

The inviolability of city councilors in the jurisprudence of the Brazilian Supreme Federal Court: from the scope of immunity to civil liability

Daniel Amorim Assumpção Neves

Post-doctoral degree in Civil Procedure from the Faculty of Law of the University of Lisbon. PhD and Master's degree in Civil Procedure and undergraduate degree from the Faculty of Law of the University of São Paulo (USP). Lawyer.

Felipe Granado Gonzales

Master's degree in Constitutional Law from the Brazilian Institute of Education, Development and Research (IDP/DF). Graduated from the Faculty of Law of the University of São Paulo (USP). Attorney for the municipality of São Paulo. Lawyer.

Eduardo Maia da Silveira

Master's degree in Economic Law from the Brazilian Institute of Education, Development and Research (IDP/DF). Legislative consultant for the Chamber of Deputies. Lawyer.

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ABSTRACT: The paper is dedicated to examining the inviolability of city councilors under the 1988 Federal Constitution of Brazil, especially in light of the judgment in RE 600.063/SP, which has general repercussion (Theme 469/STF), and its developments. The analysis covers the transformation of political communication in the digital age, particularly through the use of social media in electoral campaigns and parliamentary activity, and its impact on the application of parliamentary immunity. In the aforementioned binding precedent, the new reality of online expression was disregarded. Subsequently, the Supreme Court, in a later ruling, provided an interpretative framework for the paradigmatic decision in order to address the new digital context. The article also discusses civil liability arising from statements made by parliamentarians in light of STF Theme 950, which rejected indemnity claims against the federative entity to which the public official is linked, establishing a regime of personal, direct, and exclusive liability on the part of the legislator.

KEYWORDS: freedom of expression; inviolability; city councilor; parliamentary immunity; Supreme Federal Court.

1. Introduction

The digital revolution in political communication has imposed unprecedented challenges on the interpretation of parliamentary immunity for city councilors, especially regarding the concept of “municipal constituency,” in an environment where geographical boundaries are nonexistent.

The immediacy and unlimited reach of social media have rendered traditional legal categories obsolete. Modern parliamentary activity demands a reinterpretation of the constitutional protections for city councilors, one that is compatible with the contemporary reality of political representation.

From this perspective, the present study begins with a brief analysis of the inviolability of city councilors in the current context of freedom of expression, in order to examine the jurisprudence of the Federal Supreme Court (STF) regarding the material immunity of councilors.

More specifically, the judgment in RE 600.063/SP, which gave rise to Theme 469/STF, is adopted as a benchmark, establishing a binding understanding on the immunity of city councilors. The precedent was established in light of the social reality then in place. The judgment deals with a statement made within the municipal jurisdiction and, even considering the advanced stage of use of social media in elections and parliamentary activity, did not encompass modern forms of communication and the reach of expressions in the virtual environment.²

Based on the ruling issued in the case with general repercussions, collegial decisions on the matter were sought. Thus, a new vector for interpreting Theme 469/STF was observed, consistent with the opinions expressed through the internet.

The study also analyzes the issue of civil liability for parliamentary pronouncements, as consolidated by Theme 950/STF in the judgment of RE 632.115/CE.³

The aim is to understand the necessary balance between the institutional protection of the Legislative Branch and the safeguarding of citizens'

2 See the summary of the judgment: "CONSTITUTIONAL. EXTRAORDINARY APPEAL. CIVIL INVIO-LABILITY OF THE OPINIONS, WORDS AND VOTES OF CITY COUNCILORS. ADDITIONAL PROTEC-TION OF FREEDOM OF EXPRESSION. SETTING ASIDE OF JUDICIAL REPRIMAND FOR OFFENSES MANIFESTED IN THE EXERCISE OF THE MANDATE AND WITHIN THE MUNICIPALITY'S JURISDICTION. APPEAL GRANTED. 1. City councilor who, in a session of the Chamber, allegedly expressed himself in a way that offended a former city councilor, stating that the latter "supported corruption [...], thievery, [...] shamelessness", being a person without dignity and without morals. 2. Obser-vance, in this case, of the limits provided for in art. 29, VIII, of the Constitution: statement made in the exercise of the mandate and within the municipality's jurisdiction. 3. The interpretation of the phrase "in the exercise of the mandate" should highlight the different aspects of parliamentary activity, among which the oversight of other branches of government and political debate stand out. 4. Although undesirable, personal insults uttered within the scope of political discussion, respecting the limits established by the Constitution itself, are not subject to judicial reprimand. This immunity is characterized as additional protection for freedom of expression, aiming to en-sure the flow of public debate and, ultimately, democracy itself. 5. The absence of judicial control does not completely immunize the statements of parliamentarians, which can be reprimanded by the Legislative Branch. 6. The appeal is granted, with the following thesis established, under general repercussion: within the limits of the municipality's jurisdiction and provided there is relevance to the exercise of the mandate, council members are judicially immune for their words, opinions, and votes. (RE 600063, Rapporteur Justice Marco Aurélio, Rapporteur for the Judgment Justice Luís Roberto Barroso, Full Court, decided on February 25, 2015. Electronic judgment on general repercussion - merits DJe-090, released on May 14, 2015 and published on May 15, 2015).

