JUDICIAL FUNDAMENTAL RIGHTS IN THE BRAZILIAN CONSTITUTION

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I. Introduction

The Brazilian Constitution of 1988 places unique emphasis on individual rights. The cataloging of these rights at the very beginning of the text reflects their importance for the special assembly responsible for the Constitution. The length of the text, seventy-eight items and four paragraphs (Article 5), reinforces the impression. Moreover, the stipulation that individual rights have immediate jurisdiction highlights the fact that all state bodies are bound to strictly uphold them.

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The special assembly also recognized that fundamental rights are an integral part of the identity and continuity of the Constitution, thereby viewing as illigitimate any attempt to suppress them (Article 60, § 4).

However, if individual rights are to be more than simple programmatic rules, then the precise identity and scope of each right must be accurately defined. This need in turn highlights the essential role of legislators to both implement certain rights and establish their limits.[1] Clearly, both central government and local organs and agencies with regulatory, judicial and administrative powers play a vital part in securing fundamental rights.

Fundamental rights both pertain to the individual subject and serve as central components of the objective constitutional order. As subjective rights, they grant citizens the ability to protect and affirm private interests against state administration[2]. As key elements of the objective constitutional order, they ground the legal framework of the democratic rule of law.

Following the development of Jellinek`s *"Theory of the Four Status,"* [3] it has become well-known that fundamental rights have different functions within the legal system. Traditionally, these rights are defensive (*Abwehrrechte*), and intended to protect individuals against state intervention, whether through: (a) non-impediment in the practice of a certain action, or (b) non-intervention in subjective situations and the non-elimination of legal positions.[4]

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[1] LERCHE, Peter. *Grundrechtlicher Schutzbereich, Grundrechtsprägung und Grundrechtseingriff*, **in**: Isensee/Kirchhoff, Handbuch des Staatsrechts, vol. V, p. 739 (740).

[2] HESSE, Konrad. *Grundzüge des Verfassungsrechts der Bundesrepublik Deutschland*, Heidelberg, 1995, p. 112; KREBS, Walter. *Freiheitsschutz durch Grundrechte*, **in**: JURA 1988, p. 617 (619).

3 JELLINEK, G. *Sistema dei Diritti Pubblici Subiettivi*, Italian translation, Milan, 1912, p. 244. On critique of Jellinek's theory, see ALEXY, Robert. *Theorie der Grundrechte*, Frankfurt am Main, 1986, p. 243 s; Alson see, SARLET, Ingo, *A eficácia dos Direitos Fundamentais*, Porto Alegre, 1998, p. 153 s.

[4] See ALEXY, *Theorie der Grundrechte*, cit., p. 174; Also see, CANOTILHO, *Direito Constitucional*, Coimbra, 1991, p. 548.

Here, fundamental rights include provisions defining the negative competence of government (*negative Kompetenzbestimmung*), which is thereby required to respect core freedoms enshrined in the Constitution.[5]

Other rules ensure rights to positive claims *(Leistungsrechte),* which may refer to positive factual claims *(faktische positive Handlungen)* and positive normative claims *(normative Handlungen).*[6]

Fundamental rights of a judicial nature must also be highlighted. The German constitution coined the term "*Justizgrundrechte*" to refer to safeguards aimed at protecting the individual undergoing judicial procedures. Of course, this term may be inadequate insofar as many of these rights transcend the judicial sphere.

Lacking a more precise term, in Brazil we have chosen to adopt the term `judicial fundamental rights and constitutional procedural guarantees`, while recognising its limitations. However, its importance lies in establishing the right to defense and due process, not only in civil and criminal cases and procedures, but also within administrative procedures in general. In addition, the principle may be invoked in private lawsuits in order to tackle failure due to omission[7]

The Constitution of 1988 enshrines many significant rights aimed at defending individuals against unjust administration or in connection with judicial bodies in general, and these are present in many of its provisions (e.g. Article 5, XXXIV; XXXV; and

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5 See, HESSE, *Grundzüge des Verfassungsrechts*, cit., p. 133.

6 ALEXY, *Theorie der Grundrechte*, opus cit., p. 179; Also see, CANOTILHO, *Direito Constitucional*, cit., p. 549.

7 RE 201.819, Rep. Min. Gilmar Mendes, *DJ* of 10-21-2005; also see: Gilmar Ferreira Mendes, Fundamental rights: effectiveness of constitutional guarantees in private relations: analysis of jurisprudence of the German constitutional court, in *Direitos fundamentais e controle de constitucionalidade:* estudos de direito constitucional, 3. ed. rev. e ampl., São Paulo: Saraiva, 483 p.; and A eficácia dos direitos fundamentais nas

XXXVII through LXXIV; LXXVI and LXXVIII. Other provisions also work to materialize, explain and enhance these safeguards. For example, Article 93, IX stipulates that judicial decisions must be fully grounded, while Article 95 shows how norms related to magistraturial guarantees are intimately linked to the concept of natural justice.

