Legal advisory and litigation for the Legislative Branch: the practice of the Office of Legal Counsel of the Brazilian Chamber of Deputies

Jules Queiroz

Lawyer for the Chamber of Deputies. Legislative consultant in the area of tax law and taxation. PhD in economic, financial and tax law from the University of São Paulo. Professor at IDP and ESA/DF.

Abstract: This article examines the establishment and functions of the Office of Legal Counsel of the Chamber of Deputies, analyzing how this centralized body for legal advisory and judicial representation was created to enhance the prerogatives of the Legislative Branch in the context of expanded constitutional review and the judicialization of political relations in Brazil following the 1988 Constitution. The paper first explores the reasons underlying the necessity for such an institution, emphasizing the intensification of judicial oversight and the limitations of the Attorney General's Office in defending the Legislative Branch. It then describes the practical experience of the Office of Legal Counsel, highlighting its centralization of administrative legal advisory functions and its strategic litigation efforts. The article concludes that the creation of this office has contributed to institutional balance among the branches of government, strengthening the democratic legitimacy of legislative decisions and improving efficiency and legal certainty in the management of the Chamber of Deputies.

Keywords: Legislative Branch; Office of Legal Counsel of the Chamber of Deputies; judicialization; legal advisory services; judicial representation.

1. Introduction

This article aims to describe the institutional experience of the creation and operation of the Office of Legal Counsel of the Chamber of Deputies.

Unlike its state counterparts and the Federal Senate itself, until 2021 the Chamber of Deputies did not have a centralized body for judicial representation and legal advice on non-legislative matters. The Federal Senate established its Advocacy Office in 1994 and created a specific career for lawyers, selected through public examinations. Legislative Assemblies in 24 states of the federation followed the model and created Attorney General's Offices within their structures (Moça, 2022). Some Municipal Chambers, such as the city of São Paulo, also did so.

Until 2021, the legal representation of the Chamber of Deputies was carried out in a diffuse manner, by the General Secretariat of the Board and the General Directorate, depending on the legislative or administrative nature of the matter. In rare cases, lawyers appointed by the Presidency of the House carried out procedural acts, such as oral arguments. In some cases, the representation of bodies and authorities of the Chamber was carried out by the Attorney General's Office itself, even by attorneys specially appointed ad hoc. Information in litigation for abstract control of constitutionality and in

writs of mandamus before the Federal Supreme Court was generally signed by the President of the House himself.

Legal consultancy was also provided sparsely. The House has long had advisory bodies on legislative matters, such as the Legislative Consultancy and the Budget and Financial Oversight Consultancy, in addition to the General Secretariat of the Board and advisory services to the standing committees and party leaders. An important point that deserves attention is that advisory services on legislative matters are not only legal. Despite the need for formal and substantive legal examination during the legislative process, bodies such as consultancies provide advice in several non-legal areas, such as politics, economics, technology, etc. Legal advice on administrative matters was provided by bodies such as the Technical Advisory Service of the General Directorate and the Legal Advisory Services of the Administrative Directorate and the Human Resources Department.

This structure was profoundly changed with the enactment of resolution no. 23/2021. With the aforementioned resolution, a body was created that centralized legal advice on administrative matters, as well as the judicial representation of the Chamber of Deputies and its bodies. Resolution no. 23/2021, a primary normative act, under the terms of art. 59, item VII, of the 1988 Constitution, was regulated by Act of the Board no. 231/2022. Legislative advice remained with the technical bodies already established, in a distribution similar to that adopted by the Federal Senate.

The constitutionality of the creation of legal advisory bodies and legal representation for autonomous bodies is established in the case law of the Supreme Federal Court[1]. The classic doctrine of Victor Nunes Leal, in the case of Municipal Chambers, also recognizes the legislative bodies' capacity to sue to defend their institutional prerogatives in court (Leal, 1949). Sustainability requires the existence of procedural legal representatives, and the legislative bodies' advocacy bodies are of utmost importance in the development of this type of competence.

In the Chamber of Deputies, Resolution No. 23/2021 adopted a representation model by permanent civil servants, registered with the Brazilian Bar Association, occupying positions of trust in a structure legally designated specifically for this activity. There is, to date, no specific career, unlike what occurs in the Federal Senate and in most Legislative Assemblies. However, the model of permanent civil servants occupying positions of trust is repeated by Assemblies such as those of Ceará and Mato Grosso do Sul.

The model adopted by the Office of Legal Counsel of the Chamber of Deputies is in accordance with the recent case law of the Supreme Federal Court, according to which the performance of civil servants merely designated for legal representation not attributed by law to the respective position is incompatible with the Constitution (ADI 7177, 2024). The case judged by the STF concerned the legal representation of the Court of Auditors of the State of Paraná (TCE/PR). In that state, the Presidency of the TCE could designate civil servants to provide legal consultancy and legal representation for the body. This model should not be confused with that of the Office of Legal Counsel of the Chamber of Deputies, in which civil servants are formally designated for functions created by law, with specific competence for consultancy and legal representation activities. That is, in the Chamber of Deputies, there are specific positions of trust, with powers established by law in a formal sense, to provide legal consultancy and legal representation. There is no individual and

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[1] See, to this effect: ADI 1,557 MC, rapporteur Justice Octavio Gallotti, Full Court, decided on 3/20/1997. See also: ADI 175, RTJ 154/14, Pet. 409-AgRg, RTJ 132/645 and ADI 825, DJ of 4/2/1993. More recently: ADI 6,433, rapporteur Justice Gilmar Mendes, Full Court, decided on 4/3/2023.

precarious designation of civil servants by the managers of the Legislative Branch. In fact, the TCE/PR model is more similar to the model adopted by the Chamber of Deputies before Resolution No. 23/2021 than to the one resulting from it.