3 The judgment of RE 632.115/CE, conducted virtually, was concluded on September 26, 2025. The written submissions are available on the STF (Federal Supreme Court) website. The following thesis is presented in the unanimous opinion of the rapporteur: "1. Parliamentary immunity (Article 53, *main paragraph*, in conjunction with Article 27, § 1, and Article 29, VIII, CF/1988) constitutes an exclusion of the State's objective civil liability (Article 37, § 6, CF/1988), precluding any claim for compensation against the public entity for opinions, words, and votes covered by this guarantee. 2. In cases where the conduct of a parliamentarian exceeds the limits of parliamentary immunity, any liability will fall personally, directly, and exclusively on the parliamentarian himself, under the regime of fault-based liability." (RE 632.115/CE. Rapporteur Justice Luís Roberto Barroso. De-cided on September 26, 2025).

fundamental rights, especially in a context of accelerated transformation of the means of communication and the forms of exercising democratic representation at the municipal level.

2. Notes on freedom of expression and the material immunity of city councilors

In listing fundamental rights and guarantees, the 1988 Federal Constitution explicitly addresses freedom of expression. Article 5, in sections IV, IX, and XIV, provides for the free expression of thought and intellectual expression and communication activity, as well as guaranteeing access to information.

These provisions aim to ensure, provided there are no conflicts with other fundamental rights or values enshrined in the Constitution, any and all forms of manifestation, expression, externalization of thought, criticism, and opinion. Freedom also encompasses the right not to express oneself (Mendes; Coelho; Branco, 2007, pp. 350 and 351).

The text, however, also provides for limitations, such as the prohibition of anonymity, the right of reply and compensation for material damages and compensation for moral or image damages, and the inviolability of intimacy, privacy, honor and image, ensuring the right to compensation.

In this context, the Constitution guarantees parliamentarians at all levels, in articles 27, § 1, 29, VIII, and 53, inviolability, both civil and criminal, for their opinions, words, and votes.

Parliamentary immunity therefore represents a kind of qualified freedom of expression, since it prevents city councilors, state deputies, and senators from being held accountable for their statements made in the exercise of their duties.

This immunity clause aims to guarantee the full freedom of action of the parliamentarian, not as an individual privilege, but in an institutional capacity, as a representative of Parliament itself. This ensures the breadth of the debate of ideas and prevents retaliation or even the legislator feeling inhibited in their actions as a parliamentarian (Veronese, 2006, p. 55).

The 1988 Federal Constitution elevated municipalities to the category of federated entities and granted them financial, political, and administrative autonomy. In light of this new federative structure, the Federal Constitution of 1988 provides city councilors with material immunity for their opinions,

words, and votes in the performance of their mandate and within the territorial limits of the city (Meira, 2002, p. 2).

The jurisprudence of the Brazilian Supreme Court (STF), as will be explored in this study, has fluctuated regarding the scope of the material immunity of city councilors. At times it was understood that the inviolability of councilors was relative, unlike the immunity of deputies and senators, and restricted to parliamentary activity within the City Council; at other times it was considered absolute in substantive terms, differing only in geographical limitation.

The Federal Supreme Court's understanding, therefore, involves reconciling two important theoretical currents on the matter: one related to the location of the demonstration and the other concerning the connection between the demonstration and parliamentary activity.

The first link connects immunity to the so-called "spatial criterion" or "geographical criterion," whereby, in the case of parliamentary activity within the premises of the legislative house, inviolability is absolute, dispensing with the need to analyze the causal link with parliamentary activity. Immunity could only be waived "in cases of abuse or criminal, fraudulent, or deceitful use of this prerogative to cause degrading offense to third parties or to incite the commission of crimes¹. "

According to the second interpretation, when statements are made outside the parliamentary environment, immunity is relative and conditional upon demonstrating a causal connection between the statement and the exercise of legislative function. In such situations, the opinion or pronouncement must maintain a thematic relevance to the duties of the parliamentary mandate – whether in the context of criticism of government action, in the exercise of oversight of the acts of the Public Power, in accountability to the electoral base, or in contributing to the democratic debate on socially relevant issues;

1 In the judgment of the Appeal in ARE 1.347.443/RJ, Minister Gilmar Mendes presents the jurisprudential trends of the Supreme Court: "[...] In other precedents, the Court established that speeches delivered from the rostrum of the respective parliamentary chamber would be inviolable regardless of the verification of the causal link between the speech and legislative functions, which would approximate an absolute and geographical theory, of Blackstonian origin, of parliamentary prerogatives. Regarding speeches delivered outside the rostrum of the respective chamber, the Court has understood that they are only covered by the immunity clause if they possess this reciprocal link (*propter officium*) with the functions of parliamentarians." The minister points to the evolution of understanding towards moving away from the absolute character of immunity, to prioritize the link between the statements and the exercise of parliamentary activity. Thus, it states that "[...] although broad freedom of expression is still guaranteed to the people's representatives, as it is an essential prerogative for the performance of their duties, in cases of abuse or criminal, fraudulent or deceitful use of this prerogative to offend third parties or to incite the commission of crimes, it can be concluded that the immunity clause does not apply, since the aforementioned privilege cannot be used in a manner contrary to the very purpose that generated its creation." (ARE 1.347.443 AgR, rapporteur Justice Gilmar Mendes, Second Panel, DJe July 17, 2023).