This expansion of procedural, criminal and criminal-procedural constitutional safeguards is not just a Brazilian phenomenon. Rather, the adoption of the European Convention for Human Rights by many countries has led to a widespread explosion of rights and safeguards. By looking at the rights in the Constitution of 1988 and their general agreement with those in the European Convention, today`s massive enhancement in the scope and meaning of fundamental rights becomes clearly visible. Referring to the significance of this growth in the German context, Werner Beulke observed that it amounted to de facto supremacy for the European Convention vis à vis German Law.[8]

In particular, Beulke noted that Article 6, I, of the European Convention includes seven judicial rights, that Article 6, II, enshrines the presumption of innocence, and that Article 6, III, contained eight additional judicial rights. The right to due process as envisioned in Article 6, I, constitutes a wide-ranging general right which underpins the more specific rights deriving from it.[9]

Human rights can only be achieved when they restrict the power of the state. As such, upholding these rights depends more on judicial independence than on listing them in a constitution.[10] It is the successful application of judicial fundamental rights (for which effective judicial protection is essential) that marks the difference between the rule of law

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relações privadas: exclusão de sócio da União Brasileira de Compositores, *Ajuris* n. 100, dez. 2005.

[8] BEULKE, Werner. *Strafprozessrecht*, 8. ed., Heidelberg, 2005, p. 6; cf., on this topic also see, Maria Fernanda Palma, *Direito constitucional penal*, Coimbra: Almedina, 2006; *Jornadas de Direito Processual Penal e Direitos Fundamentais*, coordinated by Maria Fernanda Palma, Coimbra: Almedina, 2004.

[9] BEULKE, Werner, *Strafprozessrecht*, opus cit., p. 6.

and a police state. In other words, criminal, procedural and criminal procedural rights play a key role in accomplishing the modern democratic rule of law.

II. Judicial Fundamental Rights

Making fundamental rights effective is essential for achieving and maintaining the principle of human dignity. As widely recognized, this principle is what prevents citizens being reduced to mere objects in state procedures.[11]

By law, the state is bound to respect and protect the individual against insult and humiliation. Submitting citizens to undefined judicial processes or treating them as objects rather than subjects violates the principles of effective judicial protection (*rechtliches Gehör)* and of human dignity.[12]

Protecting citizens in this way is precisely what makes the difference between democracy and totalitarianism. It is whether or not these guarantees are fully and correctly applied that allows us to evaluate actual compliance with the of the rule of law. Here lies the difference between civilization and barbarism.[13]

In sum, effective safeguards for individual and Constitution depend equally on ensuring both due process and the dignity of the human person.

It is worth mentioning that, while procedural fundamental rights have a clearly normative and/or regulatory nature, not all rules concerning individual rights are aimed at restricting or limiting power.

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[10] KRIELE, Martín, *Introducción,* opus cit., p. 150; 159-160.

[11] MAUNZ-DÜRIG, *Grundgesetz Kommentar*, Band I, München: Verlag C. H. Beck, 1990, 1I 18.

[12] MAUNZ-DÜRIG, *Grundgesetz Kommentar*, opus cit., 1I 18.

[13] BOBBIO, Norberto. *As Ideologias e o Poder em Crise*. Brasília: Ed. da UnB, 1988, p.p. 97-98.

Legal rulings are usually intended to complement, enhance and solidify fundamental rights.[14] This is especially so in cases concerning material and intellectual property rights, succession rights (Article 5, XXII-XXXI), consumer protection (Article 5, XXXII), and the right to judicial protection (Article 5, XXXV, LXVII-LXXII). Without such rulings, establishing and protecting fundamental rights would be problematic if not impossible.

Similarly, inadequate procedural rules can turn the right to judicial protection into no more than rhetoric. Here, the Constitution explicitly states that "the law shall not exclude from review… any threat or injury to a right" (Article 5, XXXV). Clearly, legislative intervention is both unavoidable and necessary, except when it might harm effective judicial protection. In such cases it should not be allowed.

