Reeligibility in the Legislative Branch's Executive Boards in Light of the New Jurisprudence of the Supreme Federal Court

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Table of contents: 1. Introduction; 2. Reeligibility for the positions in the Executive Boards of the Legislative Branch: the new perspective of the Supreme Federal Court following ADI 6.524/DF; 3. Attempts to circumvent the objective limits established by the Supreme Federal Court on reeligibility in the Legislative Branch Executive Boards and the natural jurisprudential reaction; 4. Conclusion; References.

Abstract: The 1988 Federal Constitution established, in § 4th of its article 57, the basic rules to be observed by the Legislative Branch for the election of Executive Boards, including the prohibition of reappointment to the same position in the immediately subsequent election. This provision has always sparked debate within the scope of the Federal Supreme Court, particularly regarding its applicability to the legislative bodies of subnational entities. This article aims to examine the evolution of the Federal Supreme Court's jurisprudence, especially following the judgment of ADI 6.524/DF, rapporteur justice Gilmar Mendes, concerning the election of Legislative Executive Boards at the federal, state, and municipal levels, and to anticipate, if possible, new debates on this issue based on the jurisprudential principles recently established by the Supreme Court.

Keywords: reeligibility; executive boards; STF; jurisprudence.

1. Introduction

For years, the Supreme Federal Court has been dedicated to the task of defining the real scope of the rule set out in § 4 of art. 57 of the Federal Constitution of 1988 (Brazil, 1988, art. 57, § 4), as well as to examining its possible application to state, district, and municipal parliaments.

In fact, the constitutional rule in question has always raised questions about the possible possibility of reappointing parliamentarians to the same position on the Board in an immediately subsequent election, regardless of whether it is held in the same or a different legislature.

Moreover, the Supreme Court's case law has consistently held that the constitutional rule of § 4 of art. 57 is not mandatorily applicable to other federated entities is not, the state, district and municipal parliaments enjoyed broad autonomy to freely decide on the possibility, or not, of reappointing the members of their respective Boards of Directors[1].

1 See, for example, the following precedents that consolidated this understanding: ADI 793-9, reported by Justice Carlos Velloso, Full Court, tried on April 3, 1997; Rp 1,245, reported by Justice Oscar Corrêa, Full Court, tried on November 14, 1986; MS 24,104, reported by Justice. Celso de Mello, monocratic decision, tried on September 10, 2015; ADI 1,805, reported by Justice. Rosa Weber, Full Court, tried on November 23, 2020.

This possibility, however, triggered the institution, throughout the country, of the most varied legal regimes, many of them disproportionate and unreasonable, which ended up generating the filing of dozens of constitutional actions with the purpose of discussing, in more detail, the limits of action of the Legislative Assemblies of peripheral federated entities, whether regarding the issue of reelection for the same position on the Board, or with regard to the calling of elections for this purpose.

This essay aims to examine the new jurisprudential guidance issued by the Supreme Court following the judgment, in December 2018, of ADI 6,524/DF, under the reporting of Minister Gilmar Mendes, as well as to analyze the future in relation to the subject, considering the objective premises most recently established by the Supreme Court.

2. Reeligibility for the positions in the Executive Boards of the Legislative Branch: the new perspective of the Supreme Federal Court following ADI 6.524/DF

The discussion about the possibility of successive reelections for the leadership of the Legislative Branch at national, state or municipal levels is not new and has been on the agenda of the Judiciary Branch for some time, especially the Supreme Federal Court, which has been called upon on several occasions to decide on the validity of frequent attempts to perpetuate presidents and members of Boards of Directors in power.

At the federal level, the possibility of reappointing members of the Boards of the Chamber of Deputies and the Federal Senate was, relatively recently, defined by the Federal Supreme Court in ADI 6,524/DF, reported by Justice Gilmar Mendes. At that time, a ban was established on the reappointment of the presidents of the Legislative Houses for the same position in the immediately subsequent election, within the same legislature. Therefore, reappointment would only be possible, following this guideline, in the case of a new legislature, given the formation of a new Congress (Brazil, 2020b).