To describe the institutional experience of the creation and operation of the Office of Legal Counsel of the Chamber of Deputies, this article will be divided into two parts.

The first section will discuss the theoretical and practical issues that led to the creation of the Office of Legal Counsel of the Chamber of Deputies. It is clear that the problems fundamentally surround the judicial representation of the Chamber, especially in view of the increase in the subjective scope and objective scope of concentrated constitutional review actions. As if this were not enough, there is a gradual reduction in the role of the Attorney General of the Union as guardian of the principle of the presumption of constitutionality of laws. With the admission that the AGU does not defend contested laws that go against the understanding of the STF or that conflict with the interests of the Union, the political decision of the Legislature becomes vulnerable to judicial review without adequate adversarial proceedings.

In particular, the expansion of abstract control led to an expansion of judicial control of issues that, in the previous system, were essentially political. External and internal political conflicts within Parliament, when assessed by the Judiciary, require adequate legal representation from the Houses, otherwise the quality of the debate on the matters will be reduced.

The second part of the paper will seek to demonstrate how the institutionalization of the Office of Legal Counsel of the Chamber of Deputies addressed the issues that led to its creation. In this sense, the centralization of the consultative legal activity in non-legislative matters (supporting activity) will be discussed, as well as the judicial activity of the Chamber of Deputies' Legal Department.

2. The 1988 Constitution and the transformation of the legal functions of the Legislative Branch

2.1 Expansion of the scope and depth of constitutional review

A first element to understanding the judicial action of the Legislative Branch is the significant expansion of constitutional control, especially abstract control, by the 1988 Constitution.

In the essay “Who Ought to Be the Guardian of the Constitution?”, Kelsen proposes that the Constitutional Court act as a third-party mediator in disputes between the government and Parliament. Kelsen argues that this impartial and technically qualified court has the legitimacy to interpret the Constitution without political influence and to ensure the correct application of constitutional norms. He also argues that the separation of powers is essential to avoid abuses and to protect the Constitution from the momentary interests of political majorities. He concludes that the Constitutional Court is the most appropriate body to guarantee the supremacy and stability of the Constitution, by acting as a mediator between law and politics (Kelsen, 1931).

As Lynch (2012) points out, constitutional control has played an important role in resolving crises and political impasses in Brazil. Throughout history, it has been one of the mechanisms that competed with the State of Exception and other instruments, such as the Moderating Power and the State of Siege, to stabilize the political regime in critical moments. This role highlights the importance of constitutional control not only as a legal instrument, but also as a means of ensuring the legitimacy and continuity of the political and institutional order.

The 1891 Constitution, the inaugural act of the Republic, introduced concrete constitutional review, inspired by the North American model. In this system, any judge or court could declare a rule unconstitutional during a legal proceeding, provided it was argued by one of the parties and related to the specific case under trial. This model gave the courts a role in defending the Constitution, but within a decentralized approach. The initial model had little participation by the Legislative Branch, since controversies developed through specific cases, without procedural participation by Parliament.

The 1934 Constitution introduced federal intervention representation, an abstract control mechanism designed to ensure compliance with sensitive constitutional principles, such as fundamental rights and federative order. In this context, the Attorney General of the Republic was responsible for proposing federal intervention, and it was up to the Supreme Federal Court to decide on the constitutionality of the situations highlighted. Although it was conceived as a mechanism for resolving federative conflicts, interventionist representation was seen by a large part of the doctrine as an inaugural mechanism for concentrated control of constitutionality (Mendes, 2009, p. 65).

With Constitutional Amendment No. 16/1965 to the 1946 Constitution, the system of constitutional review underwent a major transformation. The representation of unconstitutionality was created, a concentrated review instrument that allowed the Attorney General of the Republic to directly question the compatibility of infra-constitutional norms with the Constitution in the Supreme Federal Court. This model centralized the decision on the validity of laws and gave greater prominence to the STF and the Federal Public Prosecutor's Office, particularly the Attorney General's Office (PGR), in the review of constitutionality.

It is worth mentioning an interesting case tried by the Supreme Court in 1971 (First Rcl 849). The Brazilian Democratic Movement (MDB) party, which was then in opposition to the Military Regime, filed a representation to the Attorney General of the Republic claiming unconstitutionality in light of Decree-Law No. 1,077/1970. This rule had been enacted by President Emílio Médici, who created the regime of prior censorship of books and media outlets, under the argument of preserving national security. The Attorney General of the Republic, Xavier de Albuquerque, who would later become a minister of the STF, dismissed the representation. In an interview with journalist Felipe Recondo (2021), forty years later, Minister Xavier de Albuquerque said that although the matter was expressed in the Constitution, he understood that it was up to the MDB to “play politics with the fact”. In stating this, the minister reflected a conception of that time, that political problems should be resolved by Politics, not by Justice.

The MDB then filed a complaint with the STF, understanding that the Attorney General was obliged to propose the representation of unconstitutionality. The Plenary of the Supreme Court rejected the complaint, according to the vote of Justice Adalício Nogueira, dissenting Justice Adaucto Lúcio Cardoso. The press reported that the dissenting minister placed his robe over the back of his chair and said he would request retirement (Recondo, 2018, p. 225).

The 1988 Constitution introduced significant changes in relation to the previous regime and expanded both the list of abstract control actions and the list of parties entitled to file them. In addition to the Direct Action of Unconstitutionality (ADI), new actions were introduced, such as the Declaratory Action of Constitutionality (ADC) and the Claim of Non-Compliance with a Fundamental Precept (ADPF). Regarding active legitimacy, the new Constitution expanded the list of actors eligible to file abstract control actions, including governors, political parties with representation in the National Congress, trade union confederations and national class entities, among others. This

expansion democratized access to the STF and reinforced the control of the State and society over the constitutionality of the rules, which ensured greater effectiveness of the system.

