remedies, requires a lawyer to act on the case and must be filed with the first degree court, where the harmful act occurs or occurred.

One of the primary points that must be clarified is that popular action violates some rules of jurisdiction for judgment and certain coercive authorities assured by theCF1988, as the law itself statesdetermined the competence to judge the action in the first degree court.

It is possible to observe that all constitutional remedies, except the right of petition and habeas corpus, require lawyers or bodies to represent society in court, being authorized by the competent institutions to exercise the postulatory capacity to represent legitimate interests of legal entities or individuals. in court or outside among themselves or between states, there being a need to prepare an instrument determined by law to manifest The Judiciary, with the initial petition process, and depending on the case and the decision of the judicial authority, file a type of appeal in Second instance or even starting the dispute directly in the Superior Court, depends on the co-authoring authority.

6 THE KINDS OF CONSTITUTIONAL REMEDY AND THE HYPOTHESES THAT ENSURE ITS IMPETRATION

Just like any other type of action, constitutional remedies depend on some event or threat to occur, being supported and ensured that they are filed or notified to the competent public authority.

> Constitutional remedies are means made available to individuals and citizens to provoke the intervention of the competent authorities, aiming to correct illegality or abuse of power to the detriment of individual rights and interests. They are also called constitutional guarantees or constitutional actions (OLIVEIRA, 2017, p. 211)

However, there are some possibilities and hypotheses provided for in the law itself and in the 1988 federal constitution, and ensure the use of the appropriate remedy. For the right to petition, it is necessary that there is abuse of power or illegality. ality, and the interested party must seek the public authority competent to inform about its occurrence, so that the authority can take the necessary appropriate measures.

CONCLUSION

Constitutional remedies are extremely relevant in the Brazilian legal system as they are fundamental based on the 1988 federal constitution, and point out the fundamental rights and guarantees guaranteed by the original legislator.

Analysis of infraconstitutional and constitutional legislation shows that the right topetition, warrantinjunction, writ ofsecurity, Habeasdates, habeas corpus and popular action, there is no legal provision only in the constitution federal law of 1988, but it is also infraconstitutional norms.

Therefore, these remedies are a fundamental guaranteeassuredby the legislator, andhe hasa relevant role in the Brazilian legal design, depending only on an analysis of the circumstances that occurred and, to befiledThe appropriate species guaranteeing the guaranteed right.

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