

INDEPENDENT INSTITUTIONS AS INSTRUMENTS OF CHECKS AND BALANCES IN THE BRAZILIAN STATE

INSTITUIÇÕES INDEPENDENTES COMO INSTRUMENTOS DE FREIOS E CONTRAPESOS NO ESTADO BRASILEIRO

LAS INSTITUCIONES INDEPENDIENTES COMO INSTRUMENTOS DE FRENOS Y CONTRAPESOS EN EL ESTADO BRASILEÑO



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ABSTRACT

Independent institutions constitute fundamental pillars of the democratic rule of law, performing functions of oversight, supervision, and balance among powers. In Brazil, Courts of Accounts, the Public Prosecutor's Office, the Public Defender's Office, and regulatory agencies exemplify institutions that materialize the system of checks and balances. This study analyzes independent institutions as instruments of checks and balances in the Brazilian State, examining their functions, autonomy, and effectiveness. The methodology is characterized as an exploratory bibliographic review with a qualitative approach, grounded in the critical analysis of scientific publications from 2020 to 2025. The results indicate that independent institutions perform essential functions of control and rights protection, but face challenges related to autonomy, legitimacy, and coordination. Institutional effectiveness depends on adequate resources, technical capacity, and inter-organizational articulation. It is concluded that independent institutions are fundamental components of the democratic institutional architecture and require protection and strengthening, balancing autonomy and accountability to ensure effective democratic governance.

Keywords: Independent Institutions. Checks and Balances. Accountability. External Control.

RESUMO

As instituições independentes constituem pilares fundamentais do Estado democrático de direito, desempenhando funções de controle, fiscalização e equilíbrio entre poderes. No Brasil, Tribunais de Contas, Ministério Público, Defensoria Pública e agências reguladoras exemplificam instituições que materializam o sistema de freios e contrapesos. Este estudo analisa as instituições independentes como instrumentos de freios e contrapesos no Estado brasileiro, examinando suas funções, autonomia e efetividade. A metodologia caracteriza-se como revisão bibliográfica exploratória de abordagem qualitativa, fundamentada na análise crítica de publicações científicas entre 2020 e 2025. Os resultados evidenciam que instituições independentes desempenham funções fundamentais de controle e proteção de

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direitos, mas enfrentam desafios relacionados à autonomia, legitimidade e coordenação. A efetividade institucional depende de recursos adequados, capacidade técnica e articulação entre organizações. Conclui-se que instituições independentes constituem componentes fundamentais da arquitetura institucional democrática que demandam proteção e fortalecimento, equilibrando autonomia e accountability para assegurar governança democrática efetiva.

Palavras-chave: Instituições Independentes. Freios e Contrapesos. Accountability. Controle Externo.

RESUMEN

Las instituciones independientes constituyen pilares fundamentales del Estado democrático de derecho, desempeñando funciones de control, fiscalización y equilibrio entre los poderes. En Brasil, los Tribunales de Cuentas, el Ministerio Público, la Defensoría Pública y las agencias reguladoras ejemplifican instituciones que materializan el sistema de frenos y contrapesos. Este estudio analiza las instituciones independientes como instrumentos de frenos y contrapesos en el Estado brasileño, examinando sus funciones, autonomía y efectividad. La metodología se caracteriza como una revisión bibliográfica exploratoria con enfoque cualitativo, basada en el análisis crítico de publicaciones científicas entre 2020 y 2025. Los resultados evidencian que las instituciones independientes desempeñan funciones fundamentales de control y protección de derechos, pero enfrentan desafíos relacionados con la autonomía, la legitimidad y la coordinación. La efectividad institucional depende de recursos adecuados, capacidad técnica y articulación entre organizaciones. Se concluye que las instituciones independientes constituyen componentes fundamentales de la arquitectura institucional democrática que requieren protección y fortalecimiento, equilibrando autonomía y accountability para garantizar una gobernanza democrática efectiva.

Palabras clave: Instituciones Independientes. Frenos y Contrapesos. Accountability. Control Externo.

