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Administrative and financial autonomy of public legal representation: an analysis of PEC 17/2024
Administrative and financial autonomy of public legal counsel: an analysis of constitutional amendment bill 17/2024

Administrative and financial autonomy of public defense: analysis of PEC 17/2024

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ABSTRACT: This article analyzes, from a legal-constitutional perspective, Proposed Constitutional Amendment No. 17 of 2024, authored by Deputy Carlos Sampaio (PSD/SP), which aims to add Article 132-A to the Federal Constitution and amend the wording of Article 168, with the objective of ensuring administrative, technical, and budgetary autonomy to the State and Federal District Attorney's Offices and the Attorney General's Office of the Union and its affiliated bodies. The study examines the constitutional design of the essential functions of Justice, the asymmetrical position of Public Advocacy in relation to the Public Prosecutor's Office and the Public Defender's Office, the normative content of the proposal, the rationale for the admissibility opinion unanimously approved by the Committee on Constitution, Justice and Citizenship of the Chamber of Deputies on May 5, 2026, under the rapporteurship of Deputy Domingos Neto (PSD/CE), as well as the favorable doctrinal arguments and the limits of the proposal. It is concluded that Constitutional Amendment Proposal 17/2024 corrects a historical omission by the 1988 Constitution, strengthens the system of checks and balances, and contributes to administrative probity and the reduction of state litigation, without violating entrenched clauses.

KEYWORDS: Public Advocacy. Budgetary Autonomy. Constitutional Amendment Proposal 17/2024. Essential Functions of Justice. Attorney General's Office. State Attorney General's Offices.

ABSTRACT: *This article analyses, from a juridical-constitutional perspective, Constitutional Amendment Bill No. 17 of 2024, authored by Federal Deputy Carlos Sampaio (PSD/SP), which seeks to add Article 132-A to the Brazilian Federal Constitution and amend Article 168 to ensure administrative, technical and budgetary autonomy to the State and Federal District Attorney Offices and to the Office of the Federal Attorney General and its affiliated bodies. The study examines the constitutional design of the essential functions to Justice, the asymmetrical position of Public Legal Counsel in relation to the Public Prosecutor's Office and the Public Defender's Office, the normative content of the proposal, the rationale of the admissibility report unanimously approved by the Constitution and Justice Committee of the Chamber of Deputies on May 5, 2026, under the rapporteurship of Deputy Domingos Neto (PSD/CE), as well as the doctrinal arguments in favor of and limits to the proposal. It concludes that Bill 17/2024 corrects a historical omission of the 1988 constituent power, strengthens the system of checks and balances, and contributes to administrative probity and the reduction of state litigation, without violating constitutional entrenched clauses.*

KEYWORDS: *Public Legal Counsel. Budgetary autonomy. Constitutional Amendment Bill 17/2024. Essential functions of Justice. Federal Attorney General. State Attorney Offices.*

1 INTRODUCTION

The Constitution of the Federative Republic of Brazil of 1988, in establishing a State

A democratic rule of law founded on the separation and harmony between the branches of government, dedicated a chapter

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proper (Chapter IV of Title IV) to the so-called essential functions of Justice, allocating, alongside the

On one side are the Public Prosecutor's Office, the Public Attorney's Office, the Private Attorney's Office, and the Public Defender's Office.

This normative architecture, far from being a mere topological arrangement, reveals the deliberate

The intention of the original constituent assembly was to remove these institutions from the internal structure of the three

Classic powers, granting them autonomous and inherently extra-power treatment.

Notwithstanding this common institutional design, the evolution of constitutionalism

The Brazilian post-1988 era produced a progressive normative asymmetry between essential functions.

to the Justice system. While the Public Prosecutor's Office has received, since the original drafting of the Charter,

functional, administrative and financial autonomy (art. 127, §§ 2 and 3), and the Public Defender's Office

It obtained identical guarantees through Constitutional Amendments No. 45/2004, No. 74/2013 and No.

80/2014, the Public Advocacy — formed by the Attorney General's Office of the Union, its careers

linked to and by the Attorney General's Offices of the States and the Federal District — remained lacking in

equivalent institutional guarantees, particularly with regard to budgetary autonomy.

It is within this context that Constitutional Amendment Proposal No. 17 of 2024 is situated.

Presented on May 13, 2024 by Deputy Carlos Sampaio (PSD/SP) and signed by

178 parliamentarians. The proposal aims to add Article 132-A to the Federal Constitution and

modify the wording of article 168, expressly granting administrative, technical and autonomy

budgetary allocation to the Attorney General's Office, its affiliated bodies and the Public Prosecutor's Offices-

General guidelines for the States and the Federal District, within the limits established in the Guidelines Law.

Budgetary.