At the end of the debates, the thesis established by the Supreme Federal Court in relation to the possibility of reappointment to the same position within the National Congress was summarized as follows:

> CONSTITUTIONAL LAW. SEPARATION OF POWERS (ART. 2, CF/88). LEGISLATIVE POWER. ORGANIZATIONAL AUTONOMY. CHAMBER OF DEPUTIES. FEDERAL SENATE. REELECTION OF MEMBER OF THE BOARD (ART. 57, § 4, CF/88). INTERNAL REGULATIONS. INTERPRETATION IN ACCORDANCE WITH THE CONSTITUTION. 1. Modern constitutionalism recognizes that parliaments have the prerogative to decide on their organizational structure, a necessary condition to guarantee the autonomy of the legislative institution and the full exercise of its final powers. 2. In line with comparative law and the principle of separation of powers, Brazilian constitutionalism, with the exception of the well-known authoritarian interregnums, granted the Legislative Branch broad institutional autonomy, and it is our tradition to have successive reelections (reappointments) for positions on the Board of Directors. This parliamentary practice was discontinued by Institutional Act No. 16 of October 14, 1969, and then by Constitutional Amendment No. 1 of October 17, 1969. Both measures were part of the cycle of repression initiated by Institutional Act No. 5 of 1968, the focus of which was the institutionalization of repressive control over civil society and all public bodies, including the Legislative and Judicial Branches. 3. Direct Action requesting that the Chamber of Deputies and the Federal Senate be

> prohibited from undertaking any interpretation of the text of the rules of procedure (art. 5, caput and § 1, RICD; art. 59, RISF) other than that which prohibits the reappointment of a Member of the Board (and for any other position on the Board) in the immediately subsequent election (whether in the same or in another legislature); on the grounds that this is required by art. 57, § 4, of the 1988 Constitution. Request for interpretation in accordance with the Constitution, the full provision of which would occur at the cost of introducing, into the current constitutional order, the normativity of art. 30, sole paragraph, h, of Constitutional Amendment 1/1969. 4. Direct Action known, with judgment partially admissible of the request. By understanding of the majority that art. 57, § 4, of the 1988 Federal Constitution requires interpretation of art. 5, caput and § 1, of the RICD, and art. 59, RISF, which establishes the impossibility of reappointing a Member of the Board to the same position, in the immediately subsequent election, which takes place at the beginning of the third year of the legislature. Also by majority, the Court reaffirmed case law that states that the prohibition in reference does not apply in the case of a new legislature, a situation in which a new Congress is constituted. (Brazil, 2020b, p. 1-2)

The issue was then transferred to the state level. This is because several state constitutions authorized successive reelection for positions on the Board of Directors of State Assemblies. These provisions found some support in the historical jurisprudence of the Federal Supreme Court, established, for example, in ADI 793/RO, according to which the constitutional rule that prohibits reelection for the same position in the immediate election would not be mandatory for member states.

> CONSTITUTIONAL. STATE LEGISLATIVE ASSEMBLY: BOARD OF DIRECTORS: REAPPOINTMENT FOR THE SAME POSITION. Constitution of the State of Rondônia, art. 29, inc. I, item b, as amended by State Constitutional Amendment No. 3/92. CF, art. 57, § 4. COURT OF AUDITORS: COUNCILOR: APPOINTMENT: REQUIREMENT OF BEING UNDER SIXTY-FIVE YEARS OF AGE. Constitution of the State of Rondônia, art. 48, § 1, I, as amended by State Constitutional Amendment No. 3/92. CF, art. 73, § 1, I. I – The rule of § 4 of art. 57 of the Federal Constitution, which deals with the election of the Boards of the Federal Legislative Houses, prohibits reappointment to the same position in the immediately subsequent election, is not mandatory for reproduction in the constitutions of the member states, because it does not constitute an established constitutional principle. II – Precedent of the STF: Rep 1,245-RN, Oscar Corrêa, RTJ 119/964. III – The requirements for the appointment of members of the Federal Court of Auditors, set forth in art. 73, § 1, of the Federal Constitution, must be mandatorily reproduced in the Constitutions of the member states, because they are requirements that must be observed in the appointment of counselors to the State Courts of Auditors and Municipal Councils of Auditors. Federal Constitution, art. 75. IV – Direct action of unconstitutionality ruled partially admissible. (Brazil, 1997, p. 1)

It turns out that, although the long-standing jurisprudence of the Federal Supreme Court had indicated that the determination of § 4 of art. 57 of the Federal Constitution would not be mandatory in the member states (STF, 1997), after the judgment of the paradigmatic ADI 6,524/DF, the issue of the reappointment of state deputies also began to be interpreted in light of the republican and democratic principles (Brazil, 2020b).

In fact, the precedent of the report by Minister Gilmar Mendes promoted a true shift in the Court's jurisprudence on the subject, having been referenced by numerous decisions handed down since then, which prohibited successive reappointment at the state level[2].