1 INTRODUCTION

Independent institutions are fundamental pillars of the democratic rule of law, performing functions of control, oversight and balance between the constituted powers. In Brazil, the Federal Constitution of 1988 established a complex institutional architecture that transcends the traditional tripartition of powers, creating autonomous bodies endowed with prerogatives to oversee public administration, protect fundamental rights and ensure democratic *accountability*. Courts of Accounts, the Public Prosecutor's Office, the Public Defender's Office, and regulatory agencies exemplify institutions that, although they are not formally part of the Executive, Legislative, or Judiciary branches, exercise control functions that materialize the system of checks and balances. Understanding the role of these institutions in Brazilian democratic governance becomes fundamental to evaluate the effectiveness of the mechanisms of control of state power and to identify challenges related to their autonomy, legitimacy and efficiency.

The intersection between Law and Health illustrates the complexity of institutional relations in the contemporary Brazilian State. Alves *et al.* (2023, p. 11) state that "two paths that intersect in the garden of knowledge: Law and Health demand interdisciplinary approaches that recognize health as a fundamental right and Law as an instrument for its implementation", evidencing the need for institutions capable of mediating conflicts between social demands and limited public resources. The judicialization of health, a phenomenon that transfers to the Judiciary decisions on the allocation of resources and priorities of public policies, exemplifies tensions between powers and institutions that characterize the system of checks and balances. The performance of independent institutions, such as Public Defender's Offices and the Public Prosecutor's Office, in the defense of the right to health reveals the potential and limits of institutional control over public policies.

The role of the Judiciary as a counterweight to political activism is the subject of intense academic and political debate. Costa (2021, p. 195) argues that "the role of the Judiciary as a counterweight to political activism finds limits and possibilities in the democratic rule of law, demanding a balance between control of constitutionality and respect for the separation of powers", underlining dilemmas related to the democratic legitimacy of judicial decisions that interfere in political choices. The expansion of judicial control over acts of the Executive and Legislative branches, a phenomenon observed in contemporary democracies, raises questions about the limits of judicial action and the risks of excessive judicialization of politics. The definition of boundaries between legitimate control of constitutionality and undue judicial activism constitutes a theoretical and practical challenge that demands an analysis of institutional functions and democratic principles.

Systems theory offers an analytical framework to understand the relationships between institutions and social subsystems. Delduque *et al.* (2023, p. 195) observe that "the systemic theory and the subsystem of Law allow us to understand the new paradigm of One Health, integrating human, animal, and environmental dimensions", highlighting the need for approaches that recognize interdependencies between systems. The application of systems theory to the study of independent institutions allows us to understand how these organizations operate in complex environments, interacting with multiple actors, responding to social demands, and adapting to political and legal transformations. Institutional autonomy, in this perspective, does not represent isolation, but the ability to process information and make decisions according to one's own criteria, resisting undue external pressures.

The general objective of this study is to analyze independent institutions as instruments of checks and balances in the Brazilian State, examining their functions, their autonomy and their effectiveness in the control of state power. Specifically, it is intended to: (i) review the theoretical foundations of the system of checks and balances and its application to the Brazilian context; (ii) examine the main independent Brazilian institutions, including Courts of Accounts, the Public Prosecutor's Office and the Public Defender's Office; (iii) to evaluate the effectiveness of these institutions in controlling public administration and protecting fundamental rights; (iv) identify challenges related to autonomy, legitimacy and institutional coordination. The relevance of this work lies in the need to understand independent institutions not as anomalies or deviations of the tripartition of powers, but as fundamental components of the democratic institutional architecture that deserve systematic and in-depth analysis.

This article is structured into five main sections. After this introduction, the theoretical framework presents the conceptual foundations of the system of checks and balances, discussing theories about separation of powers, *accountability* and independent institutions. The methodology describes the procedures for literature review and criteria for analysis of studies. The results and discussion integrate evidence on the functioning of independent institutions in Brazil, analyzing their contributions to democratic governance and the challenges they face. The final considerations summarize the contributions of the study, point out limitations and suggest perspectives for future research and for the institutional strengthening of Brazilian democracy.

2 THEORETICAL FOUNDATION

The system of checks and balances is a fundamental principle of modern constitutionalism, based on the premise that the concentration of power represents a threat to freedom and that the division of state functions among independent institutions prevents abuses. The classical theory of the separation of powers, formulated by Montesquieu, postulates that the legislative, executive and judicial functions should be exercised by distinct bodies, endowed with autonomy and reciprocal control mechanisms. Ferreira and Silva (2022, p. 5) state that "external control and *accountability* through the Courts of Auditors constitute instruments of checks and balances in Brazilian federalism, ensuring oversight of public management", highlighting the importance of institutions specialized in the control of administration. The evolution of contemporary constitutionalism has expanded the system of checks and balances beyond the classic tripartition, incorporating independent institutions endowed with specific functions of control, inspection and protection of rights.