in other words, “parliamentary immunity has a scope limited by the very purpose that gives rise to it.”²

The issue was examined by the Federal Supreme Court, with general repercussion. At that time, the scope of the inviolability of city councilors was addressed; however, the Court did not delve into a more specific analysis of the area of activity of councilors in the face of the phenomenon of digital communication. This examination, in a collegial manner, was carried out years later by the Court’s First Panel, which established a broader guideline than that established in the general repercussion case, as will be explored below.

3. Parliamentary immunity in the digital age

Over the past two decades, political communication in Brazil has undergone a profound transformation. While the internet played a secondary role in the 2006 elections, from 2010 onwards social networks have established themselves as crucial tools for mobilization, debate and interaction between candidates and voters (Murta; Ituassu; Capone; Leo; La Rovere, 2017, p. 53).

This trend intensified in subsequent elections, with the rise of Facebook (2014), Instagram (2018), and TikTok (2022). Each social network introduced new dynamics to political communication. At the municipal level, the relevance of social networks was even greater.

City councilors, who traditionally faced obstacles in accessing mass media such as radio and television, have found in digital platforms direct and free channels to communicate with their constituents. Facebook pages, Instagram profiles, and YouTube channels have become daily tools for accountability, oversight of the municipal executive branch, and discussion of local public policies.

2 See the summary of the judgment: “Criminal and criminal procedural law. Criminal complaint. Insult. Defamation. Precedent 714/STF. Statements in an interview related to parliamentary activity. Federal deputy. Material immunity. Atypicality of conduct. Rejection. 1. The legitimacy of the offended party, through a complaint, and of the Public Prosecutor’s Office, conditioned on the representation of the offended party, for criminal action for a crime against the honor of a public servant due to the exercise of their functions is concurrent (Precedent 714/STF). 2. The parliamentarian’s statements have a causal link with legislative activity. 3. The civil and criminal immunity of the federal parliamentarian aims to enable the full exercise of the mandate. 4. Excessive language may, in theory, constitute a breach of decorum, giving rise to political control. 5. Criminal protection does not apply in this case, as the conduct is atypical. Precedents. Criminal complaint rejected.” In his vote, the rapporteur, Justice Luís Roberto Barroso, points out that “only opinions unrelated to parliamentary activity can, in theory, subject a member of Congress to the penal control to which other citizens are subject.” The Justice also states that “the fact that the parliamentarian is not in the premises of the respective legislative house or the means by which the statements are conveyed does not exclude constitutional protection.” Note, however, that the case dealt with a statement by a federal deputy, whose area of interest is national in scope. (Pet 5.647/DF, First Panel, rapporteur Luís Roberto Barroso, DJe November 26, 2015).

The Covid-19 pandemic further accelerated this “digitalization of mandates,” with legislative sessions broadcast live and public hearings held virtually in various city councils. This new reality gives contemporary political communication specific characteristics: instantaneity (publications reach thousands of people simultaneously), virality (content can be shared exponentially), unlimited reach (social media posts transcend geographical barriers), and permanence (statements are recorded indefinitely).

These attributes challenge traditional legal concepts, particularly the idea of “municipal jurisdiction” as per article 29, VIII, of the Federal Constitution. The phenomenon of social media applied to the political field makes problematic the view that subordinates the immunity of city councilors to statements made within the territorial limits of the municipality.

On the internet, geographical boundaries are nonexistent. A post by a city councilor from a small municipality can, in a matter of minutes, reach readers throughout the country and even internationally. The viral spread of political content on social media occurs unpredictably and is independent of the author’s intention; in other words, there is no control over its reach.

Therefore, a literal interpretation of the territorial limitation would result in the denial of protection to practically all digital expressions of city councilors, thus emptying the constitutional guarantee.

4. The inviolability of city councilors in the case law of the Brazilian Federal Supreme Court(STF) based on Theme 469/STF

On August 25, 2011, a date when the use of social media in political campaigns was already a reality, the Brazilian Supreme Court, in RE 600.063/SP, with Justice Marco Aurélio as the rapporteur, recognized the existence of general repercussion in the issue concerning the scope of the inviolability of city councilors for their opinions, words, and votes.

The case involved a lawsuit for compensation for moral damages filed by a politician without a mandate against a city councilor who was then serving as president of the City Council of Tremembé (SP).