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2 Regarding the jurisprudential turnaround, it must be understood that: "the precedent, as a source of law (jurisdictional law), tends to have lasting validity, but can be extinguished or revoked at any time, just as happens with the law in the strict sense. Whoever had the power to establish a precedent naturally has the power to revoke or change it. In Anglo-American law, the birthplace of the precedent system, we speak of overruling when a precedent completely loses its binding force." (Theodoro Júnior, 2024, p. 716)

The most in-depth debate on the subject regarding the applicability of constitutional limits on re-election to positions in the Boards of the Legislative Branch of subnational entities, from the perspective of republican and democratic principles, took place in the context of ADI 6.707/ES, 6.684/ES, 6.709/TO and 6.710/SE. In this case, although the Supreme Federal Court has reiterated the historical jurisprudence according to which the rule of § 4º of art. 57 of the 1988 Constitution does not function as a parameter for controlling the constitutionality of a rule contained in a state Constitution – precisely because it is not mandatory for repetition by the resulting Constituent Power –, the thesis was established that the republican principle, and its corollaries of the temporary nature of mandates and the alternation of power, should function as an objective limit on the re-election of members of the Board.

Additionally, once the premise of the need for objective limitation on reelection was established, the Court understood that Constitutional Amendment No. 17/1997 ended up redefining the content of the republican principle by allowing reelection within the scope of the Executive Branch, thus providing an objective and fully valid constitutional criterion to understand the possibility of a single successive reelection/reappointment for the same position on the Board, regardless of whether within or outside the same legislature (Brazil, 1997).

In the joint trial of ADI 6.707/ES, 6.684/ES, 6.709/TO and 6.710/SE, the rapporteur of the case, Minister Ricardo Lewandowski, fully applied the precedent established by the aforementioned ADI 6.524/DF and declared the normative act challenged therein unconstitutional for allowing members of the Board of Directors of the Legislative Assembly to be reappointed to the same position in the same legislature.

In his dissenting vote, however, Minister Alexandre de Moraes disagreed with the rapporteur and, based on a logical-normative premise derived from Constitutional Amendment No. 16/1997, stated:

> Thus, the new guidance requires that states, when regulating the issue, observe republican and democratic principles, and establish, at most, permission for ONE SINGLE SUCCESSIVE REELECTION.
>
> This parameter – a single reelection – cannot be fully used in relation to the Houses of the National Congress (subject of the judgment of ADI 6524) due to the prohibitive content of art. 57, § 4, of the CF, which, referring only to the Legislative Power of the Union, has a more restricted and special scope of application.
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> Hence the conclusion of the aforementioned judgment, in which the prohibition on reappointment of positions on the Boards of Directors of Congress prevailed, although limited to each legislature.
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> In relation to the States, on the other hand, there is no obstacle to using the rule of a single reelection, regardless of the legislature, as a safe criterion for the balance between the autonomy of the Legislative Branches of the member states and the need to guarantee the republican and democratic nature of the decision-making processes of these Branches. And without the inconvenience that the eligibility rules for the members of the Board of Directors vary depending on whether the election is held in the first or third legislative session of a legislature. (Moraes, 2023, p. 18-19)

The divergence inaugurated by Minister Alexandre de Moraes gave rise to a new request for review, this time formalized by Minister Gilmar Mendes, who, when casting his vote, highlighted that the controversy should "be resolved based on other constitutional norms, especially the republican,

democratic and political pluralism principles, as well as in light of what was revealed by the precedent established in ADI 6524" and established the following judgment theses[3]:

> (i) the election of members of the Boards of State Legislative Assemblies must observe the limit of a single reelection or reappointment, a limit whose observance is independent of whether the consecutive terms refer to the same legislature; (ii) the prohibition on reelection or reappointment applies only to the same position on the board of directors, not preventing a member of the previous board from remaining on the board of directors, as long as in a different position; and (iii) the limit of a single reelection or reappointment, as stated above, must guide the formation of the Boards of Legislative Assemblies that were elected after the publication of the decision of ADI 6,524, with previous acts remaining unchanged. (Mendes, 2021, p. 56)

As can be seen, the Supreme Federal Court has therefore established an important *distinction* between the legal-constitutional regime applicable to the Boards of the Chamber of Deputies and the Federal Senate and that which applies to the election for the Boards of the Legislative Branch of the states, municipalities and the Federal District. While the Supreme Court's case law has established that, at the federal level, re-election/reappointment to the same Board position in different legislatures is constitutionally permitted reelection for the same Board position only once, regardless of whether within or outside the same legislature.

The modulation of the effects of the decision, undertaken by the Court for reasons of legal certainty and public interest, cannot go unnoticed[4], given the evident hypothesis of overruling in relation to the understanding that had been applied within the scope of the Legislative Assemblies of subnational entities. Thus, as stated in the decision of ADI 6.707/ES, 6.684/ES, 6.709/TO and 6.710/SE, the limit of a single reelection or reappointment should guide the formation of the Boards of the Legislative Assemblies that were elected after the publication of the judgment of ADI 6.524/DF, that is, on April 6, 2021, leaving the previous acts unchanged.