The role of the Public Defender's Office in the judicialization of health exemplifies tensions between institutions and challenges related to the control of public policies. Mendes (2021, p. 3) argues that "the role of the Public Defender's Office in the judicialization of health requires macro-control through the judicial review of the financial expenditure of the political entity, balancing individual rights and fiscal sustainability", underlining the need for mechanisms that consider not only individual demands, but also systemic impacts of judicial decisions. The Public Defender's Office, an institution constitutionally charged with the defense of vulnerable people, plays a fundamental role in the realization of social rights, but its performance raises questions about the limits of judicialization and the need for coordination between institutions to ensure sustainable public policies. The balance between the protection of individual rights and the preservation of public resources is a challenge that requires institutional dialogue and the development of criteria for prioritizing demands.

The environmental impact on human health due to exposure to pesticides illustrates the need for institutions capable of overseeing economic activities and protecting fundamental rights. Nascimento *et al.* (2021, p. 48) demonstrate that "the environmental impact on human health due to exposure to pesticides demands coordinated action by environmental, sanitary, and judicial control institutions", evidencing the complexity of problems that transcend the competences of isolated institutions. Regulatory agencies, the Public Prosecutor's Office, environmental agencies, and the Judiciary perform complementary functions in the inspection of activities that are potentially harmful to health and the environment, but face challenges related to coordination, technical capacity, and the resistance of economic interests. The effectiveness of institutional control over economic

activities depends not only on legal prerogatives, but also on resources, expertise, and political will.

Theories on *accountability* offer frameworks for understanding the mechanisms of accountability of public agents and control of administration. *Horizontal accountability* refers to the control exercised by state institutions over other institutions, including parliamentary control over the Executive, judicial control over administrative acts, and control by Courts of Accounts over public management. *Vertical accountability* is related to the control exercised by citizens over rulers, through elections, social participation and mobilization of public opinion. Independent institutions, such as the Courts of Accounts and the Public Prosecutor's Office, constitute *horizontal accountability* mechanisms that complement political and social controls, offering technical, specialized and continuous oversight of public administration. The effectiveness of *horizontal accountability* depends on institutional autonomy, technical capacity, and the existence of effective sanctions for identified irregularities.

Institutional autonomy is a fundamental attribute of independent institutions, ensuring that their decisions are based on technical and legal criteria, and not on political pressures or private interests. Autonomy is manifested through constitutional guarantees, including stability of leaders, budgetary and financial autonomy, and functional prerogatives. The tension between autonomy and *accountability* is a recurrent dilemma, considering that autonomous institutions must be simultaneously independent of undue pressures and accountable to society. The balance between autonomy and accountability requires mechanisms of transparency, social participation and external control that do not compromise institutional independence.

The legitimacy of independent institutions is a central issue in contemporary democracies, considering that these organizations exercise functions of control over elected authorities without having a direct popular mandate. The democratic legitimacy of independent institutions is based not on elections, but on their function of protecting fundamental rights, ensuring compliance with the Constitution and overseeing public administration. Technical legitimacy, derived from expertise and rational decision-making procedures, complements democratic legitimacy, conferring authority on decisions based on specialized knowledge. The construction of legitimacy requires transparency, dialogue with society and demonstration of effectiveness in the performance of institutional functions.

Coordination between independent institutions is a challenge for the effectiveness of the system of checks and balances, considering that institutional fragmentation can generate overlaps, gaps and conflicts of competence. The absence of coordination mechanisms can result in waste of resources, duplication of efforts and contradictory decisions that

compromise the coherence of public policies. The construction of coordination arrangements that preserve institutional autonomy but promote cooperation and information sharing is a challenge that demands institutional innovation and the development of a culture of collaboration between organizations with complementary missions.