It is extracted from the records that the politician who filed the lawsuit had submitted a criminal complaint to the Public Prosecutor’s Office against the mayor of the tourist resort of Tremembé and requested that said document be read in the City Council. The defendant, a councilman from the mayor’s

political coalition, upon seeing the plaintiff in the legislative building, began to verbally abuse him with offensive words, implying that he had neither the moral standing nor the dignity to speak in that environment, as he had supported the corruption and “thievery” of a previous mayor whose term had been revoked.

In his defense in the lawsuit, among other arguments, the councilman claimed that his statement was made within the limits of freedom of expression and that it was protected by the material immunity provided for in article 29, VIII, of the Federal Constitution of 1988.

In the ruling, based precisely on the inviolability of council members for opinions, words, and votes guaranteed by the Constitution, the judge dismissed the claim. The magistrate reasoned that the defendant’s statement, as a council member, in the City Council plenary session, occurred due to political dissent, in the exercise of his mandate, within the municipality’s jurisdiction, in accordance with parliamentary activity.

The Court of Justice of the State of São Paulo, on appeal, overturned the sentence. The local court understood that the parliamentary immunity invoked by the councilman did not apply to the case, given that the offenses had exceeded reasonableness and did not qualify as typical of parliamentary activity. The ruling indicates that parliamentary immunity is not absolute and does not prevail over the rights to honor, image, and privacy.

The councilman then filed an extraordinary appeal, based on the violation of article 29, VIII, of the Federal Constitution of 1988.

The general repercussion of the issue was recognized in 2011 in this process. After four years, the appeal was brought to trial. In the session of February 25, 2015, Justice Marco Aurélio, in the position of rapporteur, delivered a vote to deny the appeal, due to the absence of violation of the constitutional provision invoked.

The Justice adopted as a premise for resolving the controversy the need to examine the nature of the inviolability provided for in Article 29, VIII, of the Constitution, whether absolute or relative, for acts performed within the City Council.

Based on considerations regarding the purpose of parliamentary immunity, in the sense of the need to ensure freedom and independence for the exercise of parliamentary activity, the rapporteur pointed out that the 1988 Federal Constitution granted city councilors mitigated immunity, unlike state and federal parliamentarians, as it would only cover opinions, words, and

votes in the exercise of their mandate and within the territorial limits of the city. He also asserted that inviolability would encompass both criminal and civil spheres, thus guaranteeing the politician's freedom of expression for the proper development of their mandate.

The Justice explained that the Federal Supreme Court(STF) had established the interpretation that the constitutional inviolability of city councilors would be equivalent to the immunity provided for in Article 53 of the 1988 Constitution, that is, oral and written statements made in the legislative house would be subject to absolute material immunity.³ He asserted that this interpretation was superseded by the subsequent understanding that, in relation to city councilors, inviolability would only be guaranteed in the case of statements related to parliamentary activity, in the exercise of their office, and within the municipality's jurisdiction.⁴

In this line of reasoning, the Justice states that the inviolability of city councilors cannot serve as protection for abusive pronouncements that harm the honor of others, types of statements that would go beyond parliamentary activity.

In this specific case, upon examining the speech of the councilman from Tremembé, the court understood that the criticisms directed at the plaintiff did not constitute an act related to parliamentary activity and, therefore, voted to uphold the conviction for moral damages.

However, Justice Luís Roberto Barroso initiated the dissenting opinion. Initially, in the plenary session, he delivered a simple vote stating that the

3 In this regard, the opinion cites RE 140.867/MS, reported by Justice Marco Aurélio, with Justice Maurício Corrêa as the rapporteur for the decision, decided on June 3, 1996, and published on May 4, 2001. See the summary of the judgment: "EXTRAORDINARY APPEAL. CITY COUNCILOR. INVOLABILITY FOR HIS STATEMENTS IN THE EXERCISE OF HIS MANDATE AND WITHIN THE MUNICIPALITY. ABSOLUTE MATERIAL IMMUNITY. INTERPRETATION OF ITEM VI OF ARTICLE 29 OF THE FEDERAL CONSTITUTION. 1. Member of Parliament. Inviolability for his opinions, words, and votes. Material immunity. Constitutional guarantee that prevents his submission to criminal proceedings for acts that are characterized as crimes against honor, as a result of statements made in the exercise of functions inherent to the mandate and within the limits of the municipality's jurisdiction that he represents. 2. Excesses committed by the councilman in his opinions, words, and votes, within the scope of the municipality and in the exercise of his mandate. Matter to be submitted to the legislative house, in accordance with the rules of procedure. Extraordinary appeal acknowledged and granted."

4 In this regard, the opinion cites RE 354.987/SP, reported by Justice Moreira Alves, judged on March 25, 2003, RE 583.559, reported by Justice Eros Grau, judged on June 10, 2008, and RE 526.441, reported by Justice Cármen Lúcia, judged on March 19, 2013. For illustrative purposes, see the summary of the judgment rendered in the AgR in RE 526.441/MG: "INTERNAL APPEAL IN THE EXTRAORDINARY APPEAL. CONSTITUTIONAL. CITY COUNCILOR. MATERIAL IMMUNITY. LACK OF RELEVANCE BETWEEN THE STATEMENT AND THE EXERCISE OF THE CITY COUNCILOR OFFICE. PROVEN MORAL DAMAGES. COMPENSATION. RE-EXAMINATION OF EVIDENCE. PRECEDENT 279 OF THE FEDERAL SUPREME COURT. INTERNAL APPEAL DENIED."

councilman's statement, although improper, was related to parliamentary activity, as it involved a clash between local political actors, in light of the complaint filed against the mayor with the Public Prosecutor's Office.