Once the gatekeeper of the STF, the PGR no longer had the revealed power to block access to the Court. Now, various sectors of society could directly challenge the Supreme Court and allege violations by the State – especially by the Legislature – of constitutional norms.

This expansion of legitimacy is not without criticism. Alexandre Araújo Costa and Juliano Zaiden Benvindo, for example, criticize the prominence of the interests of states and corporations in the concentrated control of constitutionality, to the detriment of collective agendas (2014). The expansion of active legitimacy, in effect, disproportionately benefited the interests of corporations to the detriment of diffuse interests or interests held by groups with less power of political and legal mobilization.

If there was an increase in the number of subjects of abstract control, there was also an increase in its object. With the 1988 Constitution, not only the actions of the Legislative Branch, but also its omissions, began to be controlled by means such as the Direct Action of Unconstitutionality by Omission and the Injunction Writ. A famous case that illustrates this difference is public servants' right to strike. Initially, the Supreme Court considered injunction writs that argued the lack of regulation of such right but limited itself to declaring the delay of the National Congress in enacting legislation on the subject (MI 20, 1994). However, in 2007, in view of the repeated delay of the Parliament, the Supreme Court itself decided to fill the gap by applying the law on strikes for private sector workers (MI 712, 2007).

Given this expansion of the scope of judicial review of congressional acts and omissions, who is responsible for defending the prerogatives of Parliament? In principle, according to art. 103, § 3, of the 1988 Constitution, it would be up to the Attorney General of the Union (AGU) to act in defense of the contested normative acts. Thus, the AGU is regarded as the guardian of the presumption of constitutionality of laws (Moraes, 2012, p. 780). Therefore, it would not be up to the AGU to act as an opinion provider or monitor of constitutionality, a role already attributed to the Attorney General of the Union. Older precedents of the STF are that the AGU is prohibited from expressing its opinion on the unconstitutionality of a law[2].

The noble role of the AGU, as constitutionally designed, poses a first problem. Although this body represents all branches of government in court, as a rule, it is linked to the Executive Branch and therefore hierarchically subordinate to the President of the Republic. Hence, the question arises as to whether the AGU could satisfactorily perform its role as a guardian in situations in which laws resulting from vetoes by the President of the Republic that have been rejected by the National Congress are being discussed. Or, even, whether the AGU would act in defense of a law questioned by the President of the Republic himself.

With the evolution of case law, the Supreme Court began to admit in some cases that the AGU could declare the contested normative act unconstitutional. The first of these cases occurs when the legal thesis discussed has already had its unconstitutionality recognized by the STF (ADI 1616, 2001).

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[2] "The Constitution requires that the Attorney General of the Union, or whoever performs such functions, defend the contested act in a direct action of unconstitutionality. Inadmissibility of attack on the norm by someone who is exercising the functions provided for in § 3 of art. 103" (ADI 242, 1994).

The second case occurs when there is a conflict between the role of guardian of the constitutionality of laws (art. 103, § 3) and that of judicial representative of the Union (art. 131) (ADI 3,916, 2010). In these cases, the harmonization of the two norms leads to the conclusion that the AGU could declare the contested norm unconstitutional.

In the precedent that gave rise to the debate on this last understanding, it was a challenge by the Attorney General's Office in the face of a law of the Federal District. In this case, in fact, one can argue a conflict between the role of curator and the role of defender of a specific person – the Union. A law enacted by a subnational federative entity could – and in this case, did – contradict the legal and political interests of the Union. Hence the perplexity in forcing the AGU to stop defending the interests of its main "client" in favor of the interest of a third party. But the notion of "interest of the Union" is not always so evident in other cases.

Regarding the "interest of the Union", one can speak of at least three subdivisions (Silva, 2019, p. 190): (i) the indivisible interests of the Union; (ii) the divisible interests of the Union in light of the principle of separation, in a situation of consonance between the Powers; and (iii) the divisible interests of the Union, when it concerns specific interests of the Executive. A relevant question in the procedural statements of the AGU is, therefore, knowing which of these interests is pursued.

In cases of conflict between the President of the Republic and the Legislative Branch (iii), there has been a tendency for the AGU to align itself with the Executive Branch, positioning itself in favor of the unconstitutionality of federal laws. Examples of this behavior are: ADI 7,582, which questions Law No. 14,701/2023, which deals with the timeframe for the demarcation of indigenous lands; ADI 7,633, in which the President of the Republic questions Law No. 14,784/2023, which extended the payroll tax exemption; ADI 6,553, which questions Law No. 13,452/2017, which changes the boundaries of the Jamaxim National Park; ADI 7,701, which questions Law No. 14,785/2023, which regulates the control of agricultural pesticides. In these cases, the "interest of the Union" ends up being confused with the "interest of the Executive Branch", which also goes beyond the ratio decidendi that led the STF to evolve in the reading of the classic role of the AGU as curator of the principle of presumption of constitutionality of laws.

It is clear that the mandate provided for in Article 103, § 3, of the 1988 Constitution has been gradually undermined by the Supreme Court's case law and the practice of the AGU. In a scenario of increasing scrutiny of legislative acts, the fundamental role of defending the constitutionality of laws may be undermined.

As will be seen below, the judicial representation of the Legislative Branch began to fill the vacuum resulting from this transformation.

2.2 "Judicialization" of political relations

With the expansion of the scope of constitutional review actions, as well as of the field of protection of constitutional norms in 1988, the judicialization of relationships that, in the previous legal system, were essentially political, that is, not appraisable by the Judiciary, increased. This applies both to internal relationships within the Legislative Branch – between the majority and minority, parliamentarians, committees, benches – and external relationships – which generally involve conflicts with other Branches.