It should be noted, therefore, that the Supreme Federal Court addressed, with an air of finality, the issue concerning re-eligibility for the positions of the Boards of Directors of the federal, state, district and municipal Legislative Assemblies, and it appears that there is no doubt remaining regarding the limits imposed on re-elections for the same position in these internal parliamentary bodies, based on the new precedents established since the judgment of ADI 6,524/DF.

The establishment of objective limits on re-eligibility for positions in the Legislative Boards, however, ended up intensifying the impetus of certain political groups to perpetuate themselves in power, generating new situations of evident distortion of the organizational autonomy granted to the Legislative Branch, resulting, in many cases, "in personalistic continuity in the ownership of elected public functions" (Mendes, 2020, p. 79).

3. Attempts to circumvent the objective limits established by the Supreme Federal Court on reeligibility in the Legislative

3 This understanding prevailed by a majority of votes, with ministers Ricardo Lewandowski (rapporteur), Alexandre de Moraes, Cármen Lúcia and Edson Fachin partially outvoted.

4 Law No. 9,868/1999. Art. 27. When declaring the unconstitutionality of a law or normative act, and taking into account reasons of legal certainty or exceptional social interest, the Supreme Federal Court may, by a majority of two-thirds of its members, restrict the effects of that declaration or decide that it will only be effective from its final judgment or from another time that may be determined.

Branch Executive Boards and the natural jurisprudential reaction

As already explained in the previous topic, the Supreme Federal Court has set objective limits on re-election to the Boards of Directors of the Legislative Branch at all levels of government. The issue related to the application of the Court's recent understanding has been discussed again in the Court, this time in the context of ADI 6.688/PR, reported by Justice Gilmar Mendes. In fact, this discussion had already been held during the analysis of ADIs 6.707 / ES, 6.684/ES, 6.709/TO and 6.710/SE, but the topic has returned. It has returned and has led to a new – and even clearer – statement by the Supreme Federal Court, containing an important improvement, a subtle – but far from insignificant – change and, also, a timely warning against attempts to circumvent the new jurisprudential orientation.

It should be noted that, in the judgment of the aforementioned ADI 6.688/PR, the Court, by majority vote, established the thesis that:

> [...] the limit of a single re-election or reappointment, as stated above, should guide the formation of the Board of the Legislative Assembly in the period after the date of publication of the minutes of the judgment of ADI 6,524, so that compositions elected before 7/12/2021 will not be considered for the purposes of ineligibility, unless the fraudulent anticipation of the elections is configured as a circumvention of the understanding of the Supreme Federal Court. (Brazil, 2022)

Well, by examining the judgments of the direct actions of unconstitutionality cited here, it is observed that, when examining ADI 6.707/ES, 6.684/ES, 6.709/TO and 6.710/SE, the Court established the understanding that "the limit of a single reelection or reappointment, conveyed above, should guide the formation of the Boards of the Legislative Assemblies that were elected after the publication of the judgment of ADI 6.524, keeping the previous acts unchanged" (Brazil, 2021a). However, in the judgment of the aforementioned ADI 6,688/PR, the logical-temporal framework adopted became the date of publication of the minutes of the judgment of ADI 6,524/DF, that is, 7/1/2021, and no longer the date of publication of its judgment, which occurred on 6/4/2021.

A change of position, it is worth mentioning, which is more in line with the tradition of the Supreme Federal Court, since, as Minister Alexandre de Moraes recalled,

> The Court's practice, in discussions on defining the time frame for attributing effects in terms of concentrated review of constitutionality, is to adopt as a reference the date of publication of the judgment minutes, considering that art. 28 of Law 9.868/1999 determines that 'within ten days after the decision becomes final, the Supreme Federal Court will publish in a special section of the Official Gazette and the Official Gazette of the Union the operative part of the judgment', this being the milestone for producing erga omnes effectiveness and binding effect of the declaration of constitutionality, unconstitutionality or attribution of conforming interpretation (sole paragraph of the same art. 28). (Moraes, 2022, p. 44)

It should also be noted that, following the judgment of ADI 6,688/PR, the Court began to adopt, in a much more accurate manner, the terminology "ineligibility" to refer to the impediment condition of a representative who has already occupied, for two consecutive times, the same position on the Board of Directors, regardless of whether in the same or another legislature[5].

