

## CONSIDERATIONS REGARDING THE PROCESS OF PRESIDENTIAL DISMISSAL

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The process of dismissal of a president has its historical origin in the Constitution of the United States of America (USA). That country has adopted the term "impeachment", which has Latin etymology as coming from "impedicare", or prevent. In Portuguese, it should be used thus lexicon impediment (impedimento), or dismissal (destituição). There are, however, those who understand that "impeachment" sounds more beautiful, or more serious or more sophisticated, whereas expressed in a foreign language.

In the debates leading to the adoption of the US Constitution, Benjamin Franklin proposed the establishment of a legal institute for dismissal of the president, who represents a legal and procedural alternative to the murder of a Head of State/Government. It was an attitude to favor the rule of law over the arbitrary exercise of one's own reasons.

Thus, in American law, the institute of impeachment is part of the arsenal of measures that not only affirms the rule of law, but also confirms it. In countries where democratic traditions do not have the same deep roots, disparate opinions have been expressed in the sense that the impeachment process would be political. Nothing more mistaken.

The impeachment process is the one that is subject to the legal regime provided in many constitutions, in accordance with the rule of law. In the US, the Constitution brings the offenses of treason, bribes and other crimes. The competent court is a court "ad-hoc" or a special court, in this case composed by the lower house and the Senate, with specific competencies. However, the fact that, in another capacity, the court consists in a political body, does not authorize the judgment of the impeachment without compliance with current law, at the free will of the senators. So it is a fact that in that country the Senate's decision can be appealed to the last instance of the judiciary.

It is no different in Brazil. Our institute was literally adapted from the American one, as in many republics. In Brazil, the Constitution defines as crimes of responsibility the acts of the President that violates the Constitution and, especially,

- i) The existence of the Federal Union;
- ii) The free exercise of constitutional powers;

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- iii) The exercise of political, individual and social rights;
- iv) The internal security of the country;
- v) The probity in the administration;
- vi) The budget law; and
- vii) The compliance with laws and judicial decisions.

Therefore the Constitution lists the attacks against individual, social and collective rights, which are always defined and guaranteed by law. It is not possible to examine alleged violations of such rights on the sidelines of a legal process, including basic procedures provided by the Civilization, as the adversary proceedings and due process of law.

Also in Brazil, the Senate is vested with ad hoc judicial powers, which does not mean that it is possible decide on criteria other than the strictly legal. In Brazil, the Constitution provides that the law may not exclude from review by the Judiciary any injury or threat to a right, which confirms the institutional judgment by the Senate marked by legal order and the possibility of appeal to the Supreme Court.

Unfortunately, in Brazil the institute of dismissal has often been undermined by political interests of various inspirations, to alter the result of the popular vote and the Constitution of the basilar statement to the effect that all power emanates from the people, who exercise it through elected representatives or directly.

Historically, we have had many examples of such spurious attempts. Getúlio Vargas suffered an impeachment process, just as Collor de Mello, Itamar Franco, Fernando Henrique Cardoso, Luiz Inácio Lula da Silva and now Dilma Rouseff. In all these cases, the aim was to use a so-called political process as an effective instrument to change the popular will.

This is very grave error that compromises the essence of democracy itself. To invoke the legitimacy of a spurious process actually strikes against the rights that the Constitution seeks to protect, as the free exercise of the constituted powers and political rights, as well as the internal security of the country.

Through unfounded impeachment processes, the dark forces actually seek to destabilize the various governments, leaving them without functional conditions and launching therefore Brazil into a major crisis, to force out the unwanted president, by any means.

It is in fact an abuse of process, as defined by the Anglo-Saxon law.

In China, around 500 before Christ, the great philosopher Confucius has listed the 10 categories of public wickedness, and already included among them the instigation of internal chaos. This is the case in Brazil today.

All for a so-called "political judgment".