The fact that opposition political parties repeatedly appeal to the Supreme Federal Court in an attempt to invalidate laws approved by the National Congress or normative acts issued by the Executive

Branch is not a new topic. The phenomenon has already been pointed out in doctrinal (Zuccolotto, 2017) and journalistic works (Guerra, 2021) and is growing. According to a report by the newspaper O Globo, in 2021, the third year of the Bolsonaro government, the number of abstract control actions proposed by opposition parties against normative acts enacted during the Bolsonaro government exceeded the sum of actions filed during the Lula, Dilma and Temer governments: 185 actions against 144, according to data from April 2021 (Guerra, 2021).

The notion of a parliamentary opposition is inherent to liberal constitutionalism. In liberal logic, the dispute for political power is institutionalized by nature. That is, groups that challenge the government and seek to take over the running of the State through elections are politically and legally recognized as legitimate and receive, precisely because of this legitimacy, rights and prerogatives. (Ferreira Filho, 2012, p. 266). This recognition also occurs through the existence of formal positions, such as leader of the Opposition, leader of the Minority or even shadow minister in British-inspired parliaments (Westminster-style system).

The institutionalization of the opposition into organized political bodies arises from the complexity of the political activities developed in the Constitutional State, which demands a high degree of coordination. This coordination is only possible through stable and professional bodies that organize the flow of information and the decision-making process: political parties (Silva, 2021, p. 394).

The right to opposition, in this approach, consists of a requirement for the legitimacy of parliamentary deliberation in modern democracies: only a law approved by a legislative body that guarantees respect for minority opinions is legitimate (Waldron, 2006, p. 25-27). In contrast, the institutional opposition itself assumes the commitment to act in favor of the due functioning of the constitutional order (principle of loyal opposition).

The constitutional status of parliamentary minorities in Brazil encompasses several institutional prerogatives: (i) the opening of parliamentary investigations (CF, art. 58, § 3); (ii) the presentation of requests for information to authorities of the Executive Branch (CF, art. 50, § 2); and (iii) the initiation of abstract control of constitutionality (CF, art. 103, VIII). Compliance with the formal requirements of the legislative process can also be considered protection of the parliamentary minority (Waldron, 2006, p. 28-29).

The use of these prerogatives requires compliance with certain requirements. The opening of a parliamentary committee of inquiry requires the existence of a specific fact to be investigated and the signature of the respective request by at least one third of the members of the Legislative House. The request for information provided for in art. 50 of the Constitution is regulated by arts. 115 and 116 of the Internal Regulations of the Chamber of Deputies (RICD). Although it can be made by any parliamentarian individually, it is subject to deliberation by the Board, which analyzes the criteria defined by art. 116 of the Regulations.

The internal regulations of the Legislative Houses also enshrine institutional prerogatives for minorities. One of the most important points is parliamentary functioning, that is, the possibility of establishing a specific body within the administrative structure of Parliament, generally referred to as “leadership”. This body has public positions that work towards the parliamentary functioning of the political party. In addition, the leader of the political party has several prerogatives provided for in the RICD[3], such as: (i) participation in the College of Leaders; (ii) the right to speak at any time

[3] To illustrate these prerogatives, we will use the Internal Regulations of the Chamber of Deputies (RICD).

during the session (art. 10, I); (iii) the nomination of parliamentarians from the bench to form permanent and temporary committees (art. 10, VI); (iv) the nomination of parliamentarians to run for elections for positions on the Board (art. 10, IV), among others. The RICD also expressly provides for the existence of the Minority Leadership (arts. 11-A and 12).

It turns out that parliamentary functioning requires a certain minimum number of members. Originally, Article 13 of the Political Parties Act required that, in order to function as a parliamentary party, a group would need to have the support of at least 5% of the votes counted in a general election, distributed across at least one-third of the states. This was the creation of the so-called "barrier clause". This rule was declared unconstitutional by the STF in ADI 1,351-3 and 1,351-8. Subsequently, Constitutional Amendment No. 97/2017 once again instituted the barrier clause, this time at a constitutional level. The RICD, in turn, was amended, in its Article 9, by Resolution No. 30/2018, which established that only parties that reached the barrier clause would be entitled to parliamentary functioning.

Parliamentary minorities also have at their disposal in the RICD procedures for obstructing the Majority's agenda, such as: (i) removal of a proposal from the agenda (art. 117, VI); (ii) postponement of discussion or voting (art. 117, X); (iii) verification of voting (art. 185, § 3). The bench may also declare itself in obstruction itself, in which case the parliamentarians that compose it do not contribute with presence or votes to form the procedural or constitutional quorum for deliberation (art. 82, § 6).

Although requests to remove a proposal from the agenda, postpone discussion and vote can be used in and of themselves as a form of resistance (what has become known as an "obstruction kit"), they depend on deliberation by the Plenary, that is, they are only approved by a majority of the House. The request to verify the vote requires a quorum of six hundredths of the members of parliament (in the Chamber of Deputies, 31 members of parliament). Obstruction itself depends on deliberation by the bench and only has practical effect if the party adopting it has a sufficient number of members of parliament to compromise the procedural quorum for installation or voting.

The triggering of abstract constitutional control, in turn, requires only that the party be represented by a parliamentarian in either House of the National Congress. To protect the formal rules of the legislative process, both abstract control and a writ of mandamus of parliamentary initiative, filed directly with the Supreme Federal Court, can be used.