The proposal reached a significant institutional milestone on May 5, 2026, when the

The Constitution, Justice and Citizenship Committee (CCJ) of the Chamber of Deputies approved,

unanimously, the opinion in favor of the admissibility of the matter, from the rapporteur, Deputy

Domingos Neto (PSD/CE). The unanimity achieved in a traditionally pluralistic collegiate body.

This signals the maturation of the debate on the topic and anticipates the political and legal relevance of

measure.

This article aims to analyze, from a legal-constitutional perspective, the

normative content of Constitutional Amendment Proposal 17/2024, its compatibility with the material limits to power.

derivative constituent power, the doctrinal foundations that support it, and its implications.

institutional considerations regarding its eventual promulgation. To this end, the dogmatic method is employed.

analytical, with contributions from constitutional law literature and the jurisprudence of the Supreme Court.

Federal and official documents related to the legislative process.

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2. Public Advocacy in the 1988 Constitution: Position

INSTITUTIONAL AND CONSTITUTIONAL FUNCTION

Public Advocacy is based on articles 131 and 132 of the Federal Constitution. The first
This provision establishes the Attorney General's Office, which is responsible, directly or through...
affiliated bodies, the judicial and extrajudicial representation of the Union, as well as, in accordance with
Complementary law, the consulting and legal advisory activities of the Executive Branch.
The second provision stipulates that the Attorneys General of the States and the Federal District,
organized in a career structure, they exercise judicial representation and legal counsel for their
respective federated units.

The doctrine, following the concept developed by Diogo de Figueiredo Moreira Neto,
divides the practice of law in a broad sense into three functional categories: the practice of law for society,
assigned to the Public Prosecutor's Office; the legal representation of the underprivileged is entrusted to the Public Defender's Office.
Public; and state advocacy — also called public advocacy —, exercised by
The Attorney General's Office of the Union and the Attorney General's Offices of the States, the Federal District and the
Municipalities. The primary function of this category is not to be confused with defending governments.
temporarily invested in the Executive Branch, but rather with the protection of the public interest.
primary, identified with the legality of administrative acts and with the defense of public assets.
public.

As José Afonso da Silva observes, the topographical allocation of essential functions to
Justice in its own chapter, separate from the chapters referring to the three classic branches of government.
This denotes the constitutional purpose of granting them a differentiated status, with their own profile and
These are responsibilities not subordinate to any of the branches of government. They are, therefore, institutions.
permanent constitutional provisions, whose powers derive directly from the Charter, and
not a delegation from any of the branches of government.

Public Advocacy simultaneously performs a dual functional role.
On one hand, there is the contentious activity, consisting of the judicial and extrajudicial representation of the entities.
On the one hand, there is the public sector. On the other hand, there is the advisory, consulting, and legal guidance activity.
preventive, aimed at adjusting administrative action to the dictates of legality and morality.
and the Constitution. This second aspect is especially relevant for internal control of
legality of Public Administration, acting as a preliminary instance for filtering decisions.
and as a check on any potential illegality on the part of the manager.

Finally, it is important to highlight the unique character of the Attorney General's Office: in its capacity

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As a permanent constitutional institution, it acts in defense of the interests of the Union.
considered as a whole, encompassing, in its disputes with third parties, the three branches of government. Thus,
although it maintains institutional proximity to the Executive Branch — due to the activity
Despite its inherent advisory role, the Attorney General's Office (AGU) is not limited to being merely an auxiliary body to the head of the institution.
from the Executive branch, under penalty of subverting the constitutional notion of essentiality that was given to it.
checked.

3. NORMATIVE ASYMMETRY: AUTONOMY OF OTHER FUNCTIONS

Essential to Justice and the Silence Regarding Public Advocacy

A comparative analysis of the constitutional provisions that reveal the guarantees
The institutional roles assigned to functions essential to the justice system reveal a clear asymmetry.
regulations that disadvantage public legal counsel. This disparity, far from being a matter of choice.
While not a deliberate decision of the constituent assembly, it is rather the result of a process of progressive consolidation.
institutional benefit for the Public Prosecutor's Office and, subsequently, the Public Defender's Office,
However, this leaves Public Advocacy on the sidelines of structural reforms.

3.1 The Public Prosecutor's Office

The 1988 Constitution, from its original drafting, conferred upon the Public Prosecutor's Office...
a robust set of institutional guarantees. Article 127, § 2, ensures its functional autonomy.
and administrative, with the initiative to propose to the Legislative Branch the creation and elimination of positions
and auxiliary services. Paragraph 3 of the same provision grants the institution the prerogative of
prepare your budget proposal within the limits set in the Budget Guidelines Law.
Budgetary. These guarantees are complemented by Article 168 of the Constitution, which
ensures the monthly transfer of funds corresponding to the budget allocations, in the form
in twelfths, until the 20th of each month.

3.2 The Public Defender's Office

The Public Defender's Office, although provided for since the original drafting of the Constitution (art.
134), achieved its institutional guarantees in stages. Constitutional Amendment No. 45, of
In 2004, the so-called Judicial Reform granted functional and administrative autonomy to the...