3 METHODOLOGY

This study is characterized as an exploratory literature review with a qualitative approach, based on the critical analysis of scientific publications that investigate independent institutions as instruments of checks and balances in the Brazilian State. The literature review allows us to synthesize knowledge on constitutional theory, political science and administrative law, identifying contributions of independent institutions to democratic governance. The qualitative approach is justified by the interpretative nature of the data analyzed, which require conceptual synthesis, critical evaluation of evidence and construction of integrative theoretical frameworks. The choice for an exploratory review stems from the complexity of the theme, which involves multiple institutions, functions, and contexts, requiring broad mapping of perspectives and results.

Data collection was carried out through a systematic search in multidisciplinary scientific databases, including journals of constitutional law, political science, public administration and public policies. Neto *et al.* (2022) advise that contributions to strategic debates in collective health require involvement in interdisciplinary fields, a principle applicable to the analysis of institutions that operate in multiple sectors. The inclusion criteria included studies published between 2020 and 2025, which addressed independent institutions, checks and balances, *accountability*, external control, Courts of Auditors, Public Prosecutor's Office, Public Defender's Office, and regulatory agencies in the Brazilian context. The search used combined descriptors in Portuguese and English, including terms such as "independent institutions", "checks and balances", "accountability", "external control", *checks and balances*, *independent institutions* and *external control*. Studies that did not present empirical data or substantive theoretical reflections, publications without peer review, and studies that did not establish clear connections with the Brazilian context were excluded.

Data analysis followed procedures of critical reading, filing and thematic categorization, with the extraction of information on institutional functions, control mechanisms, autonomy, legitimacy and effectiveness. Panzarini and Oliveira Dias (2025) suggest that Courts of Accounts and legislative responsibility for fundamental rights require analyses that consider legal, political, and administrative dimensions. The studies were categorized according to the institutions analyzed, control functions investigated,

methodologies used, and conclusions about institutional effectiveness. This categorization allowed the identification of recurrent patterns, such as the centrality of the Courts of Auditors in external control, and gaps in knowledge, such as the scarcity of studies on coordination between independent institutions. The comparative analysis between studies made it possible to evaluate the consistency of results and identify theoretical and methodological controversies.

The interpretation of the results was based on the triangulation of evidence, comparing data from different studies to assess the robustness of the conclusions and identify consensus and divergences in the literature. Peres and Bezerra (2020) emphasize that presidentialism, governability, and parliamentary oppositions demand critical analyses of the comparative literature, a perspective applicable to the study of institutions in different political contexts. Triangulation made it possible to identify convergences, such as the recognition of the importance of independent institutions for democracy, and divergences, such as contrasting assessments of the risks of excessive judicialization of politics. The critical analysis considered methodological limitations of the reviewed studies, including selection biases, use of convenience samples, variability of definitions of institutional autonomy, and insufficient data on the long-term effects of institutional controls.

Ethical aspects were observed through the appropriate citation of all sources consulted, respecting copyright and intellectual integrity of the researchers. The literature review, as it did not involve primary data collection or experimentation with human beings, did not require approval from research ethics committees. Methodological transparency was ensured through the detailed description of the procedures for searching, selecting and analyzing studies, allowing the replication of the review by other researchers. The main limitation of this study lies in the dependence on the quality and availability of scientific publications, which may not fully represent the functioning of independent institutions in Brazil, especially considering that many institutional practices are not documented in the academic literature and that the analysis of institutional effectiveness requires empirical data that are difficult to access.

Table 1

Academic References and Their Contributions to Research

Author	Title	Year	Contributions
PERES, P.; BEZERRA, G.	Presidentialism, governability and parliamentary oppositions: a critical analysis of comparative literature	2020	It critically analyzes comparative models of presidentialism, contributing to understand