From this presentation, it is clear that the management of the prerogatives of the parliamentary opposition generally requires a certain number of parliamentarians. This does not occur, however, in the case of the triggering of abstract control of constitutionality. In this case, a single parliamentarian in the National Congress is enough for the Supreme Court to be called upon to decide. Paradoxically, parties with fewer than 31 parliamentarians cannot even request verification of the vote in the Plenary of the Chamber of Deputies, but they can lead the Plenary of the Supreme Federal Court to declare the unconstitutionality of a law. From a purely arithmetical perspective, it is reasonable to conclude that it is easier and more effective to exercise political opposition through the judicial route than through the legislative parliamentary route.

It can be seen, therefore, that the 1988 constitutional structure not only leads to, but also stimulates, an intense judicialization of political relations in Parliament. Issues that could often be considered as interna corporis are now constitutionalized and taken to the Judiciary, especially the Supreme Federal Court, for decision by very small minorities, if not by a single dissatisfied parliamentarian.

This intense exercise of judicial opposition also leads to the need for advocacy by the Legislative Branch. Although the parliamentary majority often coincides with the position of the Executive Branch, this is not a necessary rule, since the RICD provides for leadership for both the Government and the Opposition, as well as for the Majority and the Minority. When the parliamentary Majority acts in agreement with the Government, it makes some sense for the AGU to defend the majority positions, since these are either indivisible interests of the Union or, if divisible, without a situation of conflict of powers. However, this is not true when there are conflicts between the parliamentary Majority and the position of the Government. The previous chapter has already demonstrated the tendency for the AGU to position itself in favor of the Executive Branch in these cases and leave open the defense of the majority positions of the Legislative Houses. This vacuum in the defense of majority positions, combined with the encouragement of the judicialization of political issues, reveals a problem in the institutional design of the 1988 system, insofar as it aggravates democratic criticism of constitutional control.

Jeremy Waldron (2006, p. 1,353) summarizes the democratic criticism of judicial review of constitutionality in two fundamental points. First, the actions of the courts do not help society clearly face the problems arising from disagreement about the content of its constitutional rights. Quite the contrary, for the author, judicial review masks disagreement about rights behind discussions about precedents, parties, texts and interpretations. Second, Waldron indicates that judicial review is in itself politically illegitimate, as it favors voting among a small number of unelected public agents and disregards basic principles of political representation and political equality in the decision-making of issues involving rights.

A similar criticism is described by Jürgen Habermas (2020, p. 316). Judiciary, by interfering in legislative powers for which it does not have democratic legitimacy, threatens the balance of the normative structure of the Rule of Law. Furthermore, such judicial intervention, often based on principles of high abstraction and generality, reinforces a flexible structure of law that privileges the autonomy of the state apparatus to the detriment of the autonomy of citizens. This results in a weakening of democratic legitimacy, since fundamental decisions for society are shifted from representative institutions to a technocratic and unelected sphere, which compromises popular participation in the decision-making process.

These criticisms are aggravated by the Brazilian institutional design, as the defensive discourse of decisions taken by popular sovereignty is weakened. In other words, without adequate judicial defense of majority parliamentary decisions, the fundamental disagreements of society are not even properly exposed and, furthermore, the political and legal reasons that led to the Parliament's conclusion are ignored.

However, the phenomenon of judicialization also occurs in political relations between the Legislative and Executive branches, which are essentially political branches. The aforementioned ADI 7,633, in which the President of the Republic challenges Law No. 14.784/2023, which extended the payroll tax exemption, is an example of this situation. The Executive Branch acted within the scope of Parliament to win the dispute against the extension of the tax benefit. After the law was approved by the National Congress, it was vetoed by the President of the Republic. The veto was later rejected by the members of parliament. Defeated in the legislative arena, the Executive Branch appealed to the STF arguing that the new legislation was budgetary and financially inadequate, which was suspended by the Court.

It should be noted that the topic under debate in ADI 7,633 – budgetary and financial adequacy of legislative measures – was until recently an exclusively political matter, specific to the Executive and Legislative Branches. However, with the enactment of Constitutional Amendment No. 95/2016, which established the New Fiscal Regime, the rule of art. 113 of the ADCT was created, which established in the Constitution the jurisdictional control of the budgetary adequacy of legislative proposals. In these terms, the National Congress itself, acting as a reforming constituent, transformed an essentially political relationship into a legal issue, which is subject to the scrutiny of the Supreme Court.

The case of ADI 7.633 is a notable example of the expansion of the scope of judicial control of political issues, by recommending a reformulation of the Parliament's behavioral model in the face of this type of issue. This reformulation is precisely the need to create legal representation bodies.

In these cases, there is also a tendency for the legal arguments of the Executive Branch to prevail over the Legislative Branch. In these cases, the AGU acts to protect the interests of the government, and the Judiciary Branch is not able to adequately assess the legal and political reasons of the parliamentary majorities opposed to the government. Here, there is a problem of technocratic overriding of democratic parliamentary deliberation, which reinforces criticism of the inadequate exercise of constitutional review.

3. The experience of the Office of Legal Counsel of the Chamber of Deputies

3.1 Legal advisory services in non-legislative matters

The first aspect to consider is that the establishment of the Office of Legal Counsel of the Chamber of Deputies unified and centralized the activity of legal consultancy on non-legislative matters in the House. According to Act of the Board No. 231/2022, the Legal Department has consultancy units specialized in personnel, bidding processes and administrative and technical-financial contracts. Centralization and specialization are far from representing movements of a merely formal or cosmetic nature.