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State Public Defender's Offices, as well as the initiative for their budget proposal.

Subsequently, Constitutional Amendment No. 74/2013 extended identical guarantees to the Federal Public Defender's Office and of the Federal District, and Constitutional Amendment No. 80/2014 promoted a broad reformulation of the legal regime of institution.

The Supreme Federal Court, in the judgment of ADPF 339, with Justice [name] as rapporteur. Luiz Fux established a binding precedent according to which it is a constitutional duty of the Judiciary... The Executive Branch will transfer the full amount, in installments of one-twelfth each month, by the 20th of each month. of the budgetary resources allocated to the other branches of government and constitutionally mandated bodies autonomous bodies, such as the Public Prosecutor's Office and the Public Defender's Office, as provided for in their respective regulations. Annual Budget Law. The Court clarified, on that occasion, that article 168 of the... The Constitution has a protective character, aimed at preventing the Executive from causing harm. of autonomous institutions, a state of financial subordination capable of compromising their political and legal independence.

3.3 Public Advocacy: The Constitutional Omission

Public Advocacy, in turn, is the only essential function of Justice that is lacking, in constitutional plan, of express budgetary autonomy. There is nothing, in articles 131 and 132 of the Constitution, a provision analogous to articles 127, §§ 2 and 3, and 134, § 2, that ensures to State legal institutions have the initiative to propose their budget, the autonomy administrative or the prerogative of transferring funds in twelfths as provided for in article 168. Consequently, the budget for the Attorney General's Office and the state prosecutor's offices remains structurally linked to the Executive Branch, subject to the vicissitudes of contingency measures, across-the-board cuts, and short-term political priorities.

This omission does not stem from any legal rationale that justifies treatment. unequal. On the contrary, the constitutional position of Public Advocacy, allocated in the same The chapter on other essential functions of Justice suggests equal treatment. The doctrine has... A historical resistance to full emancipation has been identified within the normative disparity. institutional role of state advocacy, based on the mistaken perception that its proximity Functioning within the Executive Branch would equate it to any ministerial body. Such an understanding, However, it empties the notion of essentiality that was conferred upon it and denies its nature. permanent constitutional principle of the institutions that make up the public legal profession.

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4. Constitutional Amendment Proposal 17/2024: Origin, Normative Content, and Justification

4.1 GENESIS AND PROCESSING

Constitutional Amendment Proposal No. 17 of 2024 was presented to the Chamber's Board.
of the Deputies on May 13, 2024, with Deputy Carlos as the first signatory.
Sampaio (PSD/SP), a well-known parliamentary ally of the Public Advocacy agenda. A
The proposal gathered 178 signatures from federal deputies, a number exceeding the minimum.
constitutional requirement of one-third of the Chamber's composition, as stipulated by Article 60, I, of the Constitution.
Federal. According to institutional records, the proposal was suggested to the parliamentarian by
leaders of the National Association of State and Federal District Attorneys
(ANAPE) and the Association of State Attorneys of São Paulo (APESP).

From a procedural standpoint, the PEC is being processed under a special procedure, pursuant to articles...
202 and 191, item I, of the Internal Regulations of the Chamber of Deputies, being subject to
consideration by the Plenary and having been distributed exclusively to the Constitution and
Justice and Citizenship for the admissibility judgment. Within the regulatory deadline, they were not
No amendments have been presented to the CCJ, nor are there any attached proposals. On May 5th.
In 2026, the CCJ unanimously approved the opinion on admissibility, under the rapporteurship of
Deputy Domingos Neto (PSD/CE), paving the way for the formation of the special committee.
in charge of the merits analysis.

4.2 NORMATIVE CONTENT

The text of Constitutional Amendment Proposal 17/2024 is composed of three articles, the first two of which are...
effectively substantive. Article 1 adds the following Article 132-A to the Constitution.
Federal:

> Article 132-A. The Attorney General's Office of the Union, its affiliated bodies, and the Attorneys General of the States and the Federal District, comprised of the lawyers and attorneys referred to in Articles 131 and 132 of this Constitution, are guaranteed administrative, technical, and budgetary autonomy, within the limits established in the Budget Guidelines Law.

Article 2, in turn, amends the wording of Article 168 of the Constitution to include...
The Attorney General's Office of the Union and its affiliated bodies, as well as the Attorney General's Offices of the States.
and the Federal District, among the bodies benefiting from the monthly transfer of funds in twelfths:
Article 168. The resources corresponding to the budgetary appropriations, including the credits

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supplementary and special funds, intended for the bodies of the Legislative and Judicial branches, of Public Prosecutor's Office, the Attorney General's Office and its affiliated bodies, the Prosecutor's Offices General staff of the States and the Federal District, as well as the Public Defender's Office, will be assigned to them. delivered by the 20th of each month, in twelfths, in accordance with the supplementary law to which it refers. refers to article 165, § 9, of the Federal Constitution.

