UNITY, INDIVISIBILITY AND FUNCTIONAL INDEPENDENCE: A SYSTEMIC ANALYSIS OF THE CONSTITUTIONAL PRINCIPLES OF THE BRAZILIAN PUBLIC PROSECUTOR'S OFFICE

UNIDADE, INDIVISIBILIDADE E INDEPENDÊNCIA FUNCIONAL: ANÁLISE SISTÊMICA DOS PRINCÍPIOS CONSTITUCIONAIS DO MINISTÉRIO PÚBLICO BRASILEIRO

UNIDAD, INDIVISIBILIDAD E INDEPENDENCIA FUNCIONAL: ANÁLISIS SISTÉMICO DE LOS PRINCIPIOS CONSTITUCIONALES DEL MINISTERIO PÚBLICO BRASILEÑO

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ABSTRACT

This paper examines the institutional principles governing Brazil's Public Prosecutor's Office — unity, indivisibility, and functional independence — through constitutional hermeneutics and Robert Alexy's theory of fundamental rights. After distinguishing rules from principles, the study shows how these directives shape prosecutorial action, ensure internal coherence, and safeguard impartiality. Using a qualitative, bibliographic-documentary approach, the article traces the historical development of the natural prosecutor principle, which replaced politically appointed "ad hoc prosecutors," and assesses the National Council of the Public Prosecutor's Office (CNMP) in implementing these values. Findings indicate that the effectiveness of the principles hinges on governance that reconciles functional autonomy with democratic oversight mechanisms, preventing both internal capture and undue external interference.

Keywords: Public Prosecutor's Office. Unity. Indivisibility. Functional Independence. Natural Prosecutor.

RESUMO

O artigo examina os princípios institucionais do Ministério Público brasileiro — unidade, indivisibilidade e independência funcional — à luz da hermenêutica constitucional e da teoria dos direitos fundamentais de Robert Alexy. Depois de distinguir regras e princípios, analisa-se como essas diretrizes estruturam a atuação ministerial, asseguram coerência interna e protegem a imparcialidade do órgão acusatório. A pesquisa, de cunho bibliográfico-documental e abordagem qualitativa, revisita a evolução histórica do princípio do Promotor Natural, superando a figura do "promotor de encomenda", e avalia o papel do Conselho Nacional do Ministério Público (CNMP) na concretização desses valores. Conclui-se que a efetividade dos princípios depende de uma governança que una autonomia funcional a mecanismos democráticos de controle, prevenindo tanto a captura interna quanto interferências externas indevidas.

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Palavras-chave: Ministério Público. Unidade. Indivisibilidade. Independência Funcional. Promotor Natural.

RESUMEN

El artículo examina los principios institucionales del Ministerio Público brasileño —unidad, indivisibilidad e independencia funcional— a la luz de la hermenéutica constitucional y de la teoría de los derechos fundamentales de Robert Alexy. Tras distinguir entre reglas y principios, se analiza cómo estas directrices estructuran la actuación ministerial, aseguran la coherencia interna y protegen la imparcialidad del órgano acusador. La investigación, de carácter bibliográfico-documental y enfoque cualitativo, revisita la evolución histórica del principio del Promotor Natural, superando la figura del "promotor a la carta", y evalúa el papel del Consejo Nacional del Ministerio Público (CNMP) en la concreción de estos valores. Se concluye que la efectividad de los principios depende de una gobernanza que articule la autonomía funcional con mecanismos democráticos de control, previniendo tanto la captura interna como injerencias externas indebidas.

Palabras clave: Ministerio Público. Unidad. Indivisibilidad. Independencia Funcional. Promotor Natural.

1 INTRODUCTION

The Constitution of the Republic of 1988 reformulated the Public Prosecutor's Office (MP) as a permanent institution, charged with the defense of the legal order, the democratic regime and the inalienable social and individual interests. To ensure that this mission is fulfilled in an effective and impartial manner, the Constituent Assembly established, in paragraph 1 of article 127, the principles of unity, indivisibility and functional independence. These normative commands represent true optimization mandates, in the Alexian sense, conditioning all ministerial intervention to the beacons of the Democratic Rule of Law.