Keith Krehbiel's (1992) information theory argues that legislative institutions, especially committees and commissions, are structured to facilitate the collection and dissemination of specialized information in order to make more effective policy decisions. Unlike distributive theory, which focuses on maximizing gains for specific districts or groups, information theory emphasizes that legislators delegate power to committees to reduce information asymmetries, improve the quality of decisions, and thus promote policies that benefit the general public. This approach emphasizes neutrality and the pursuit of efficient outcomes, with the full legislature retaining ultimate authority to ensure the reliability of the information provided.

This understanding, applicable to the technical collegiate bodies of the Legislature, has been carried over to the institutionalization of its legal and attorney's offices (Silva, 2019, p. 195). That is, the creation of centralized legal bodies has the role of improving administrative decision-making, avoiding losses in efficiency and effectiveness due to the dispersion of legal information.

Legal centralization in the Chamber of Deputies can be seen as an institutional strategy to reduce information asymmetries within the administrative structure. By consolidating and specializing legal treatment in a single body, technical and regulatory information becomes more accessible, accurate,

and reliable for decision-makers. This not only increases the quality and efficiency of administrative decisions, but also reinforces the role of the legal profession as an essential mechanism for collecting and disseminating specialized information, which is in line with the logic of neutrality and the search for efficient results proposed by information theory. In this way, legal centralization contributes to a more coordinated and informed administration, and reflects the principles defended by information theory in the legislative context.

In fact, in the practical experience of the Chamber of Deputies prior to the establishment of the centralized Legal Department, it was common for information to be dispersed among the various administrative legal advisory services, which generated situations of either redundancy or contradiction in the advisory activity. A centralized legal body contributes to the uniformity of the interpretation of the law in the administrative sphere and increases the efficiency of the decision-making processes coordinated in the Legislative House.

This uniformity of legal interpretation achieved through centralization not only promotes internal efficiency, but also strengthens legal certainty in the administrative decisions of the Chamber of Deputies. By consolidating a single line of interpretation, the uncertainty caused by conflicting opinions is eliminated, which in turn reduces the risk of litigation and increases the predictability of institutional actions. This effect is particularly relevant in a scenario of increasing judicialization of public administration, in which well-founded decisions aligned with legal standards can avoid legal challenges, preserve resources and reinforce the institutional credibility of the Legislative House.

Particularly in the context of procurement, the new Law on Tenders and Contracts has introduced a peculiar rule regarding the so-called "lines of defense" (control tiers) for public procurement, the relevance of which recommends its full reproduction:

> Art. 169. Public procurement must be subject to continuous and permanent risk management and preventive control practices, including through the adoption of information technology resources, and, in addition to being subject to social control, must be subject to the following lines of defense:
>
> I – first line of defense, made up of public servants and employees, bidding agents and authorities who work in the governance structure of the body or entity;
>
> II – second line of defense, made up of the legal advisory and internal control units of the body or entity itself;
>
> III – third line of defense, integrated by the central internal control body of the Administration and the court of auditors. (Brazil, 2021)

The law adopted an ordinal structure of bodies responsible for the "defense" of the contract. The model conveyed by the law, moreover, is already widely adopted in the literature on control and auditing.

The so-called Three Lines Model is an organizational proposal that allows the coordination of the various actors responsible for control, in order to help achieve the entity's objectives, strengthen governance and increase risk control (Institute of Internal Auditors, 2020; Brasil, 2018). In the general literature, the first line is composed of the entity's administrative body, the second, risk management and the third, internal audit. Based on the Three Lines Model, it can be seen that control is part of the management cycle, so that the entity's management is also responsible for it.

The three-line structure is based on the coordination of the tasks of each one, in order to avoid harmful effects, such as duplication or overlapping of attributions and the existence of gaps in control during the management cycle (Institute of Internal Auditors, 2020, p. 7). The sequential ordering of

the lines of defense and the focus on preventive control through the adoption of continuous and permanent risk management practices indicate that the subsequent lines of defense should only intervene on the others in situations of failure or risk of failure of the previous lines. That is, the second and third lines of defense must observe and not overlap the competences of the previous lines. This is the already mentioned duty of coordination to avoid duplication, overlapping and failure.

The centralization of legal activity, from the perspective of the Three Lines Model, also contributes to greater transparency and accountability in administrative decisions. The Office of Legal Counsel of the Chamber of Deputies, by acting as a specialized legal consultancy center, reinforces the first and second lines of defense and ensures that the interpretations and opinions issued are uniform and based on current legislation. This not only reduces the occurrence of errors or contradictory decisions, but also consolidates trust in the internal decision-making process and demonstrates commitment to good governance and preventive control.

Furthermore, the integration of legal functions with the guidelines established in the new Procurement and Contracts Law demonstrates how centralization of competences can be instrumental in complying with legal standards. The Office of Legal Counsel of the Chamber of Deputies plays a strategic role in providing legal guidance that allows for risk mitigation at each stage of the contracting process. Thus, the centralized legal body not only supports the risk management practices provided for in the law, but also acts as a guardian of compliance, prevents errors and irregularities, and optimizes the use of public resources.

Finally, by aligning itself with the best practices in preventive control and risk management, the Office of Legal Counsel of the Chamber of Deputies reinforces its institutional relevance as a structuring element of public governance. This approach not only contributes to the achievement of administrative objectives, but also promotes a cycle of organizational learning. The experience gained through standardization and legal specialization can serve as a reference for other legislative and administrative bodies, which increases the benefits of centralization on a broader and more collaborative level.

3.2 Judicial representation of the Chamber of Deputies and its entities

The presentation in the first part of this article demonstrated a substantial transformation in the legal relations between the branches of government of the Brazilian State, not only with the enactment of the 1988 Constitution, but also with the subsequent development of the constitutional order. In particular, it was possible to note the expansion of the scope of action of constitutional review, as well as the expansion of the legitimacy to appeal to the Supreme Court in order to question acts of the Legislative Branch.