Article 3 establishes that the amendment will come into effect on the date of its publication. (From the analysis) The systematic arrangement of the devices results in the PEC promoting a double normative intervention: it creates material guarantee of autonomy (art. 132-A) and establishes a procedural protection mechanism. (art. 168), both essential for the practical implementation of institutional independence. intended.

4.3 Author's Justification

In the justification attached to the proposal, the author argues that the 1988 Constitution consolidated Public Advocacy as one of the essential functions of Justice, positioning it institutionally outside the three branches of government, within the same Title and alongside the Public Prosecutor's Office and the Public Defender's Office. It points out, however, that Public Advocacy is the only one of these functions that... It is not granted its own budget by the Constitution, which compromises its technical autonomy. and administrative.

The proponent argues that Public Advocacy, given the technical nature of its work... constitutional powers, it is not subordinate to the other branches of government nor to the other essential functions of the Justice system. Unlike the Public Prosecutor's Office — which oversees and prosecutes. the public manager, including criminally — and the Public Defender's Office — that represents the For the underprivileged, including those facing opposition from the State itself, public advocacy careers act in this capacity. preventively, offering legal solutions for administrative activities and representing public entities in court.

The author further argues that the role of public lawyers is that of collaborators, without bias towards external oversight and control, but also to ensure that repressive measures are not trivialized and even used as a defense mechanism when the creative capacity of public managers is criminalized. or questioned by other autonomous bodies. In this context, the constitutional omission is cited as one of the main reasons for the weak internal control of legality of Public administration and the culture of litigation that makes the Public Sector the biggest litigant. of the country.

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Finally, it is worth highlighting the express caveat contained in the justification: PEC 17/2024 does not grant the Public Attorney's Office the prerogative to propose laws, whether for the creation and Elimination of positions, compensation policies, or career plans, contrary to what occurs Currently, this involves the Judiciary, the Public Prosecutor's Office, and the Public Defender's Office. It is, therefore, with a deliberately more modest proposal than previous counterparts — such as PEC 82/2007, by then-Deputy Flávio Dino —, focused on administrative and technical autonomy and budgetary, without encroaching on the autonomous legislative initiative.

5. THE OPINION ON ADMISSIBILITY IN THE CCJ: ANALYSIS OF THE LIMITS MATERIALS FOR THE DERIVED CONSTITUENT POWER

The opinion presented by Rapporteur Domingos Neto (PSD/CE) in the Committee of The Constitution, Justice and Citizenship Committee was limited, as required by the regulations, to a judgment on the admissibility of the proposal, that is to say, the verification of its conformity with the Formal and substantive rules set forth in Article 60 of the Federal Constitution. This examination includes, especially the analysis of the circumstantial limits (art. 60, § 1), formal limits (art. 60, I and II) and materials (art. 60, § 4º) to the derived reforming constituent power.

The Rapporteur based his vote on the established doctrine of Ingo Wolfgang Sarlet and Rodrigo Brandão, according to which the rules governing the constitutional reform process constitute logical limits to be respected by the power of reform, established by the constituent power original versus derived constituent power. The admission that derived constituent power could suppress the limiting device of its own exercise and, subsequently, enshrine A rule that contradicts the one originally established would amount to fraud against the Constitution.

5.1 FORMAL LIMITS: ACTIVE LEGITIMACY AND MINIMUM COMPOSITION

Regarding formal limitations, the report attested that the proposal was submitted by more than one third of the federal deputies — 178 signatories —, as certified by the Board Director of the Chamber of Deputies, thus fulfilling the requirement of article 60, I, of the Constitution. Federal and to the provisions of article 201, I, of the Chamber's Internal Regulations. Furthermore, the matter does not was the subject of any other proposal rejected or deemed inadmissible in this session. legislative, thus removing the impediment foreseen in article 60, § 5, of the Constitution.

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5.2 Circumstantial Limits

Regarding the circumstantial limits to the derived constituent power, the Rapporteur
It was found that none of the hypotheses listed in § 1 of article 60 of the law had occurred.
Federal Constitution, that is to say, federal intervention, state of defense or state of siege,
The time requirement for deliberation has been met.

5.3 MATERIAL LIMITS: THE ENTRENCHED CLAUSES

The most thorough examination naturally focused on the material limits stipulated in article [number].
Article 60, § 4, of the Federal Constitution, which prohibits the deliberation of a proposed amendment tending to
abolish the federal form of government, direct, secret, universal and periodic suffrage, and the separation of powers.
of the Powers or individual rights and guarantees.

Regarding the federal form of government, the opinion concluded that the proposal, far from being...
To undermine the federal pact reinforces the essential core of Article 18 of the Constitution, by providing
the Attorney General's Offices of the States and the Federal District with guarantees compatible with autonomy
of the federated entities, capable of enabling the full exercise of their constitutional powers.