Despite their apparent convergence, these principles give rise to practical tensions: institutional unity can collide with the decision-making independence of the prosecutor; indivisibility, although necessary for the continuity of the service, imposes challenges to the guarantee of the natural promoter; and functional independence, if absolutized, can weaken internal and social accountability. Added to this is the creation, by Constitutional Amendment 45/2004, of the CNMP, which introduced new vectors of external control and strategic planning.

In view of this scenario, this article aims to (i) revisit the theoretical foundations that distinguish rules and principles, (ii) analyze each constitutional postulate of the MP in the light of doctrine and jurisprudence, (iii) discuss the evolution of the principle of the Natural Prosecutor and (iv) evaluate the role of the CNMP in the harmonization of institutional guidelines. Methodologically, a bibliographic research integrated with documentary examination of constitutional and infra-constitutional norms is adopted, with a qualitative and hermeneutic approach.

The relevance of the study lies in offering a systemic view that helps legal operators in the coherent application of the principles, preventing deviations such as the historical figure of the "order promoter" and strengthening social trust in the Public Prosecutor's Office.

2 INSTITUTIONAL PRINCIPLES OF THE PUBLIC PROSECUTOR'S OFFICE

The Theory of Fundamental Rights, elaborated by the jurist Robert Alexy and published in 1985, was of paramount importance for understanding the differences between rules and principles. According to this theory, rules and principles are norms, since they reveal deontic expressions, indicating order, permission, prohibition, that is, the ought to be. However, they are different, insofar as the principles are considered "optimization mandates", ordering the performance of a certain action to the greatest extent feasible, taking into account the legal and factual possibilities. The rules, on the other hand, are precise and definitive, so they are complied with or not, and there is no middle ground.

In this sense, in the conflict of rules, one eliminates the other, verifying the invalidity of one of them. With regard to the collision between principles, one separates the other when the question is resolved, observing the legal and factual context of each of them. (JÚDICE, 2007)[2]element. Thus, it is inferred that the principles, in spite of being endowed with greater generality and abstraction, as well as being more related to the context in which they are applied, requiring a weighting when applying them, have imperativeness as much as the rules, having a cogent character[3][4][5].

From this perspective, it is affirmed that the institutional principles of the Public Prosecutor's Office, engraved in § 1 of article 127 of the Federal Constitution (BRASIL, 1988), namely, unity, indivisibility and functional independence, are norms of imperative application by the operator of the law, under penalty of incurring in unconstitutionality.

2.1 PRINCIPLE OF UNITY OF THE PUBLIC PROSECUTOR'S OFFICE

The principle in question reflects that prosecutors are members of a single Public Prosecutor's Office, the same body[6]. Thus, members perform their duties without being

[2] Letícia Balsamão Amorim (2005, p. 56) argues that "when two principles are in collision, one of the two principles has to yield to the other. But this does not mean declaring the principle despised invalid or that an exception clause must be introduced in the principle despised. What will determine which principle should give way will be the circumstances. This means that, in concrete cases, the principles have different weights and the principle with the greatest weight prevails"

[3] Carlos Roberto de Castro Jatahy (2008) teaches that "Constitutions are composed of norms that can be classified into two main categories: principles and rules. Rules would be those norms that are close to common law, that is, they have the necessary elements to invest someone in the quality of holder of a subjective right. Principles, on the other hand, although they do not generate subjective right, perform a transcendental function within the Constitution, giving a semblance of unity to the Constitutional Text and determining its fundamental guidelines".

[4] From this angle, the teaching of the Minister of the Federal Supreme Court, Luís Roberto Barroso (2018, p. 26), who adduces that the "constitutional principles affect the legal world and the factual reality in different ways, is relevant. Sometimes, the principle will be the direct basis of a decision. At other times, its incidence will be indirect, conditioning the interpretation of a certain rule or paralyzing its effectiveness"

[5] With regard to the relevance of principles, it is appropriate to present the consideration of Paulo Bonavides (2011, p. 74), who elucidates that "Placed at the highest point of the normative scale, they themselves, being norms, become, from now on, the supreme norms of the legal system. Serving as guidelines or criteria par excellence for the evaluation of all normative contents, the principles, from their constitutionalization, which is at the same time positivization at the highest level, receive as a maximum evaluative instance a constitutional category, surrounded by prestige and the hegemony that is conferred on the norms inserted in the Law of Laws. With this additional relevance, the principles also become norm normarum, that is, the norm of norms"