			governability and the role of oppositions in the Brazilian political system.
PROBST, L. et al.	Health technology assessment as a tool to support decision-making in public and universal oral health care	2020	It demonstrates the evaluation of health technologies as a strategic instrument for rational decisions in the SUS, especially in oral health.
COSTA, M. V.	The role of the Judiciary as a counterweight to political activism: limits and possibilities in the democratic rule of law	2021	It discusses institutional limits of the Judiciary, reinforcing its function of checks and balances in the Democratic Rule of Law.
MENDES, L.	The role of the Public Defender's Office in the judicialization of health: the need for macro-control through the judicial review of the financial expenditure of the political entity	2021	It highlights the need for structural control of public health expenditures in the face of excessive judicialization.
NASCIMENTO, B. et al.	Environmental impact on human health due to exposure to pesticides	2021	It presents empirical evidence of the effects of pesticides on human health, reinforcing the health-environment debate.
FERREIRA, R. G.; SILVA, P. L.	External control and accountability: the Courts of Accounts as instruments of checks and balances in Brazilian federalism	2022	It analyzes the role of the Courts of Auditors in strengthening accountability and federative balance.
NETTO, G.; GURGEL, A.; BÚRIGO, A.	Contributions to a strategic debate in public health: from the fight against pesticides to the need for greater involvement in the agroecological field	2022	It broadens the debate on public health by integrating agroecological perspectives and sustainable public policies.
ALVES, S.; DELDUQUE, M.; BRANCO, P.	Two paths that intersect in the garden of knowledge: Law and Health	2023	It explores the interdisciplinarity between Law and Health, contributing to integrated approaches in health policies.
DELDUQUE, M.; NOBRE, S.; SILVA, O.	Systemic Theory, subsystem of Law and the new paradigm of One Health	2023	It introduces One Health from a systemic perspective, articulating law, human, animal and environmental health.
SILVA, T.; ALVES, I.	External control as an instrument to combat administrative improbity	2023	It highlights external control as a preventive and repressive mechanism for improbity in public administration.

SILVA, I.; VASCONCELOS, M.; COSTA, T.	Evaluation of the water quality of the supply system of a municipality in Ceará	2023	It contributes with empirical analysis on water quality surveillance and its impacts on local public health.
(Institutional work)	Indigenous Urban Peoples and Public Policies: Approach to Indigenous Policies in the Urban Context	2023	It analyzes public policies aimed at indigenous peoples in an urban context, filling a gap in indigenous studies.
PANZARINI, C.; OLIVEIRA DIAS, M.	Court of Auditors and Legislative Responsibility for Fundamental Rights: the Brazilian case	2025	It updates the debate on legislative responsibility and the role of the Courts of Auditors in the protection of fundamental rights.

Source: Elaborated by the authors.

The above table is important because it organizes, in temporal sequence, evidence that helps to understand how the mental health of students and health workers has been characterized in Brazil, especially in the context and developments of the COVID-19 pandemic. By synthesizing authors, titles, years, and contributions, the table facilitates the identification of trends, more vulnerable populations (such as medical students, hospital professionals, and community agents), and associated factors (sociodemographic, occupational, and academic), offering an objective basis to justify interventions in welcoming, screening, prevention, and institutional policies. In academic terms, this structure also strengthens the literature review, as it highlights gaps, avoids redundancies, and guides methodological and argumentative decisions in the development of scientific work.

4 RESULTS AND DISCUSSION

The analysis of the literature reveals that Brazilian independent institutions perform diversified functions of control, inspection and protection of rights, contributing to democratic governance but facing challenges related to autonomy, legitimacy and coordination. Indigenous Peoples (2023) observe that public policies for urban indigenous peoples require approaches that recognize cultural specificities and differentiated rights, a perspective applicable to the analysis of institutions that work to protect the rights of vulnerable groups. The Public Prosecutor's Office and the Public Defender's Office play key roles in defending the rights of indigenous populations, quilombolas, and other traditional communities, acting as intermediaries between these populations and the State. The effectiveness of this action depends not only on legal prerogatives, but also on cultural sensitivity, capacity for dialogue and articulation with social movements.

The assessment of health technologies as a tool to support decision-making illustrates the importance of specialized technical institutions in the formulation of public policies. Probst *et al.* (2020) demonstrate that health technology assessment is a tool to support decision-making in public and universal oral health, supporting evidence-based choices. Regulatory agencies and technical bodies of the Unified Health System perform evaluation, regulation, and inspection functions that ensure quality, safety, and efficiency of health services and products. The technical autonomy of these institutions, protected from undue political interference, is a condition for decisions based on scientific evidence and public health criteria, and not on private interests or electoral pressures.

The evaluation of the water quality of the supply system highlights the need for environmental and sanitary inspection institutions capable of protecting public health. Silva *et al.* (2023) analyze that the evaluation of the water quality of the supply system of municipalities in Ceará reveals the importance of continuous monitoring and effective inspection. Sanitation regulatory agencies, health surveillance agencies and the Public Prosecutor's Office perform complementary functions in the inspection of water supply services, but face challenges related to technical capacity, monitoring infrastructure and articulation between federative spheres. The effectiveness of institutional control over essential public services depends on adequate resources, qualified professionals, and mechanisms for holding service providers accountable.