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5 In this regard, it is worth recalling the lesson of José Jairo Gomes who, when defining ineligibility from the perspective of electoral law, teaches that ineligibility is a "negative factor whose presence obstructs or subtracts the passive electoral capacity of the national, making him ineligible to receive votes and, therefore, exercise a representative mandate". (Gomes, 2024).

Thus, in line with the premises established in the precedent under discussion, and considering the logical framework of 7/1/2021, the eventual exercise of a position on the Board of Directors prior to that date, even if already the result of a re-election, would not remove the parliamentarian's eligibility to run for the same position in the immediately subsequent election, and could even seek re-election for the following two years.

It is important to make an important point here to note yet another change in the Supreme Court's understanding on the subject, as evidenced in the judgment of ADI 6,674/MT, reported by Justice Alexandre de Moraes. At the time, the Court readjusted the thesis previously conferred in ADI 6,524/DF, expressly defining that the 2021/2022 biennium would count for the purposes of ineligibility, even if the elections had taken place prior to January 7, 2021.

Thus, the limit of a single reelection or reappointment should guide the formation of the Board of the Legislative Assembly in the period after the date of publication of the minutes of the judgment of ADI 6,524/DF (7/1/2021), and only the compositions of the 2021/2022 biennium and later should be considered for the purposes of ineligibility, unless the fraudulent anticipation of the elections is configured as a circumvention of the understanding of the Supreme Federal Court[6].

The fact is that, in the judgment of the aforementioned ADI 6.688/PR, the Supreme Court expressly stated its rejection of the adoption of strategies aimed at fraudulently bringing forward elections with the aim of avoiding ineligibility resulting from holding, for two consecutive times, a position within the Board of Directors in breach of the limits set by case law.

Apparently, however, at that time, the Court's concern was solely to prevent, through a ruse, the early election for the positions on the Board of Directors, in order to escape what was decided in ADI 6,524/DF, which is easily extracted from the analysis of the final part of the provision of the judgment in question.

Well, the truth is that the Supreme Court foresaw that situations could occur – at that time not yet foreseen – of attempted circumvention of the new parameters established in the new jurisprudence. And the fact is that, while it is true that, at the time of the judgment of ADI 6.688/PR, the concern was to nullify artificially early elections in order to escape what was decided in ADI 6.524/DF, the signal expressed by the Court kept open the possibility of reexamining the issue from the perspective of fraud.

And it was no different. New demands regarding abstract control of standards were formalized, now based on the allegation of fraud in the early elections for the positions of the Board of Directors, held simultaneously for the first and second two-year periods.

In the trial of ADI 7,350/DF, reported by Justice Dias Toffoli, the partial unconstitutionality of Constitutional Amendment No. 48/2022, of the state of Tocantins, was recognized, which expressly provided for the election, on February 1 of the first year of each legislature, of the Board of Directors for the two subsequent two-year periods. The judgment, in the part that is most directly relevant, was summarized as follows:

> Direct action of unconstitutionality. Preliminary measure. Referendum. Conversion. Judgment on merits. Amendment no. 48/22 to the Constitution of the State of Tocantins. Concurrent elections

6 In the same sense, on January 21, 2025, Minister Gilmar Mendes granted a precautionary measure to remove the president of the City Council of Maringá in the proceedings of RCl 75,268/PR for violating the decision in ADI 6,674/MT.

> of the Board of Directors of the Legislative Assembly for the first and second two-year terms. Unconstitutionality. Violation of the republican and democratic principles. Direct action ruled admissible. [...] 2. In establishing the frequency of elections for positions in the Executive and Legislative Branches, the 1988 Constitution provided that they should occur on a date close to the beginning of the new term, establishing the contemporaneity between the election and the respective term (arts. 28; 29, item II; 77 and 81, § 1º, of the CF/88). Elections for the boards of the federal Legislative Houses must also be contemporaneous with the beginning of the respective two-year term (art. 57, § 4º, of the CF/88). There is no rule in the constitutional text that resembles what the disputed provision provided for, that is, that unreasonably anticipates the selection of those elected for a given term and concentrates in a single moment the selection of two distinct "tickets" for the same positions. 3. The 1988 Constitution classifies the periodic vote as a permanent clause (art. 60, § 4, item II), as a mechanism for alternating power and promoting political pluralism, preventing the perpetuation of a given group for an indefinite period. Concentrating the elections of two distinct tickets for the same positions in a single moment suppresses the political moment of renewal that should occur after the end of a term. The result is privileging the majority political group or the one with the greatest influence at the time of the single election, which can very easily guarantee two consecutive terms. 4. The representative principle requires that political power be exercised by representatives who reflect the majority political forces in society. Therefore, for each new term, there must be a new manifestation of will by voters, close to the beginning of the respective term, as a way of ensuring that those elected will reflect the current situation and the desires of the majority. In the case under analysis, the Board of Directors for the second two-year term elected at the beginning of the legislature may not reflect the majority political forces present at the beginning of the respective term, violating the representative ideal. 5. It can be inferred from the TSE case law that the electorate authorized to vote at the time preceding the exercise of the term has the constitutional right to choose its leader (art. 1º of the 1988 Constitution) (MS n. 47.598, Rel. Min. Aldir Passarinho Junior, DJe of 6/18/10; MS n. 4.228/SE, Rel. Min. Henrique Neves, DJe of 9/1/09). The reasoning applies to the internal democracy of the Legislative Houses, given that the parliamentarians who make up the Legislative House at the beginning of the second two-year period have the right to decide on the composition of the respective Board. 6. Direct action deemed admissible. (Brazil, 2024a, p. 1-3)