[6] It should be noted that the institutional unity of the Public Prosecutor's Office must be a democratic construction with broad popular participation. In this sense, Marcelo Goulart teaches that "institutional unity must be built democratically. The Public Prosecutor's Office must be open to society and interact with the other collective political subjects that make up the basis of support for the democratic project. The democratic construction of institutional unity presupposes the participation of society in the process of defining institutional priorities. Before establishing the priority goals of the Action Plans and Programs, the Public Prosecutor's Office must consult society. These goals should reflect what society wants and expects from the work of the Public Prosecutor's Office. Each Public Prosecutor's Office – State and Union, the latter in its various branches – must define models for popular consultation and the preparation of Action Plans and Programs, taking into account their specificities and forms of spatial organization" (2021, p. 154)

identified in a way that individualizes them. They represent the institution as a whole, which is one, having only different branches with defined attributions.

Unity, in the words of Mazzilli (2008, p. 23), "means that the members of the Public Prosecutor's Office are part of a single body under the direction of a single chief". In view of this, there are those who confuse the principle in question with the principle of indivisibility, which is different, so that it refers to the activity of the prosecutor as a procedural-procedural agent (GOULART, 2009), and, at the appropriate time, will be better analyzed.

It is essential to clarify that being under the direction of a single head does not mean that there is a relationship of unity between the Federal Public Prosecutor's Office and the state Public Prosecutor's Office, nor between the Public Prosecutor's Offices of different states. It so happens that each Public Prosecutor's Office has a chief, who defines and guides the institution's activities.

In this way, the principle of unity reveals that for each institutional function conferred on the Public Prosecutor's Office in the Constitution, there is only one ministerial branch competent to execute it. Jatahy (2008) In other words, only a certain branch has the attribution to act in a concrete case[7].

Nevertheless, it can be seen that Constitutional Amendment No. 45/2004 (Reform of the Judiciary), created the National Council of the Public Prosecutor's Office (CNMP) by adding article 130-A to the text of the Magna Carta. This body basically has the attribution of controlling the administrative and financial activity of the Institution, as well as analyzing the fulfillment of the functional duties of the members who are part of it[8].

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[7] On the subject, Emerson Garcia (2017, p. 21) asserts that "By providing for the existence of a single Public Prosecutor's Office, which would encompass a diversity of autonomous institutions, the 1988 Constitution embraced "unity with the inclusion of variety". From this conclusion, it can be affirmed that the principle of unity, contemplated in § 1 of article 127 of the 1988 Constitution, acts as an evident argumentative reinforcement, indicating that both the Federal Public Prosecutor's Office and the State Public Prosecutor's Offices, each in its sphere of attributions, act as inseparable parts of one and the same body."

[8] The rule provides as follows: "Article 130-A, § 2 It is incumbent upon the National Council of the Public Prosecutor's Office to control the administrative and financial performance of the Public Prosecutor's Office and the fulfillment of the functional duties of its members, and it is incumbent upon it:
I - to ensure the functional and administrative autonomy of the Public Prosecutor's Office, being able to issue regulatory acts, within the scope of its competence, or recommend measures;
II – to ensure compliance with article 37 and to assess, ex officio or upon provocation, the legality of administrative acts performed by members or bodies of the Public Prosecutor's Office of the Union and of the States, being able to dismantle them, review them or set a deadline for the adoption of the necessary measures for the exact compliance with the law, without prejudice to the competence of the Courts of Auditors;
III – to receive and hear complaints against members or bodies of the Public Prosecutor's Office of the Union or of the States, including against its auxiliary services, without prejudice to the disciplinary and correctional competence of the institution, being able to evoke disciplinary proceedings in progress, determine removal or availability and apply other administrative sanctions, ensuring ample defense;
IV – to review, ex officio or upon provocation, the disciplinary proceedings of members of the Public Prosecutor's Office of the Union or of the States judged less than one year ago;
V - to prepare an annual report, proposing the measures it deems necessary on the situation of the Public Prosecutor's Office in the country and the activities of the Council, which must integrate the message provided for in article 84, XI" (BRASIL, 1988).