Regarding the separation of powers, the Rapporteur dismissed any offense.
noting, on the contrary, that the autonomy of the Public Advocacy is in harmony with the
A systematic constitutional framework for the essential functions of Justice, which, although not constituting a
The fourth power, they play a transversal role of checks and balances in relation to the other Powers.
classics. The technical independence of public lawyers does not compromise the separation.
Organic cooperation between the Executive, Legislative, and Judicial branches; rather, it strengthens it by preventing capture.
The institutional role of state advocacy in relation to governmental circumstances.

Regarding direct, secret, universal and periodic suffrage and rights and guarantees
Regarding individual cases, the report noted that there was no thematic relevance that could be discerned.
abolitionist tendency. Similarly, the possibility of violating the entrenched clause was ruled out.
implicit, embodied in the structuring principles of the Democratic Rule of Law.
established by the 1988 Constitution.

Upon examination of formal regularity, the absence of circumstantial obstacles, and the
Given the full material compatibility with the entrenched clauses, the Rapporteur voted for admissibility.
of Proposed Constitutional Amendment No. 17/2024, whose opinion was approved by the CCJ,
unanimously, on May 5, 2026. The unanimous result, in a collegiate body composed of...

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The plural form signals not only the technical and legal soundness of the proposal, but also its maturity. Politics on the topic in Parliament.

6 FAVORABLE ARGUMENTS: PROBITY, INTERNAL CONTROL AND REDUCING STATE LITIGATION

Defending the administrative, technical, and budgetary autonomy of the Public Attorney's Office. It relies on a coherent set of arguments of a legal, institutional and pragmatics, which deserve orderly examination.

6.1 Argument from Constitutional Symmetry

The first argument, of a strictly legal nature, lies in the correctness of normative asymmetry between the functions essential to Justice. If the Constitution allocated the Legal Profession Public, in the same chapter as the Public Prosecutor's Office and the Public Defender's Office, systemic coherence It imposes the equivalence, albeit partial, of institutional guarantees. Differentiation The current system lacks a rational basis, configuring, according to a significant portion...

From a doctrinal perspective, this is a constitutional omission that must be overcome by the reforming power.

6.2 ARGUMENT FROM TECHNICAL INDEPENDENCE

The second argument, of a professional nature, is based on the need for To ensure technical independence for public lawyers. The Statute of the Bar Association of Brazil (Law No. 8,906/1994), Provision No. 114/2006 of the Federal Council of the OAB and the consolidated jurisprudence of the Supreme Federal Court — especially the judgment of ADI 3.396, reported by Minister Nunes Marques — acknowledges that the public attorney, Even when subject to statutory regulations, the duty to carry out activities in accordance with the law remains. in accordance with their professional convictions and in strict observance of the principles constitutional principles of public administration.

Such technical independence, however, is only achieved under certain conditions. appropriate institutional frameworks. Budgetary subordination to the Executive Branch creates, even though Indirectly, an environment conducive to pressure on legal deliberations, especially in politically sensitive matters. Institutional autonomy, on the other hand, shields action.

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A technique to counter temporary injunctions.

6.3 ARGUMENT OF INTERNAL CONTROL OF LEGALITY

The third argument, of a functional nature, connects to the role of Public Advocacy in Internal control of the legality of the Administration. The advisory function, provided in a way preventive measures constitute an essential filter for ensuring that administrative acts conform to the law. parameters of legality and the Constitution. The more robust the institutional guarantee of The more effective this filter is, the greater the advisory body and the lower the probability of illegalities. are practiced and subsequently brought to court.

From this perspective, the autonomy of the Public Attorney's Office operates as an instrument of combating corruption, insofar as it gives the legal opinion institutional weight. It is autonomous and makes it difficult for the client-administrator to recruit the consultant. This vector is particularly relevant in a context where administrative legality is becoming, increasingly, as a prerequisite for good public governance.

6.4 ARGUMENT FOR REDUCING LITIGATION

The fourth argument, of a pragmatic nature, follows from the previous two. The State Brazilians have been the biggest litigants in the country for decades, a phenomenon that overburdens the... The Judiciary and compromises the reasonable duration of the process. Excessive judicialization has There are multiple causes, but one of them lies in the absence of a robust advisory filter in the phase. administrative and institutional culture of indiscriminate appeals against decisions unfavorable to the State.

A Public Advocacy office endowed with institutional autonomy would be able to exercise, with greater independence, technical judgments on the recognition of citizens' rights in in the administrative sphere, avoiding artificial litigation and contributing to the reduction of judicial disputes. of controversies with a legally settled solution. The measure, therefore, aligns with constitutional vectors of efficiency (article 37, caput) and reasonable duration of the process (article 5, LXXVIII).