Subsequently, Justice Luís Roberto Barroso added to his vote, providing more substantial reasoning regarding the inviolability of city councilors. The addition sought to reiterate the equivalence between the "intensity of protection" of the material immunity guaranteed to city councilors, state deputies, federal deputies, and senators (articles 27, § 1, 29, VIII, and 53 of the 1988 Constitution).

The Justice asserts that the difference lies only in the horizontal scope, referring to the geographical reach of city councilors, as opposed to the national scope of the mandate of congressmen. In the vertical aspect, regarding the depth of inviolability, he points out that the intensity of protection is the same for all legislators, regardless of the federated entity in which they operate. Thus, he concludes that for all of them, inviolability is absolute. And he warns that there is also no constitutional protection for any of them in the case of statements that may offend the honor of third parties and have no connection whatsoever with parliamentary activity.

Upon analyzing the specific case, the Justice laments that political debates involve personal insults instead of discussions of ideas, but acknowledges that the speech of the councilman, the defendant in the lawsuit, was delivered within the context of a political debate, within the municipal jurisdiction, and that, therefore, it would be protected by inviolability.

The Justice acknowledges that immunity serves as an additional protection for freedom of expression. He further emphasizes that this shield does not completely exempt parliamentarians from accountability, given the possibility of political liability.

In this case, the dissenting vote of Justice Luís Roberto Barroso prevails, and for the purposes of general repercussion, the Court establishes the following thesis: "Within the limits of the municipality's jurisdiction and provided there is relevance to the exercise of the mandate, immunity is guaranteed to the city councilor" (Theme 469/STF).

It cannot be overlooked that the ruling is already anachronistic from the outset. Since the 2010 elections, social media has gained significant weight in elections. The presence and activity of candidates in the digital world took a leap forward after that election, as electoral campaigning was permitted on

Twitter, currently called X (Murta; Ituassu; Capone; Leo; La Rovere, 2017, p. 53). Simultaneously, internet access also grew in the country.

It is observed, however, that in examining the scope of the inviolability of city councilors, the Federal Supreme Court(STF) turns a blind eye to social reality. By restrictively interpreting the constitutional safeguard of councilors, reaffirming that only demonstrations carried out within the territorial limits of municipalities would be protected, the Court ignores the digital phenomenon.

In truth, the Court did not observe the reality of the councilors' actions even outside the virtual environment. The interpretation of the constitutional text must consider that the activities of municipal parliamentarians include granting interviews to nationally broadcast media, traveling to solicit funds from other entities of the federation, as well as potential clashes with state and federal politicians (Toron, 2004, p. 301).

While it was positive to reinstate the guideline that the level of protection for parliamentarians is the same at the municipal, state, or federal level, it failed to consider the relevance of social media in campaigns, or the national and even international reach of political pronouncements at any level.

Since the thesis was established with general repercussion, the avenues for other appeals on the matter to reach the Federal Supreme Court(STF) are quite restricted, given that local courts will, as a rule, apply Theme 469/STF and, in the case of the denial of extraordinary appeals, only an internal appeal to the courts themselves will be possible.

In research on the subject, after the establishment of Theme 469/STF, specific collegiate decisions on the inviolability of city councilors are dwindling. However, more specific decisions are emerging regarding the expression of parliamentarians on social media (congressmen), suggesting reflection on the spatial aspect of the scope of immunity.⁵

However, there is a more recent ruling in which the First Panel of the STF specifically addresses the scope of Theme 469/STF and the constitutional inviolability of a council member for expressing themselves on the internet

5 In this sense: "Appeal. Criminal and criminal procedure. Criminal complaint for defamation and slander. Freedom of expression and parliamentary immunity. Need for connection with the exercise of the mandate. Manifestly defamatory and injurious intent of the defendant's statements. Doctrine and precedents. Functional theory of parliamentary immunity. Statements made on social media. Appeal granted, with the acceptance of the criminal complaint." (Pet 8242 AgR, reported by Justice Celso de Mello, rapporteur for the judgment Minister Gilmar Mendes, Second Panel, judged on May 3, 2022, Electronic Process DJe-118 published on June 17, 2022, published on June 20, 2022).

(ARE 1.421.633/SC AgR, reported by Justice Alexandre de Moraes, decided on May 3, 2023).⁶

Originally, the mayor of Florianópolis filed a lawsuit seeking an order compelling the mayor to remove an article from his personal website that, based on a report from the State Court of Auditors, accused the mayor of biased bidding processes. He also requested that the mayor be ordered to pay damages.