The aforementioned body is not part of the structure of any state power, just as it is not part of the structure of the Federal Public Prosecutor's Office, much less the Public Prosecutor's Office of the States. It is another mechanism for carrying out external control[9]. Thus, the implementation of the CNMP in no way injured the principle of unity, insofar as it did not intend to subject the State Public Prosecutor's Offices to the MPU or even to the above-mentioned Council. (JATAHY, 2008)

In addition, it is worth examining the new bias given to the principle of unity. It is a more political perspective of ministerial activity, in order to influence the Institution's Action Plans and Programs. In this context, the unity of the Public Prosecutor's Office must be built in a democratic manner. To this end, it is recommended that society get involved in the process of defining the priorities of the Parquet, through instruments and spaces of participatory democracy[10].

In a hasty analysis, it would be possible to discuss the supposed impossibility of coexistence between the principle in question and the principle of functional independence. On a superficial analysis, such principles may seem antagonistic and in constant collision. However, such a note does not deserve to prosper, since such rules have different destinations (GARCIA, 2017). While the first principle refers to the institution of the Public Prosecutor's Office in its organizational structure, the second is specifically aimed at the members.

2.2 PRINCIPLE OF INDIVISIBILITY OF THE PUBLIC PROSECUTOR'S OFFICE

The line that separates the institutional principle of indivisibility from the principle of unity previously analyzed is very thin. However, strengthening the differences between these principles, it should be detailed that institutional indivisibility concerns the activity of the prosecutor, insofar as it allows the replacement of members among themselves without hindering ministerial activity.

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[9] In this sense: "just as it already happens over the Judiciary or any Powers or institutions of the State, there must also be some form of external control over the Public Prosecutor's Office, not to curtail the independence and functional freedom of the institution and its agents, but to ensure that they are accountable to the Legislative Branch, the press and the community not only for the exercise of their core activities but also for the exercise of their secondary activities. After all, the Constitution supposes publicity and transparency in the activities of public bodies, only hindered in exceptional cases, in which the disclosure of the measure may result in damage to the community" (MAZZILLI, 2007, p. 15).

[10] In this orientation, Marcelo Pedroso Goulart (2009, p. 63) understands that "the principle of unity informs and guides the political-institutional action of the Public Prosecutor's Office, which, through the set of its members, its executive bodies and the Higher Administration, must be aimed at achieving its strategic objective: the promotion of the project of participatory, economic and social democracy outlined in the Constitution of the Republic (the construction of a free society, in which development must necessarily be directed to the eradication of poverty and marginalization, the reduction of social and regional inequalities and the promotion of the common good).

Thus, when it is the case that a prosecutor, for example, takes his vacation, leave, is removed due to some impediment or suspicion, he can be replaced by another member without jeopardizing the execution of the ministerial activity, considering that the acts performed by the members are performed in the name of the Public Prosecutor's Office[11]. In other words, prosecutors are not bound by the processes in which they officiate.

Thus, it can be inferred that the principle of indivisibility is contained in the principle of unity, deriving from it, in order to avoid a split in the Public Prosecutor's Office. Thus, subdivisions within the Institution cannot be autonomous and must always be subordinated to the Head of the Parquet. (GARCIA, 2017). It should be noted that the principle in question is firmly related to the Principle of the Natural Prosecutor as well as to the guarantee of irremovability (JATAHY, 2008). In this sense, the Principle of the Natural Prosecutor determines that a body of the Public Prosecutor's Office will be previously defined by law to act in cases that require ministerial action.

Previously, one could glimpse the activity of the "order promoters", who were chosen at the discretion of the Attorney General of Justice. However, in order to enforce due process of law[12] and the right to be prosecuted by the competent authority[13], the Principle of the Natural Prosecutor was recognized, rejecting casuistic designations and for political purposes, guaranteeing the irremovability of the member.

Ensuring the non-existence of an "exception accuser" is of great relevance, considering that members of society have the right to be prosecuted by an impartial, neutral prosecutor who acts in a given process because he follows criteria previously determined by law. In this way, the principle of indivisibility allows the replacement of members among themselves without tainting the activity of the Parquet, and it is not appropriate to speak of the designation of a prosecutor of order, much less that the act of a prosecutor who acted without having the proper attribution is validated.