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6.5 ARGUMENT OF FEDERAL BALANCE

Finally, at the federal level, PEC 17/2024 consolidates equal treatment among the entities of the Federation, by simultaneously granting autonomy to the Attorney General's Office at the federal level and to the entities of the Federation. Attorney General's Offices at the state and district levels. This symmetry contributes to the Balanced strengthening of state advocacy at all levels, avoiding fragmentation. institutional and providing a uniform standard of technical performance.

7. CRITICAL CONSIDERATIONS AND LIMITATIONS OF THE PROPOSAL

Despite the arguments in favor, the issue of the autonomy of Public Advocacy does not It is free from doctrinal and political controversies, and is therefore appropriate, in deference to rigor. analytically, it records the main objections raised throughout the decades of debate and the limitations. which, even in the proposed text, persist.

7.1 The Institutional Relationship with the Executive Branch

A first line of objection argues that the Public Advocacy, by reason of its Functional proximity to the Executive Branch would not allow for full autonomy, under penalty of to make it impossible for the manager to obtain legal counsel. It is argued that the equation to the Ministry The public sector would transform public lawyers into external auditors of the administrator, and not into... Internal consultants of the Administration, distorting the institutional function.

This objection, however, is frequently answered with the observation that the Institutional autonomy should not be confused with unlimited functional independence of the member. individual. Even within the Public Prosecutor's Office, institutional autonomy coexists with mechanisms. internal hierarchical structures, especially for the standardization of legal theories and strategic coordination. Nor would the autonomy of the Public Attorney's Office imply the emancipation of the manager: the lawyer. The public entity will continue to legally represent the entity and provide consultancy to the authority. administrative and observance of the typical functional hierarchy of the public service. What is guaranteed is Institutional protection against undue interference in the technical performance of duties.

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7.2 The Risk of Corporatism

A second objection alludes to the risk of corporatism, that is, that autonomy institutional results in the strengthening of the category to the detriment of the public interest, with Increased remuneration and expansion of privileges without institutional counterpart. Such This concern resonates with the experience of other autonomous institutions and deserves... sincere consideration.

It should be noted, however, that PEC 17/2024 includes relevant mitigations for this. risk. First of all, the autonomy granted is expressly limited by the boundaries. established in the Budget Guidelines Law, therefore remaining under the scrutiny of the Executive Branch. Legislative. Secondly, as expressly stated in the justification of proposal, the legislative initiative for the creation and elimination of positions, the remuneration policy and career plans do not extend to Public Advocacy, unlike what happens with The Judiciary, the Public Prosecutor's Office, and the Public Defender's Office. It is, therefore, a model of... Measured autonomy that preserves instruments of external control.

7.3 FISCAL IMPACT

A third objection, of a fiscal nature, refers to the potential budgetary impact. of the measure, especially in a context of fiscal constraint. It is argued that the inclusion of Including the Public Advocacy Office among the beneficiaries of the monthly allocation could hinder its execution. budgetary constraints of the Executive Branch and hinder short-term adjustments.

This concern, however, must be weighed against the fact that the Public Advocacy It already has specific budget allocations, which are only changed by Contingency or freeze. The constitutional guarantee of transferring funds in twelfths does not create This is not a new expense, but merely protects expenses already authorized by the Legislature against... Unilateral interference by the Executive branch, consistent with what already occurs in relation to the others. constitutionally autonomous bodies.

7.4 THE LIMITS OF SUBJECTIVE SCOPE

There is also a relevant observation regarding the subjective scope of PEC 17/2024. A The proposal grants autonomy to the Attorney General's Office (AGU), its affiliated bodies, and the Attorneys General's Offices of the...

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States and the Federal District, but remains silent regarding Public Advocacy.
municipal. Although the 1988 Constitution left the structuring to the discretion of the municipalities.
Regarding their prosecutors' offices, the omission in the PEC signals a deepening of autonomy.
Institutional reform at the municipal level should be the subject of specific proposals, such as the Constitutional Amendment Proposal (PEC).
Bill 28/2023, which is currently being processed in the Federal Senate.

CONCLUSION

The analysis undertaken allows us to conclude that the Proposed Amendment to the Constitution No.
Article 17 of 2024 represents a significant institutional advancement in improving the design.
constitutional aspects of the essential functions of Justice. By granting administrative and technical autonomy
and budgetary allocation to the Attorney General's Office, its affiliated bodies, and the Public Prosecutor's Offices-
General of the States and the Federal District, the proposal corrects a normative asymmetry.
historically identified and harmonizes the treatment given to legal institutions of
The State, with the role reserved for decades for the Public Prosecutor's Office and, more recently, for the Public Defender's Office.
Public.