In light of this situation, there has been increasing judicialization of issues that, in the previous system, were essentially political, both internally within Parliament and in its relationship with other Powers and bodies. The exercise of parliamentary opposition has come to coexist with the constant management of political opposition through the judicial system.

The new constitutional framework has created a paradoxical situation in disputes involving the Legislative Branch. The Office of the Attorney General of the Union, responsible for both acting as a guardian of the principle of the presumption of constitutionality of laws and for representing the interests of the Union in court, has found itself in constant need of protecting the divisible interests

of the Union, in line with the Executive Branch. The Legislative Branch has thus been cornered by an intensification of judicial control of its acts and, at the same time, has experienced a certain weakening of its defense before the Judiciary Branch.

In view of these findings, the creation of bodies for the judicial representation of the Legislative Branch is essential to strengthen the democratic legitimacy of constitutional review, as it balances the role of representative institutions vis-à-vis the Judiciary. In a constitutional system such as Brazil's, the Legislative Branch is frequently called upon to justify its decisions before the Supreme Court, whether in direct actions of unconstitutionality or in other mechanisms of judicial review. However, the Parliament did not have a dedicated and technical structure, such as the Attorney General's Office, in the case of the Executive Branch, to present in a consistent and robust manner the political and legal grounds that supported its decisions. This generated a certain institutional asymmetry that favored the Executive Branch and undermined the ability to defend the majority choices made by elected representatives, which compromised the democratic ideal of equality between the Branches.

This inequality is particularly problematic because, without adequate judicial representation, the arguments supporting legislative decisions may be presented incompletely or insufficiently, making it difficult for the Judiciary to fully access the political and legal reasons that underpin a given law. When this occurs, constitutional review runs the risk of being perceived as undemocratic interference by the Judiciary, which invalidates laws without adequately understanding or considering the political process that gave rise to them. The creation of a specialized advocacy body for the Legislative Branch allows for the articulation and defense of these reasons more effectively, which reinforces the idea that constitutional review should be a space for institutional dialogue, not an exercise in judicial supremacy.

Furthermore, an institutionalized advocacy role for Parliament helps mitigate democratic criticism of judicial review by promoting greater transparency in the constitutional review process. Technical and consistent advocacy for parliamentary decisions would ensure that judicial debates reflect not only technical interpretations of constitutional norms, but also the interests and values democratically discussed in the legislative sphere. This would allow constitutional review to be perceived as a mechanism for improving the democratic process, rather than as a replacement of the popular will by judicial discretion. Thus, the institutionalization of an advocacy role for the Legislative Branch not only strengthens the legitimacy of judicial decisions but also protects the role of Parliament as the most direct expression of popular sovereignty.

Another relevant aspect to consider is that the creation of legislative bodies for judicial representation is the integration of the legislative and jurisdictional activities of the State. Authors such as Julius Cohen highlight that a challenge of "legisprudence" is the need for judges to seek standards and coherence in legislative production as a way of creating "precedents" within the legal system itself (Cohen, 1983, p. 1,177-1,178). This search aims to increase the predictability and coherence of the law and to reduce conflicts between norms and judicial decisions. The work of legislative prosecutors has the potential to bring arguments of a historical and genetic nature to the Judiciary[4], in order to integrate the reasoning of the legislator and the judge. In these cases, legislative

[4] A historical argument is one that concerns the analysis of the problem, which is the object of the current standards, constructing their meaning based on the meaning they had at the time of their publication (Alexy, 1995, p. 87). A genetic argument is one that concerns texts preceding the current standard that allow the reconstruction of its meaning (Müller, 1997, p. 245).

prosecutors organize the flow of information between Parliament and the Judiciary and increase the potential for coherence between the production and application of the law.

In fact, it is worth concluding that the establishment of judicial representation bodies involves improving the effectiveness, the methodology of jurisdictional activity, and the protection of Parliament's prerogatives.

Since its creation, the Office of Legal Counsel of the Chamber of Deputies has been providing information to the Supreme Court in cases of abstract control actions and representing the Chamber itself in hearings and trials before the Court. In several cases, it has also acted in representing members of parliament and other bodies of the Chamber, especially when there is a conflict of understanding or interests vis-à-vis the Executive. The Legal Department has acted as a representative of the Chamber, for example: (i) in the special conciliation committee regarding the reductions in maximum ICMS rates by Complementary Laws No. 192/2022 and No. 194/2022 (ADI 7,191 and ADPF 984, reported by Justice Gilmar Mendes); (ii) in defending the Parliament's position in ADI 7,633, reported by Justice Cristiano Zanin, in which the President of the Republic questioned the constitutionality of the extension of the payroll tax exemption by Law No. 14,784/2023; (iii) in the special conciliation committee in ADIs 7,582, 7,583 and 7,586, ADC 87 and ADO 86, reported by Minister Gilmar Mendes, which debate the time frame for the demarcation of indigenous lands regulated by Law No. 14,701/2023; (iv) in defense of Parliament's position on the privatization of Eletrobrás (ADI 7,385, reported by Minister Nunes Marques , proposed by the President of the Republic).

The Supreme Court itself has recognized the role of the legislative branch's legal services, to the extent that it has admitted, in accordance with the precedents already cited, the creation of bodies for the judicial representation of the Houses of Parliament. However, the issue still has other jurisprudential advances.

The participation of legislative bodies in the constitutionality review process was largely limited to providing information, pursuant to Article 6 of Law No. 9,868/1999. However, successful institutional experiences have deepened this participation. In ADI 119 (2014), the Supreme Federal Court considered Article 88, § 2, of the Rondônia State Constitution to be constitutional, which assigns the Attorney General of the Legislative Assembly the right to defend acts challenged in constitutionality review before the Court of Justice. According to the rapporteur, Justice Cármen Lúcia, this is a salutary initiative, especially in the defense of laws initiated by parliament, because it enables "the defense of the law questioned by its own authors."