6 See the summary of the judgment: “INTERNAL APPEAL. INTERLOCUTORY APPEAL IN AN EXTRAORDINARY APPEAL. CITY COUNCILOR. PARLIAMENTARY IMMUNITY. WORDS SPOKEN ON THE INTERNET. THEME 469. INAPPLICABILITY TO THE CASE. UNFOLDING OF PARLIAMENTARY ACTIVITY IN THE EXERCISE OF THE TYPICAL FUNCTION OF OVERSIGHT OF THE ACTS OF THE EXECUTIVE BRANCH. APPEALED DECISION IN DISSONANCE WITH THE JURISPRUDENCE OF THE FEDERAL SUPREME COURT. PROVISION OF THE EXTRAORDINARY APPEAL. 1. The Court of origin understood that the city councilor's statements were not restricted to the municipality's jurisdiction, since they were published on the World Wide Web, and that they mislead the reader regarding the proper interpretation of a technical opinion issued by the Court of Auditors of the State of Santa Catarina. Thus, it granted the appeal filed by GEAN LOUREIRO, mayor of the municipality of Florianópolis, to overturn the judgment dismissing the claim and to condemn the appellant, a municipal councilor, to remove the article entitled “Gean Loureiro's New Scam” from his personal *website*, as well as from his social media profiles (Facebook and Twitter), and to condemn him to pay compensation for moral damages in the amount of R\$ 8,000.00 (eight thousand reais). 2. The thesis established in Theme 469 should be considered *with caution* when the alleged offenses were uttered online, but in connection with the mandate, given that this peculiarity was not the subject of debate during the judgment of the leading case. 3. In the present case, it is essential to analyze the conciliation achieved by the text of our Constitution in relation to two major theories on parliamentary inviolability: the Blackstonian theory and that of Stuart Mill. 4. The interpretation made by the Federal Supreme Court, throughout these almost 35 years of the 1988 Constitution, reconciled the two important theories applied to the issue of parliamentary inviolability, defending the important issue of the qualified freedom of expression that deputies and senators have to express themselves in words and opinions inside or outside the National Congress. 5. In some cases, the presence of the geographical clause will suffice; in others, what this SUPREME COURT has termed a “nexus of reciprocal implication” is required. And, in this hypothesis, I include the need not only for this nexus, but, in the terms set forth by Stuart Mill's theory, the presence of a specific purpose for parliamentary pronouncements, namely, to bring to the electorate their accountability, their criticisms of government policies, their oversight role, and information about their attitude towards the Government. 6. Therefore, to characterize the necessary inviolability, the presence of these two requirements is necessary: a nexus of reciprocal implication and the parameters linked to the very purpose of the qualified freedom of expression of the parliamentarian. 7. In the present case, it is an uncontested fact that the words were uttered on the personal *website of the city councilor, as well as on the profiles he maintains on social media (Facebook and Twitter)*. 8. The appellant's statements, in commenting on the irregularities pointed out by the State Court of Auditors regarding the inconsistencies identified in the bidding process launched by the Municipal Government, clearly reflect the unfolding of parliamentary activity in the exercise of the typical function of overseeing the acts of the Executive Branch. 9. There is no doubt about the existence of a reciprocal implication, as the relationship between the opinions and words spoken and the exercise of the parliamentary mandate, or by reason of that exercise, is evident; there is no possibility of disregarding inviolability, since the context in which the statements were made was not unrelated to the activities carried out by reason of the exercise of the mandate. 10. Any excesses of language committed in this case, even if conveying personal offenses, although dissonant from the pluralistic and democratic spirit that should animate discussions in the political arena, are exempt from civil and criminal liability, and may only, if necessary, be subject to censure, under a political bias, by the legislative house of which the accused is a member. 11. Nowadays, characterized by technological advances in which the internet has become one of the main means of communication between elected officials and voters, it is no longer possible to restrict the parliamentary exercise of the mandate to the strict limits of the City Council chamber. 12. Internal Appeal denied.” (ARE 1421633 AgR, reported by Justice Alexandre de Moraes, First Panel, decided on May 3, 2023, Electronic Process DJe-s/n published on May 8, 2023 and released on May 9, 2023).

In the first instance, the requests were dismissed. The trial judge adopted a rather liberal line regarding freedom of expression in his reasoning, understanding that injunctive relief in these cases lacks constitutional support. On the other hand, he pointed out that the councilman's statement was covered by inviolability, as it occurred within the limits of political debate, related to parliamentary activity and in the interest of the municipality in which he serves, even though it was disseminated via the internet.

However, in 2022, the Court of Justice of Santa Catarina overturned the sentence, ordering the removal of the article from the councilman's website and condemning him to pay compensation for moral damages.

The core of the leading opinion is based on the understanding that the immunity of city councilors is relative and only covers pronouncements related to parliamentary activity and made within the limits of the municipality. Based on the interpretation of Theme 469/STF, the Court understood that, because the statement, tainted with excessive language, was disseminated on the internet, it was not covered by material immunity. The Court followed the understanding established by the STF, in accordance with Article 927 of the Code of Civil Procedure, to strictly apply the binding precedent of the Supreme Court.