It can be seen that, in order to conclude that the contested rule is unconstitutional, the Court based its understanding on the lack of contemporaneity – in blatant disregard for the meaning of the periodic vote (item II of § 4 of art. 60 of the CF/1988) – which arises from the expression of the will of the electorate at a time very distant from the beginning of the term that will be exercised, thus belittling the principle of political pluralism. In the words of the rapporteur of the action:

> [...] Periodic elections are a mechanism for alternating political power, preventing a given group from remaining in power for an indefinite period. During the course of a term, political forces reorganize and other personalities or political groups gain prominence, and can rise to power through voting. For this reason, the periodicity of elections is also essential for promoting political pluralism. Concentrating the elections of two different "tickets" for the same positions at a single time weakens or even circumvents the possibility of political renewal, as it suppresses the political moment of renewal that should occur after the end of a term. The majority or most influential political group ends up being privileged at the time of the single election, which can very easily guarantee two consecutive terms.
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> [...]
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> In the present case, the Board of Directors for the second two-year term elected at the beginning of the legislature may not reflect the majority political forces present at the beginning of the respective term, which undermines the ideal of representation. Periodic elections also enable voters to control and oversee the exercise of mandates. Satisfaction or dissatisfaction with the way politics is being conducted must be expressed periodically, by endorsing or vetoing a

> candidate, group or political orientation at the ballot box. In this context, the unreasonable anticipation of elections for the positions on the Board of Directors deprives parliamentarians of the power to control the direction of the Legislative Assembly, since only during the first two-year term would it be possible to assess the political situation, strike the necessary balance between expectations and reality and, from there, decide on what is desired for the next two-year term. [...] (Toffoli, 2024, p. 14-15)

More recently, in the judgment of ADI 7.733/DF, the issue regarding the possibility of bringing forward the election for the composition of the Board of Directors of the Legislative Assemblies took on even more objective contours, with the establishment of a time frame applicable to the elections for the second two-year term of the Legislative Houses.

The action, proposed by the Attorney General's Office, questioned a provision of the Internal Regulations of the Legislative Assembly of the State of Rio Grande do Norte, which authorized the anticipation of the election of the members of the Board of Directors for the second two-year period of each legislature, allowing it to be held at any time up to the third year of the legislative period.

The rapporteur of the case, Justice Gilmar Mendes, in reaffirming the Court's case law on the need to observe the principles of representation and the periodicity of elections, established, based on a systematic interpretation of the constitutional text, a time frame for holding the internal election for the second two-year term of the legislature. The unanimous decision of the Supreme Federal Court established the understanding that it would be reasonable for this election to start in October of the previous year until the end of the first two-year term.

In his vote, the rapporteur concluded that:

> Thus, given the impossibility of bringing forward the elections for the positions of the Board of Directors of the Legislative Branch too far, it is necessary to examine when it would be reasonable to hold such an internal election. The answer seems to be found from the systematic interpretation of the Federal Constitution and has already been adequately answered in ADI 7,350/TO.
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> From a systematic reading of the Federal Constitution, it is possible to infer not only the need to hold elections contemporaneously with the term of office, but also the framework that can be used to consider them as such. The provisions regarding direct elections for the positions of mayor, governor and president of the Republic always refer to the month of October of the year prior to the end of the term of office. Thus, as pointed out by the Attorney General of the Republic, the month of October of the year prior to the end of the term, in relation to the elections for the Board of Directors of the second two-year term of the legislature, reflects the framework from which it is possible to attest to the contemporaneity required by the constitutional text.
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> [...]
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> Thus, in order to harmonize constitutional provisions, the elections for the Boards of Directors of the Legislative Assemblies, for the second two-year term of the legislature, must be held from October of the year prior to the end of the first two-year term, in respect of the legitimacy of the legislative process and the political expression of the current composition of the House. (Mendes, 2024, p. 17-18).