Although the principle of indivisibility allows the replacement of prosecutors in their activities, as they represent the Public Prosecutor's Office itself, it should be noted that the attribution of each member has limitations. Hugo Nigro Mazzilli (2001) understands that it is only possible to take advantage of the act performed by the ministerial body before the

[11] It means that "Indivisibility is a characteristic of all formal organizations. Its members, in this capacity, are inseparable from the organization. This is what happens with the Public Prosecutor's Office in relation to its indivisibility, meaning that its members, as such, express the will of the institution, and not their individual will" (ROCHA, 2001, p. 53).

[12] Under the terms of Article 5, LIV of the Constitution "no one shall be deprived of liberty or property without due process of law" (BRASIL, 1988)

[13] Also according to the Federal Constitution, in its article 5, LIII, "no one shall be prosecuted or sentenced except by the competent authority" (BRASIL, 1988)

competent court if there has been no scope to circumvent the Principle of the Natural Prosecutor and if the act is ratified by the competent ministerial body.

2.3 PRINCIPLE OF FUNCTIONAL INDEPENDENCE

The principle of functional independence contained in the Federal Constitution (BRASIL, 1988) guarantees ministerial members not functional subordination to any body or power, exercising their attributions and manifesting themselves in the processes always in a reasoned manner, subject only to their conscience and the legal order.

In view of this, the hierarchical relationship between the prosecutors and the attorney general can be questioned. It so happens that the members of the Public Prosecutor's Office are subordinate to the Head of the Institution only in the administrative sense[14]. Thus, with regard to institutional attributions, prosecutors do not submit to the recommendations of higher bodies, only in the administrative sphere.

From this perspective, the LONMP (BRASIL, 1993b), National Organic Law of the Public Prosecutor's Office (Law No. 8,625, of February 12, 1993) establishes that the bodies of the Higher Administration are non-binding subject to their recommendations. Such recommendations can come from the Attorney General of Justice[15], the Superior Council of the Public Prosecutor's[16] Office and the General Internal Affairs Office of the Public Prosecutor's[17] Office. It should be noted that, although the Attorney General's Offices[18] are not part of the Higher Administration, they may publish recommendations of an administrative or institutional nature, without, in the same way, binding the member of the Public Prosecutor's Office.

It is different with administrative decisions coming from the Higher Administration. According to article 43, XIV, of the LONMP, it is the duty of the members of the Public

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[14] In this regard, Emerson Garcia (2017, p. 57) explains that "the principle of functional independence is directly related to the exercise of the finalistic activity of ministerial agents, preventing exogenous factors, foreign or not to the Institution, from influencing the performance of its munus. Thus, it is avoided that authorities that are part of any of the so-called "Powers of the State", or even the bodies of the Superior Administration of the Public Prosecutor's Office itself, carry out any type of ideological censorship in relation to the acts practiced".

[15] According to Law No. 8,625/1993 (BRASIL, 1993b), in its article 10, "It is incumbent upon the Attorney General of Justice: XII - to issue recommendations, without a normative character to the bodies of the Public Prosecutor's Office, for the performance of his functions"

[16] Pursuant to article 15 of Law No. 8,625/1993 (BRASIL, 1993b), "The Superior Council of the Public Prosecutor's Office is responsible for: X - suggesting to the Attorney General the issuance of recommendations, without a binding nature, to the bodies of the Public Prosecutor's Office for the performance of their functions and the adoption of appropriate measures to improve services"

[17] Article 17 of Law No. 8,625/1993 (BRASIL, 1993b) establishes that "The General Internal Affairs Office of the Public Prosecutor's Office is the guiding and supervisory body of the functional activities and conduct of the members of the Public Prosecutor's Office, and it is incumbent upon it, among other duties: IV - to make recommendations, without a binding nature, to the executive body"

[18] Article 20 of Law No. 8,625/1993 (BRASIL, 1993b) provides that "The Prosecutors of the Civil and Criminal Prosecutor's Offices, who officiate at the same Court, shall meet to establish legal guidelines, without a binding character, forwarding them to the Attorney General of Justice".