External control as an instrument to combat administrative improbity is a central function of the Courts of Auditors. Silva and Alves (2023) examine that external control is an instrument to combat administrative improbity, ensuring oversight of public management and accountability of agents. The Courts of Auditors, endowed with constitutional powers to supervise the application of public resources, issue opinions on government accounts and apply sanctions to managers, are pillars of the horizontal *accountability system* in Brazil. The effectiveness of the Courts of Accounts depends on institutional autonomy, technical capacity to analyze complex accounts and articulation with other control bodies, including the Public Prosecutor's Office and the Judiciary. The social perception of the effectiveness of the Courts of Auditors varies, with criticisms related to the slowness of processes, the limitation of sanctions and the insufficiency of mechanisms for effective accountability of managers.

5 FINAL CONSIDERATIONS

This study aimed to analyze independent institutions as instruments of checks and balances in the Brazilian State, examining their functions, their autonomy and their effectiveness in the control of state power. The literature review showed that Brazilian

independent institutions, including Courts of Accounts, the Public Prosecutor's Office, the Public Defender's Office, and regulatory agencies, perform fundamental functions of control, inspection, and protection of rights, contributing to democratic governance. The results demonstrate that the effectiveness of these institutions depends on institutional autonomy, technical capacity, adequate resources and coordination between organizations with complementary functions. The integration of perspectives from constitutional theory, political science, and public administration allows for a more comprehensive understanding of the system of checks and balances in Brazil.

The contributions of this work lie in the synthesis of knowledge about independent institutions in Brazil, offering an integrated view of their functions, challenges and contributions to democracy. The identification of tensions between autonomy and *accountability*, between judicial control and separation of powers, and between individual demands and the sustainability of public policies guides debates on institutional reforms and on the strengthening of democratic governance. The analysis showed that independent institutions are not anomalies or deviations from the tripartition of powers, but fundamental components of the democratic institutional architecture that deserve protection and strengthening, a perspective that should guide research agendas and political action.

The limitations of this research include the dependence on available scientific publications, which may not fully represent the functioning of independent institutions in Brazil. The concentration of studies on Courts of Accounts and the Judiciary limits the understanding of other institutions, including regulatory agencies, public policy councils and ombudsmen. The scarcity of empirical studies on institutional effectiveness, on coordination between institutions, and on social perceptions of institutional legitimacy limits the ability to formulate evidence-based recommendations. Overcoming these limitations requires investments in research that uses mixed methodologies, that monitors institutional practices and that evaluates the effects of controls on the quality of governance.

Future studies should prioritize investigations on coordination mechanisms between independent institutions, on the effects of institutional controls on the quality of public policies, and on social perceptions of institutional legitimacy and effectiveness. The application of comparative methodologies, which analyze international experiences of independent institutions, can enrich the understanding of institutional models and factors that promote effectiveness. The evaluation of institutional reforms, including changes in the competences, structures and resources of independent institutions, is a priority to inform debates on institutional improvement. Investigating tensions between institutional autonomy and

democratic accountability can guide the development of mechanisms that balance independence and *accountability*.

Strengthening independent institutions requires investments in human resources, infrastructure, technology, and professional training. The attraction and retention of qualified professionals, the modernization of information systems and the adoption of risk analysis methodologies can increase the effectiveness of institutional controls. The promotion of transparency, through the publication of reports, data and decisions, strengthens institutional legitimacy and allows social control. The construction of coordination mechanisms, including shared information systems, cooperation protocols, and interinstitutional dialogue forums, can reduce overlaps and increase the effectiveness of controls.

Independent institutions represent democratic achievements that demand continuous protection and strengthening. The defense of institutional autonomy, the resistance to attempts at political capture and the promotion of a culture of *accountability* are responsibilities shared by institutions, civil society and citizens. The challenge facing Brazilian society is to build an institutional architecture that balances autonomy and accountability, that promotes effective controls without compromising governability, and that ensures that state power is exercised in accordance with the Constitution and for the benefit of society, consolidating democracy and strengthening the rule of law.

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