This is yet another, but not the last, debate held in the Supreme Federal Court regarding the consequences arising from the establishment of the new guideline involving the scope of the rule of § 4 of art. 57 of the Constitution and the attempts to circumvent the objective limits established by the jurisprudence of the Supreme Federal Court.

4. Conclusion

The debate on the interpretation and exact scope of § 4 of art. 57 of the Federal Constitution is not recent and has been the subject of frequent discussions within the Judiciary, especially in the Supreme Federal Court. These discussions have been driven by constant provocations in the context of concentrated control, involving the constitutionality of norms or even specific situations related to re-election to the Boards of Directors of the Legislative Branch.

An analysis of the Court's recent rulings reveals a progressive pacification of the issue in the case law. The reaffirmation of the constitutional obstacle to the possibility of successive reelections for the leadership of the Legislative Branch gained momentum in the ruling of ADI 6,524/DF, reported by Justice Gilmar Mendes, in which the prohibition on the reappointment of the presidents of the Federal Senate and the Chamber of Deputies to the same position in the immediately subsequent election, within the same legislature, was ratified.

The constitutional logic of limiting re-eligibility was extended to the states and municipalities, especially after the judgment of ADI 6.707/ES, 6.684/ES, 6.709/TO and 6.710/SE. From this perspective, the rule contained in § 4 of art. 57 of the Federal Constitution gave way to republican and democratic principles. These principles supported the Court's guidance that the election of members of state and municipal legislative boards must observe the limit of a single re-election or reappointment, regardless of whether the consecutive terms refer to the same legislature.

Furthermore, the limit of a single reelection or reappointment should guide the formation of the Legislative Boards of subnational entities in the period after the date of publication of the minutes of the judgment of ADI 6,524/DF (7/1/2021), and only the compositions of the 2021/2022 biennium and later should be considered for the purposes of ineligibility, unless the fraudulent anticipation of the elections is configured as a circumvention of the Court's understanding.

In parallel, the Supreme Federal Court was asked to rule on specific cases that ultimately involved the adoption of fraudulent strategies with the aim of bringing forward elections, seeking to circumvent the ineligibility resulting from the consecutive exercise of two terms and the possible nullification of the election. Given this scenario, after the judgment of ADI 7,350/TO and 7,733/RN, the time period for holding the elections related to the second legislative biennium was established, which must take place from October of the previous year until the end of the first biennium, under penalty of nullity.

Despite these parameters being somewhat consolidated in case law, the topic remains intriguing and the objectification of interpretative criteria is incapable of encompassing all the nuances imposed by the complexity of the facts. It is the responsibility of the Supreme Federal Court to ensure compliance with the republican and democratic principles, the essence of which underpins the periodicity of mandates and the alternation of power and their observance in elections for the leadership of the Legislative Branch at all levels.

References

BRAZIL. Constitution of the Federative Republic of Brazil of 1988. Art. 57, § 4. Available at: http://www.planalto.gov.br/ccivil_03/constituicao/constituicaocompilado.htm. Accessed on: Dec. 13, 2024.

BRAZIL. Constitutional Amendment No. 17, of November 22, 1997. Amends provisions of Arts. 71 and 72 of the Transitional Constitutional Provisions Act, introduced by Constitutional Revision

Amendment No. 1, of 1994. Official Gazette of the Union, Brasília, Nov. 24, 1997. Available at: http://www.planalto.gov.br/ccivil_03/constituicao/emendas/emc/emc17.htm. Accessed on: Dec. 16, 2024.

BRAZIL. Constitutional Amendment No. 48, of March 28, 2022. Amends § 3 of Art. 15 of the Constitution of the State of Tocantins. Official Gazette of the State of Tocantins, Palmas, Dec. 22, 2022. Available at: https://sapl.al.to.leg.br/norma/514. Accessed on: Dec. 16, 2024.

BRAZIL. Law No. 9.868, of November 10, 1999. Provides for the procedure and judgment of direct actions of unconstitutionality and declaratory actions of constitutionality before the Supreme Federal Court. Official Gazette of the Union, Brasília, Nov. 11, 1999. Available at: http://www.planalto.gov.br/ccivil_03/leis/l9868.htm. Accessed on: Dec. 16, 2024.

BRAZIL. Supreme Federal Court. ADI 1.805. Full Court. Rapporteur: Justice Rosa Weber. Judgment on Nov. 23, 2020. 2020a. Available at: https://www.stf.jus.br. Accessed on: Dec. 16, 2024.