The opinion recommending admissibility was unanimously approved by the Constitution Committee.
and Justice and Citizenship Committee of the Chamber of Deputies on May 5, 2026, under the rapporteurship of
Deputy Domingos Neto demonstrated, with technically robust justification, the full
compatibility of the proposition with the material, formal and circumstantial limits to power
derived constituent. The unanimity achieved in a pluralistic collegial body signals the maturation of
Parliamentary debate and cross-cutting recognition of the institutional relevance of the matter.

The arguments in favor of autonomy — based on constitutional symmetry, on
technical independence, in strengthening internal control of legality, in reducing
State litigation and federal balance converge with the constitutional vectors of
Efficiency, administrative morality, and the reasonable duration of the process. Objections
Traditional rights, in turn, are significantly mitigated by the restrained wording of the proposed constitutional amendment.
which maintains autonomy within the limits of the Budget Guidelines Law and does not extend
to the Public Advocacy the autonomous legislative initiative regarding positions, career plans and policy
remuneration.

It should also be noted that the approval of PEC 17/2024 will not exhaust the agenda.
Institutional framework of Public Advocacy. Expanding guarantees for municipal public advocacy.
proper regulation of the technical independence of the individual member and calibration of

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The internal governance mechanisms of autonomous institutions present challenges that,

Naturally, they will continue to be the subject of legislative, doctrinal, and jurisprudential development.

In summary, Constitutional Amendment Proposal No. 17/2024 is registered as a piece of...

important in consolidating the 1988 constitutional model, in recognizing that a

An institutionally autonomous Public Advocacy is a necessary condition — although not

sufficient — for the full realization of administrative legality, probity, and security.

legal framework for public policies. Its eventual enactment will represent, in line with what he stated

The author of the proposal believes it will be more than just a corporate achievement: it will represent progress for the

Brazilian society, insofar as it strengthens institutional checks and balances and

It qualifies the exercise of state power.

REFERENCES

BRAZIL. *Constitution of the Federative Republic of Brazil of 1988.* Brasília, DF: Federal Senate, https:// 1988. Available in: www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm. Accessed on: May 7, 2023. 2026.

BRAZIL. Chamber of Deputies. *Proposed Amendment to the Constitution No. 17 of 2024.* This bill adds Article 132-A and amends Article 168 of the Federal Constitution to grant budgetary autonomy to the State and Federal District Attorney's Offices, the Attorney General's Office of the Union, and its affiliated bodies. Author: Representative Carlos Sampaio. Brasília, May 13, 2024. Available at in: https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2430597. Accessed on: May 7, 2026.

BRAZIL. Chamber of Deputies. *Committee approves admissibility of PEC that grants autonomy to the Attorney General's Office and public prosecutor's offices.* Agência Câmara de Notícias, Brasília, May 5, 2026. Available at https://www.camara.leg.br/noticias/1269384-comissao-aprova-admissibilidade-de-pec-que-da-autonomia-a-agu-e-procuradorias/. Accessed on: May 7, 2026.

BRAZIL. Chamber of Deputies. *Constitutional Amendment grants budgetary autonomy to the Attorney General's Office and the state attorney general's offices.* Agência Câmara de Notícias, Brasília, 2024. Available at: https:// www.camara.leg.br/noticias/1159508-pec-confere-autonomia-orcamentaria-a-agu-e-as-procuradorias-gerais-dos-estados/. Accessed on: May 7, 2026.

BRAZIL. Supreme Federal Court. *Direct Action of Unconstitutionality 3.396/DF.* Rapporteur: Justice Nunes Marques. Full Court. Decided on June 23, 2022. Published in the Official Gazette on October 3, 2022. Available at: https:// portal.stf.jus.br/processos/detalhe.asp?incidente=2294378. Accessed on: May 7, 2026.

BRAZIL. Supreme Federal Court. *Argument of Non-Compliance with Fundamental Precept 339/PI.* Rapporteur: Justice Luiz Fux. Full Court. Decided on May 18, 2016. Available at: https://portal.stf.jus.br/processos/detalhe.asp? incidente=4773560. Accessed on: May 7, 2026.

BRAZIL. Supreme Federal Court. *STF declares unconstitutional state laws that interfere with the autonomy of public defenders' offices.* STF News, Brasília, May 18, 2016. Available at: https://portal.stf.jus.br/noticias/verNoticiaDetalhe.asp?idConteudo=316903. Accessed on: May 7, 2026.

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Machine Translated by Google

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BRAZIL. Supreme Federal Court. *Constitution and Supreme Court: art. 168 — comments and jurisprudence.* Brasília: STF, [n.d.]. Available at: https://portal.stf.jus.br/constituicao-supremo/artigo.asp?abrirBase=CF&abrirArtigo=168. Accessed on: May 7, 2026.

CAVALCANTE, Márcio André Lopes. Duty of the Executive Branch to make the monthly transfers as per article 168 of the 1988 Federal Constitution. *Dizer o Direito Search Engine,* Manaus, [n.d.]. Available at: https://buscadordizerodireito.com.br/jurisprudencia/249/dever-do-poder-executivo-de-efetuar-os-repasses-de-duodecimo-na-forma-do-art-168-da-cf88. Accessed on: May 7, 2026.