Prosecutor's Office "to comply, at the administrative level, with the decisions of the bodies of the Superior Administration of the Public Prosecutor's Office". Therefore, it is inferred that recommendations are different from administrative decisions, which are binding. Because of this, the principle of functional independence does not encompass the administrative precepts, and there is observance, in the Parquet, of the disciplinary-administrative hierarchical principle. (JATAHY, 2008)

Thus, while the principle of functional independence aims to provide greater protection to the ministerial member so that he or she officiates in the deeds without external interference, the prosecutor must be bound by the administrative decisions coming from the Higher Administration. For this reason, the Attorney General has the authority conferred by law[19] to, for example, establish the assignment of a certain prosecutor in cases where there is a conflict of assignment. In this way, the prosecutor cannot decline the assignment in a given case and refuse to act when determined by the Head of the Institution, alleging violation of the principle of functional independence[20].

In addition, from the analysis of the principle of independence, it can also be inferred that the members of the Parquet are immune from liability on account of their acts performed during the exercise of their institutional functions. In this regard, Zanetti Jr (2018) points out that political agents, including prosecutors, have functional freedom, similar to the independence of judges, being safe from civil liability, except if they have acted with gross negligence, bad faith or abuse of power.

However, it should be clarified that although the principle of indivisibility previously studied allows the replacement of members in the same judicial process since they are representing the institution itself, this does not mean that the substitute prosecutor will be subordinated to the content of the manifestations of the substituted one. That said, by the principle of functional independence, the member of the Public Prosecutor's Office who replaces the other is not obliged to follow the same line of legal thought previously used.

Furthermore, it is important to emphasize that the principle of functional independence differs from functional autonomy, in the terms in which the latter refers to the Public

[19] Article 10 of Law No. 8,625/1993 (BRASIL, 1993b) provides that "It is incumbent upon the Attorney General of Justice: X - to settle conflicts of attributions between members of the Public Prosecutor's Office, designating who should officiate in the deed"

[20] Mazzilli comments that "under the administrative aspect, the members of the Public Prosecutor's Office must abide by the decisions of the higher administration bodies. Thus, the solution of a conflict of attributions, the review of the promotion of the archiving of a civil inquiry or police inquiry, the imposition of disciplinary measures - are decisions that require compliance. However, no procedure or manifestation can be imposed by the higher management bodies on the member of the institution with regard to the exercise of institutional functions, provided that the act depends on the latter's decision and conviction, which is guaranteed by unrestricted functional independence. Thus, it cannot be determined to the member of the Public Prosecutor's Office: ask for merit or dismissal, appeal or refrain from appealing, give an opinion in this or that way" (2008, p. 15)

Prosecutor's Office as an institution, so that it confers the necessary freedom of action in relation to other Organs and Powers of the State. In this way, due to functional autonomy, the Public Prosecutor's Office is subject only to the Constitution and the laws.

Functional independence is different, since it refers to an attribute of public agents within the scope of the Public Prosecutor's Office itself, that is, it enshrines freedom of action to members of the same institution. Thus, for example, due to functional autonomy, the Public Prosecutor's Office deliberates on the non-promotion of public criminal action, however it is by virtue of functional independence that a prosecutor can advocate for the acquittal of a defendant, even if his colleague from the institution has appealed in favor of the conviction. (MAZZILLI, 2013)

Thus, it is appropriate to clarify that the freedom granted to ministerial representatives as a result of the principle of functional independence could give rise to numerous abuses, therefore, it is stated that it is not absolute, insofar as constitutional and infra-constitutional legislation observes limits for its application[21]. Such a conjuncture shows that there is no absolute right, which is not possible to suffer eventual demarcations.

Thus, the member cannot legitimize acts that violate his duty to defend the legal order, the democratic regime and the inalienable social and individual interests, as limited by the Federal Constitution (BRASIL, 1988).[22] In this guideline, the LONMP is also found, which in its article 41, item V, establishes that the member of the Public Prosecutor's Office, when in the exercise of his functions, "enjoys inviolability for the opinions he expresses or for the content of his procedural manifestations or procedures, within the limits of his functional independence". Here, the legislator expressly manifested the existence of limits to the exercise of ministerial freedom.

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[21] On the subject, José Eduardo Sabo Paes (2003, p. 65) understands that "admitting limits to independence does not mean denying it, but ensuring its effective exercise within legal standards, based on ethical and logical assumptions, under penalty of not doing so, submitting the premises and institutional destination of the Public Prosecutor's Office. If functional independence were absolutely unlimited, the possibility of abuse would also be unlimited. In itself, freedom, one of the basic postulates of democracy, is also subject to limits provided for by law. Were it not so, under the cloak of freedom and functional independence, the Prosecutor or the Judge could arbitrarily deny compliance with the Federal Constitution itself, which is the foundation not only of the legal order but even of its investitures; or else they could sustain, without the slightest reasonableness, only based on abstractions or generic speculations, any breach of the legal order.