In the respective extraordinary appeal, Justice Alexandre de Moraes, in his capacity as rapporteur, states that Theme 469/STF should be interpreted with limitations, given that the judgment did not include a debate on offenses disseminated via the internet.

The Justice emphasizes the importance of the constitutional inviolability of parliamentarians to protect them "against abuses and pressures from the other branches of government." He points out that this is an important tool for guaranteeing freedom of expression in light of the role played by legislators.

After a historical overview of parliamentary immunity in the United States and Brazil, and of the jurisprudence of the Brazilian Supreme Court (STF), the Justice observes that, regarding debates within Parliament, there is consensus about the applicability of inviolability. On the other hand, for cases where the expression occurs outside the legislative house, he states that it is necessary to analyze whether it is related to parliamentary activity. He concludes, therefore, that in certain cases it will be sufficient to verify whether the statement occurred in Parliament, and in others it will be necessary to verify whether there is a correlation with the legislator's political activity and the very purpose of qualified freedom of expression.

The ruling, unlike the judgment issued in cases with general repercussions, recognizes the importance of the internet in the current context as a communication tool for politicians and voters, which prevents restricting the actions of city councilors to the space of the legislative building.

Regarding the resolution of the specific claim, the leading opinion holds that the article published online by the city councilor against the mayor of Florianópolis does not exceed the parliamentarian's oversight function and was disseminated within the realm of political debate. It concludes that the act exhibits what the Federal Supreme Court (STF) calls a "nexus of reciprocal implication" and reaffirms the guideline that abuse of language may be investigated and punished by the respective legislative body. Thus, the panel grants the appeal, reinstating the judgment dismissing the claims.

The ruling is extremely relevant to the matter, as it emerges as an interpretative guide consistent with the current reality for the already anachronistic Theme 469/STF. Similar to the understanding already established by the STF in cases relating to members of Congress (Meira, 2002, p. 2), the focus of the analysis regarding parliamentary immunity turns to the nexus of reciprocal implication, that is, to the link between the statement and the parliamentary mandate, regardless of the use of social media and its respective reach.

Specifically regarding city councilors, the Supreme Court therefore proposed a reinterpretation of the concept of "jurisdiction" in light of digital reality. A purposive interpretation is suggested, focusing on the content of the statement and its connection to local interests, rather than the medium used or its geographic reach. From this perspective, a social media post will be protected whenever it addresses a topic related to the councilor's work, regardless of the number of people reached.

The understanding of the Federal Supreme Court (STF) was oriented towards interpreting the prerogative of parliamentary immunity, without distinction as to the location where the expression occurs, based on its primary purpose: to ensure broad protection of the freedom of expression of parliamentarians as an instrument to safeguard the democratic system.

Unfortunately, the opportunity to refer the appeal to the Full Court for formal supplementation of Theme 469/STF was lost. There is no record of a subsequent ruling on the matter that addressed the scope of the inviolability of city councilors on its merits. The establishment of Theme 469/STF makes it extremely difficult for new appeals to be filed, given the procedural regime designed so that, as a rule, the STF will not rule again on a matter already

addressed under the general repercussion system (articles 927, 1030, I and § 2, of the CPC).

5. Civil liability for acts protected by parliamentary immunity (Theme 950/STF)

Another issue related to immunity concerns the subject who will be held liable for paying compensation for the damages caused. Establishing the limits of inviolability is inextricably linked to who will suffer the consequences of the statements. In the case of an act by a city councilor, the question arises whether the responsibility will fall on the councilor himself who committed excesses in his statements unrelated to the exercise of his mandate or the respective municipality in which he serves.

The issue of civil liability arising from statements protected by parliamentary immunity has long been the subject of debate in the legal field, especially regarding the risk of restricting the scope of this institutional prerogative or creating indirect mechanisms to inhibit the free exercise of the mandate by holding the federative entity liable.

On June 23, 2017, the Brazilian Supreme Court (STF), in the judgment of RE 632.115/CE, recognized the existence of general repercussion of the constitutional issue raised, giving rise to Theme 950. The controversy originated from a statement made by a state parliamentarian from Ceará who, using the platform of the respective legislative house, attributed to the magistrate of the district of Canindé the practice of illicit conduct of a criminal nature, including corrupt practices, illicit association with the head of the municipal Executive branch, and intentional omissions in judicial proceedings.

The magistrate, whose honor was offended, filed a lawsuit seeking compensation for moral damages against the State of Ceará, based on the theory of strict liability provided for in § 6 of Article 37 of the Constitution. The Ceará judiciary, while acknowledging that the statements did not exceed the bounds of the immunity prerogative, granted the plaintiff the right to monetary compensation, arguing that the constitutional guarantee did not have the power to override the state's strict liability. The State filed an extraordinary appeal, alleging a violation of the constitutional provision concerning material immunity.