BRAZIL. Supreme Federal Court. ADI 6.524/DF. Full Court. Rapporteur: Justice Gilmar Mendes. Judgment on Dec. 15, 2020. 2020b. Available at: https://www.stf.jus.br. Accessed on: Dec. 12, 2024.

BRAZIL. Supreme Federal Court. ADI 6.674. Full Court. Rapporteur: Justice Alexandre de Moraes. Judgment on Dec. 19, 2023. Available at: https://www.stf.jus.br. Accessed on: Dec. 16, 2024.

BRAZIL. Supreme Federal Court. ADI 6.684. Full Court. Rapporteur: Justice Ricardo Lewandowski. Judgment on Sept. 20, 2021. Available at: https://www.stf.jus.br. Accessed on: Dec. 16, 2024.

BRAZIL. Supreme Federal Court. ADI 6.688. Full Court. Rapporteur: Justice Gilmar Mendes. Judgment on Dec. 7, 2022. Available at: https://www.stf.jus.br. Accessed on: Dec. 16, 2024.

BRAZIL. Supreme Federal Court. ADI 6.707. Full Court. Rapporteur: Justice Ricardo Lewandowski. Judgment on Sept. 20, 2021. 2021a. Available at: https://www.stf.jus.br. Accessed on: Dec. 16, 2024.

BRAZIL. Supreme Federal Court. ADI 6.709. Full Court. Rapporteur: Justice Ricardo Lewandowski. Judgment on Sept. 20, 2021. 2021b. Available at: https://www.stf.jus.br. Accessed on: Dec. 16, 2024.

BRAZIL. Supreme Federal Court. ADI 6.710. Full Court. Rapporteur: Justice Ricardo Lewandowski. Judgment on Sept. 20, 2021. 2021c. Available at: https://www.stf.jus.br. Accessed on: Dec. 16, 2024.

BRAZIL. Supreme Federal Court. ADI 7.350. Full Court. Rapporteur: Justice Dias Toffoli. Judgment on Mar. 11, 2024. 2024a. Available at: https://www.stf.jus.br. Accessed on: Dec. 16, 2024.

BRAZIL. Supreme Federal Court. ADI 7.733. Full Court. Rapporteur: Justice Gilmar Mendes. Judgment on Nov. 19, 2024. 2024b. Available at: https://www.stf.jus.br. Accessed on: Dec. 16, 2024.

BRAZIL. Supreme Federal Court. ADI 793-9. Full Court. Rapporteur: Justice Carlos Velloso. Judgment on Apr. 3, 1997. Available at: https://www.stf.jus.br. Accessed on: Dec. 12, 2024.

BRAZIL. Supreme Federal Court. MS 24.104. Monocratic decision. Rapporteur: Justice Celso de Mello. Judgment on Sept. 10, 2015. Available at: https://www.stf.jus.br. Accessed on: Dec. 16, 2024.

BRAZIL. Supreme Federal Court. Rp 1245. Full Court. Rapporteur: Justice Oscar Corrêa. Judgment on Nov. 14, 1986. Available at: https://www.stf.jus.br. Accessed on: Dec. 16, 2024.

GOMES, José Jairo. Direito eleitoral. 20th ed., rev., updated and reformed [2nd reprint]. Barueri: Atlas, 2024.

MENDES, Gilmar. Vote in ADI 6.524. Supreme Federal Court, judgment on Dec. 15, 2020. Available at: https://www.stf.jus.br. Accessed on: Dec. 13, 2024.

MENDES, Gilmar. Vote in ADI 6.688. Supreme Federal Court, judgment on Dec. 7, 2022. Available at: https://www.stf.jus.br. Accessed on: Dec. 16, 2024.

MENDES, Gilmar. Vote in ADI 7.733. Supreme Federal Court, judgment on Nov. 19, 2024. Available at: https://www.stf.jus.br. Accessed on: Dec. 16, 2024.

MORAES, Alexandre de. Vote in ADI 6.674. Supreme Federal Court, judgment on Dec. 19, 2023. Available at: https://www.stf.jus.br. Accessed on: Dec. 16, 2024.

MORAES, Alexandre de. Vote in ADI 6.688. Supreme Federal Court, judgment on Dec. 7, 2022. Available at: https://www.stf.jus.br. Accessed on: Dec. 16, 2024.

THEODORO JÚNIOR, Humberto. Curso de direito processual civil. 57th ed., vol. 3. Rio de Janeiro: Forense, 2024.

TOFFOLI, Dias. Vote in ADI 7.350/DF. Supreme Federal Court, judgment on Mar. 11, 2024. Available at: https://www.stf.jus.br. Accessed on: Dec. 16, 2024.