[22] Regarding the principle "in the first place, it should be noted that the principle of functional independence is not an end in itself. It is also not a prerogative that is incorporated into the person of the members of the Public Prosecutor's Office at the moment they take office in their positions. It is a mere instrument made available to ministerial agents with a view to achieving an end: the satisfaction of the public interest, which is the raison d'être of the Public Prosecutor's Office, as is the case with any state body. From this simple observation, it becomes possible to affirm that the main prism of analysis of this important principle should be its association with the final activity of the Institution, a prerequisite for the realization of the public interest. Thus, the measurement plan must be removed from the person of the agent, and the feelings and aspirations, legitimate or not, inherent to it are irrelevant, and the vanity of the agent's person should not be confused with the prerogative of the position occupied by him. This one is indispensable, that one is not. Functional independence adorns the position, which is intended for the exercise of ministerial activity, an element that materializes the public interest". (GARCIA, 2017, p. 52)

Thus, it can be inferred that if the Constitution had not established instruments to safeguard the free ministerial action, the existence of the Public Prosecutor's Office in the Brazilian legal system would be of no use. The principles of functional independence, unity and indivisibility have the power to foster the impartial exercise of members, free from internal influences and pressures (coming from hierarchically superior colleagues in the offices of attribution of members) and external (those caused by other organs of power) and without fear of possible retaliation or superior orders that lead to the discredit of their actions before society.

However, under the argument of functional independence, the member of the Public Prosecutor's Office cannot fail to adopt a certain measure considered a priority by the institution's Higher Administration in its strategic planning carried out after consulting the population[23]. It should be noted that article 43 of Law 8625/93 (BRASIL, 1993b) provides that "it is the duty of the members of the Public Prosecutor's Office, in addition to others provided for by law – XIV – to comply, at the administrative level, with the decisions of the bodies of the Superior Administration of the Public Prosecutor's Office". In addition, the aforementioned provision, in its item XI, also imposes the duty to "provide information requested by the institution's bodies".[24] Therefore, if a certain institutional project is considered strategic and a priority, the member of the Public Prosecutor's Office cannot refuse adherence.

[23] In these terms: "The goals, priorities and actions defined in the Action Plans and Programs stem from the need for the Public Prosecutor's Office to fulfill, by virtue of a generic constitutional imposition, its strategic objectives. Therefore, these Plans and Programs necessarily contemplate hypotheses of mandatory action and bind the members of the Public Prosecutor's Office. The member who fails to observe the goals, priorities, and actions established in the Action Plans and Programs cannot invoke, in his defense, the principle of functional independence, as this principle cannot serve as a shield for those who fail to comply with constitutionally and democratically defined institutional objectives" (GOULART, 2021, p. 159)

[24] Marcelo Goulart's warning about the need to combine the principle of functional independence with the strategic objective of the Public Prosecutor's Office is indispensable. The author points out that "from the relationship that is established between functional independence and the institutional objective emerges the true meaning of this principle. Functional independence, before being a guarantee of the member of the Public Prosecutor's Office, is a guarantee of society, as it is instituted to give the people the security of having a political agent who, in the exercise of the functions of defending social interests, can act independently, immune to the pressures of power. Functional independence guarantees the immunity of the member of the Public Prosecutor's Office to external and intra-institutional pressures, but does not free him to act based on strictly subjective judgments and personal agendas. The immunity resulting from this principle guarantees independence, yes, but to act in accordance with the strategic objective. In the exercise of his duties, the member of the Public Prosecutor's Office is bound by the institutional strategy and the commitments assumed, via the Constitution, with Brazilian society. When we speak of the duty of obedience to conscience, we are not dealing with a spontaneous or contingent conscience (false conscience); rather, of an authentic, emancipated and universal consciousness (true consciousness). It is an ethical conscience, informed by the universal values of democracy and constituted within the scope of the cathartic movement that overcomes, in the member of the Public Prosecutor's Office, the corporative (particularist) moment by the ethical-political (transformative) moment" (2021, p. 157-158)

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