Legislative proposals have also changed the institutional framework in a similar way. In Bill No. 3,640/2023, which originated from a committee of jurists formed within the Chamber of Deputies and chaired by Justice Gilmar Mendes of the STF, it was expressly provided that the AGU may argue either for or against the constitutionality of the contested legislation (art. 20, sole paragraph). It is from this that we conclude that the bill has surpassed the role of the AGU as guardian of the principle of the presumption of the constitutionality of laws. In our view, according to the premises of the aforementioned bill, the defense will be the responsibility of the parliamentary body itself in its information (art. 18).

The issue of defending the contested act has generated fruitful debate in the Committee on Constitution and Justice and Citizenship of the Chamber of Deputies. The rapporteur, deputy Alex Manente, presented an opinion in which he raises the unconstitutionality of the aforementioned modification, since, according to the text of the Constitution, the AGU could only defend a contested

act (Brazil, 2023). Deputy Laura Carneiro, in a separate vote (Brazil, 2024), highlighted the conflicting situation of the AGU's role as a representative of the Union and the President of the Republic, especially if the latter is the proponent of the ADI, and as a defender of the contested act. The deputy proposed deepening the participation of the Legislative Branch in the defense of the contested act and making the legal statement of the Legislative Houses mandatory.

Also, Proposed Amendment to the Constitution No. 8/2021, already approved by the Federal Senate, now provides, in § 3º-A of art. 102 of the Constitution, that the Legislative Houses of the National Congress, from which the legal norm or normative act emanated, will also be previously summoned to express their opinion on the contested act or text, through their own bodies. Such bodies are generally the Advocacy Offices of the Chamber of Deputies and the Senate, which demonstrates the deepening of the legislative debate on the judicial representation of Parliament.

4. Conclusions

This article addressed as a central problem the absence of a centralized judicial representation and legal consultancy body in the Chamber of Deputies, a condition that historically hindered the defense of legislative prerogatives in a context of expanding constitutionality control and the judicialization of political relations. The main objective was to describe the institutional experience that culminated in the creation and operation of the Office of Legal Counsel of the Chamber of Deputies and to detail its foundations and its performance.

To understand the need to create a centralized legal practice, some justifications must be highlighted:

(i) With the 1988 Constitution, there was a certain increase in the objective and subjective intensity of judicial control over the activities of the Legislative Branch, especially in the control of constitutionality. As the Constitution began to regulate in detail various aspects of the country's political and institutional life, it also expanded the legitimacy for individuals to take these issues to the Supreme Federal Court.

(ii) This expansion of constitutional control by the 1988 Constitution resulted in the increasing judicialization of political relations and transferred to the Judiciary the resolution of disputes that were previously considered internal to Parliament or of an essentially political nature, especially in conflicts between parliamentary majorities and minorities and between the Legislative and Executive branches.

(iii) The Attorney General's Office, which is competent to defend legislative acts challenged before the STF, began to position itself in favor of the admissibility of ADI, even against federal laws. In this sense, it was noted that the AGU does not defend only indivisible or homogeneous interests of the Union, but often defends divisible interests, aligns itself with the Executive Branch and leaves the acts of the Legislative Branch lacking defense.

In the context identified, it is noted that the absence of institutionalized legal representation of Parliament aggravates institutional asymmetry, favors the Executive and hinders the adequate defense of legislative decisions, which compromises the democratic legitimacy of constitutionality control and highlights the need for specific parliamentary advocacy bodies.

The second part of the text then addressed the specific experience of the Chamber of Deputies' Legal Department, focusing on advisory and litigation activities. The following issues were raised:

(i) The creation of the new body centralized and unified administrative legal consultancy, which was previously fragmented among different advisory services and agencies. This centralization sought to reduce redundancies, avoid conflicting interpretations, and increase efficiency and legal certainty in the House's administrative decisions. The creation of the Office of Legal Counsel of the Chamber of Deputies, from the perspective of legal compliance of administrative acts, reinforced predictability, mitigated litigation, and contributed to good governance and transparency, which consolidated the relevance of the Legal Department as an essential element in the efficient and responsible management of public resources.

(ii) The Office of Legal Counsel of the Chamber of Deputies began to fill the institutional vacuum of judicial representation of the Legislative Branch and to act in abstract control actions and strategic litigation, defending the positions of the Chamber in situations of conflict between Branches or within the Legislative Branch itself. The Legal Department was created as a way to provide balance to institutional relations, which allowed the political and legal reasons of the Parliament to be adequately presented in judicial debates, especially in the Supreme Federal Court. In addition, the centralization of judicial representation promoted greater articulation in the defenses presented and contributed to the strengthening of democratic legitimacy and the integration between the legislative and jurisdictional roles of the State. This change also sought to mitigate the problems of democratic legitimacy by creating conditions for a more transparent and dialogic review of constitutionality, reinforcing the autonomy and the capacity of the Legislative Branch to defend its decisions.

As a conclusion, it is argued that the creation of the Office of Legal Counsel of the Chamber of Deputies represents a milestone in strengthening the institutional prerogatives of the Legislative Branch, as it balances relations between the Branches in a scenario of increasing judicialization. The centralization of legal activity promoted greater administrative efficiency, legal certainty and the ability to defend parliamentary decisions before the Judiciary. In a constitutional system that prioritizes constitutionality control, the Legislative Legal Department emerges as an essential instrument to guarantee transparency and inter-institutional dialogue and reinforce the democratic legitimacy of legislative decisions.

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