The Brazilian Supreme Court (STF), unanimously, when considering General Repercussion Theme 950/STF, granted the extraordinary appeal, ruling the claims made in the initial petition inadmissible, and established the following thesis:

1. Parliamentary immunity (Article 53, *main paragraph*, in conjunction with Article 27, § 1, and Article 29, VIII, of the 1988 Federal Constitution) constitutes an exclusion of the State's objective civil liability (Article 37, § 6, of the 1988 Federal Constitution), precluding any claim for compensation against the public entity for opinions, words, and votes covered by this guarantee. 2. In cases where the conduct of a parliamentarian exceeds the limits of parliamentary immunity, any liability will fall personally, directly, and exclusively on the parliamentarian himself, under the regime of fault-based liability.

In other words, if the actions of a representative exceed the limits of constitutional protection, any obligation to repair damages will fall personally, immediately, and exclusively on the political agent himself, subjecting him to the regime of fault-based liability.

Justice Luís Roberto Barroso, the rapporteur for the appeal, emphasized that parliamentary immunity is a constitutional provision that amplifies, in relation to democratically elected representatives, the fundamental right to freedom of expression as an essential prerequisite for the autonomous, independent, and critical performance of political representation in a democratic regime.

According to the rapporteur, "such a prerogative does not constitute a personal privilege, but an instrument aimed at the institutional protection of the Legislative Branch and, consequently, of democracy itself, by guaranteeing the people's representatives the necessary freedom of expression in the exercise of their mandate." It is, therefore, an institutional mechanism for the protection of democracy, capable of allowing elected officials to speak freely, without fear of reprisals or sanctions of a civil or criminal nature for their statements in the performance of their duties.

However, aligning itself with the Court's most contemporary jurisprudence on this prerogative, the pronouncement emphasizes that immunity is not intended to protect parliamentarians who use it as a tool to disseminate abusive statements completely unrelated to the legislative function, that is, statements of a purely personal nature, devoid of connection with democratic debate or with legislative activity.

Along these lines, precedents were cited in which the Federal Supreme Court (STF) rejected the applicability of parliamentary immunity, thus consolidating the understanding that this guarantee was not structured to cover incitement to crime, expressions of hatred, offenses against democratic in-

stitutions, or knowingly false attributions of facts, uttered with harmful intent or blatant disregard for the truth. It was thus established, as a fundamental requirement for the recognition of this prerogative, the presence of a causal connection with the legitimate exercise of the mandate.

6. Final considerations

The equalization, from a vertical perspective, of the inviolability of city councilors with that of deputies and senators in RE 600.063/SP (Theme 469/STF) was extremely relevant to stabilizing the fluctuating jurisprudence of the STF on the matter.

However, even though the case did indeed involve a statement by a city councilor within the Legislative house, the opportunity to establish a binding precedent was lost, one that would also address expression in digital media, or actions outside the municipal jurisdiction but within the local interest.

The precedent of mandatory observance ignored the reality that existed at the time, which already demonstrated the great importance of social media in elections and in communication between elected officials and their voters.

Subsequently, the First Panel addressed a specific case of abuse of language by a city councilor on a personal website against a mayor and broadly explored the scope of inviolability (ARE 1.421.633/SC, reported by Justice Alexandre de Moraes, decided on May 3, 2023). However, a single ruling from one of the Court's chambers is not sufficient to represent a firm position of the Supreme Court on the matter.

This pronouncement by the Court represents a significant step forward in recognizing that the internet has become an essential communication tool between city councilors and voters. Furthermore, it suggests a purposive interpretation, prioritizing the content of the statement and its connection to local interests, rather than the medium used or the geographic reach of the publication.

The digital transformation of political communication necessitates a reinterpretation of the concept of "municipal constituency" as outlined in Article 29, VIII, of the Federal Constitution. A literal interpretation of this territorial limitation proves incompatible with the reality of social networks, where geographical boundaries are nonexistent and the viral spread of content occurs unpredictably.

The existence of Theme 469/STF, which prevents extraordinary appeals on the matter, makes it difficult for the Court to revisit the thesis. It is urgent that the anachronistic Theme 469/STF be supplemented to reflect the most recent understanding of the STF and the current dynamics of communication among council members and social interactions in the digital environment, in order to settle national jurisprudence.

The Federal Supreme Court(STF) case 950 provided an important definition regarding civil liability for statements covered by parliamentary immunity, establishing that this prerogative constitutes an exclusion of the state's strict liability. The thesis established in RE 632.115/CE clarifies that, in the case of parliamentary action within the limits of material immunity, there is no basis for holding the federative entity liable, thus avoiding the risk of creating indirect mechanisms to inhibit the free exercise of the mandate.

On the other hand, the precedent reaffirms that, in cases where a member of parliament exceeds the limits of constitutional protection, the responsibility will fall personally, directly, and exclusively on the political agent himself, under the regime of fault-based liability.

An integrated analysis of Themes 469/STF and 950/STF, in light of the challenges posed by the digital age and contemporary phenomena of disinformation, reveals the need for a balance between protecting the qualified freedom of expression of parliamentarians and safeguarding the fundamental rights of citizens, always with the purpose of strengthening democratic institutions and responsible public debate.

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