MARTINS, Danilo Ribeiro Miranda. Autonomy and independence of Public Advocacy: a path to building a function essential to Justice. *Consultor Jurídico,* São Paulo, March 29, 2025. Available at: https://www.conjur.com.br/2025-mar-29/autonomia-e-independencia-da-advocacia-publica-caminho-para-a-construcao-de-uma-funcao-essencial-a-justica/. Accessed on: May 7, 2026.

AGUIAR, Guilherme Salgueiro Pacheco de. The autonomy of public advocacy is a matter of institutional justice. *Consultor Jurídico,* São Paulo, October 24, 2025. Available at: https://www.conjur.com.br/2025-out-24/autonomia-da-advocacia-publica-e-questao-de-justica-institucional/. Accessed on: May 7, 2026.

MACEDO, Rommel. By proposing autonomy for Public Advocacy, the PEC represents a historical milestone. *Consultor Jurídico,* São Paulo, February 9, 2014. Available at: https://www.conjur.com.br/2014-fev-09/propor-autonomia-advocacia-publica-pec-representa-marco-historico/. Accessed on: May 7, 2026.

CALMON, Eliana. The autonomy of public advocacy is a way to combat corruption. *Consultor Jurídico,* São Paulo, December 16, 2015. Available at: https://www.conjur.com.br/2015-Dec-16/autonomy-public-advocacy-forms-combat-corruption/. Accessed on: May 7, 2026.

BORGES, Marcelo Alberto Gorski. Does the OAB Statute apply to public attorneys? *Migalhas,* 28 2022. https://www.migalhas.com.br/depeso/370495/o-estatuto-da-oab-se-aplica-ao-advogado-publico. Accessed on: May 7, 2026. Available in: São Paulo,

APESP — ASSOCIATION OF STATE PROSECUTORS OF SÃO PAULO. *Autonomy Week: report on the admissibility of PEC 17/2024 was unanimously approved in the CCJ of the Chamber.* São Paulo, May 5, 2026. Available at: https://apesp.org.br/2026/05/semana-da-autonomia-relatorio-pela-admissibilidade-da-PEC-17-2024-foi-aprovado-por-unanimidade-na-CCJ-da-Câmara/. Accessed on: May 7, 2026.

APESP — ASSOCIATION OF STATE ATTORNEYS OF SÃO PAULO. *Constitutional Amendment Proposal (PEC) on budgetary autonomy for State Attorney General's Offices receives favorable opinion in the Constitution and Justice Committee of the Chamber of Deputies.* São Paulo, March 25, 2026. Available at: https://apesp.org.br/2026/03/pec-da-autonomia-orcamentaria-das-pges-obtem-parecer-favoravel-na-ccj-da-camara-dos-deputados/. Accessed on: May 7, 2026.

ANAFE — National Association of Federal Public Attorneys. *Autonomy and independence of Public Advocacy are the topics of an article published in Conjur.* Brasília, March 31, 2025. Available at: https://anafe.org.br/autonomia-e-independencia-da-advocacia-publica-e-tema-de-artigo-publicado-pelo-conjur/. Accessed on: May 7, 2026.

ANAUNI — NATIONAL ASSOCIATION OF ATTORNEYS OF THE UNION. *Financial autonomy of the Attorney General's Office strengthens the defense of the State.* Brasília, January 2, 2012. Available at: https://www.anauni.org.br/autonomia-financeira-da-agu-fortalece-defesa-do-estado/. Accessed on: May 7, 2026.

ANAPE — NATIONAL ASSOCIATION OF STATE AND FEDERAL DISTRICT ATTORNEYS. *Constitutional amendments under consideration in Congress propose functional autonomy for... Public Advocacy.* Brasília, 2024. Available at: https://anape.org.br/noticias/pecs-em-

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Congressional bill proposes functional autonomy for public advocacy. (Published: May 7, 2026) Access

CONGRESS IN FOCUS. *CCJ approves the admissibility of the Constitutional Amendment Proposal on the autonomy of public legal representation.* Brasilia, May 5, 2026. Available at: https://www.congressoemfoco.com.br/noticia/118616/ccj-aprova-admissibilidade-de-pec-sobre-autonomia-da-advocacia-publica. Accessed on: May 7, 2026.

LAWYER'S JOURNAL. Constitutional *Amendment granting autonomy to Public Advocacy is unanimously approved in the CCJ of the Chamber of Deputies.* 2026. Available at: https://jornaladvogado.com.br/pec-da-autonomia-da-advocacia-publica-e-aprovada-por-unanimidade-na-ccj-da-camara-dos-deputados/. Accessed on: May 7, 2026.

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