In sum, ignoring or suppressing rules integral to ordinary legislation may violate both Constitutional safeguards and individual rights.[15] The configuration of individual rights is thus even more significant with regard to so-called rights that are strictly defensive or normative in nature (*rechtsnormgeprägter Schutzbereich*). At the end of the day, it is routine judicial and legislative activity that ensures meaning and effectiveness in constitutional protection.[16]

III. Protecting the Human Person and Respecting Fundamental Rights in Supreme Court Jurisprudence

[14] On this topic, see, ALEXY, Robert. *Theorie der Grundrechte,* Frankfurt am Main: Suhrkamp, 1986, p. 300; Bodo Pieroth, Bernhard Schlink, *Grundrechte — Staatsrecht II*, 21. ed., Heidelberg, 2005, p. 53-54; José Joaquim Gomes CANOTILHO, *Direito constitucional*, 4. ed., Coimbra: Almedina, 1986, p. 633.

[15] ALEXY, Robert. *Theorie der Grundrechte,* opus cit., p. 303.

[16] On this topic, see, CANOTILHO, José Joaquim Gomes. *Direito constitucional*, opus cit., p. 634.

Precedents from the Supreme Federal Court to ensure human dignity are significant with regard both to judicial fundamental rights and to constitutional procedural guarantees:

a) Reasonable Length of Cases – The recognition that citizens have a right to an expedited trial (one lasting reasonable time) means adopting appropriate measures by government, in general, and judiciary, in particular. Here a new institutional field is opening up, one intended to plan, control and inspect public policy so that jurisdictional inspection may identify injury or threat to fundamental rights, potential or otherwise.

This is a complex issue with various implications. These include how to update and simplify the procedural system, the creation of judicial organs in numbers appropriate to the modernization and control of jurisdictional consideration, and how to ensure effective access to justice.

The right to reasonable duration, despite its complex implementation, may have an immediate impact in individual cases. For example, it can mean lifting provisional arrest if a certain time limit is exceeded, or legitimising precautionary measures when appropriate. There are numerous precedents from the Supreme Court granting *habeas corpus* in cases where precautionary arrest has exceeded time-limits.

The Court understands that overlong cases, when not attributable to the defense, and even when concerning the most serious crimes, violate constitutional principles, particularly those related to human dignity (Article 1, III); to due process (Article 5, LIV); the presumption of innocence (Article 5) and reasonable duration (Article 5, LXXVIII). In these circumstances, the Judiciary is required to immediately lift precautionary arrest.

This development of `reasonable duration` is a decisive step in requiring that criminal and investigation procedures are conducted with great care. Only in this way will they link with and reinforce the item in LXXVIII, which ensures the right to reasonable

duration to "to everyone within the judicial and administrative spheres."

b) Motivation for Judicial Decisions - In the case of *Habeas Corpus* 91,514/BA[17], the Supreme Court revoked a preventive arrest by arguing that the warrant was allegedly based on convenience of criminal investigation and maintaining public order. According to Court jurisprudence, concrete reasons for preventive arrest must be provided, not just a textual explanation based on the requirements of Article 312 of the Code of Criminal Procedure.

Likewise, decisions by congressional committees or inquiries by governmental bodies must always be based on sufficient and genuine evidence. Moreover, these activities become subject to judicial review should they threaten a constitutional right or safeguard, as established by the Supreme Court in *Mandado de Segurança* (writ of mandamus) no. 25,668/DF.[18] This obligation applies equally across judiciary, legislature, and executive. In brief, it is clear that effective judicial protection has to be based on well-grounded decisions.

c) *Habeas corpus* Scope of Protection - In *Habeas Corpus* 90,617/PE, the defense argued that time for fact-finding was excessive vis à vis the precautionary suspension of the accused, who was a judge at the state level. The Supreme Court suspended a decision by the *Superior Tribunal de Justice (*Superior Court of Justice) which had prevented the defendant from exercising his duties as a judge (pursuant to the provisions of Article 29 of Complementary Law no. 35/1979).

The Supreme Court stated the legitimacy of *habeas corpus* as a fundamental right that enables and requires judicial attention to illegal restrictions or abuse. Depending on the case, such abuse may mean curtailing a defendant`s freedom of movement.

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[17] HC 91.514/BA, Rep. Min. Gilmar Mendes, *DJE* of 5-16-2008; Also see RE 540.995/RJ, Rep. Min. Menezes Direito, *DJE* de 2-5-2008.

[18] MS 25.668/DF, Rep.. Min. Celso de Mello, *DJ* of 8-4-2006.

Consequently, situations of injury or risk to a right that may persist for an unreasonable amount of time must be eligible for effective judicial protection (Article 5, XXXV).

d) Generic Charges – Much Supreme Court jurisprudence considers that a vague or imprecise charge hinders the right to an effective defense, and so violates the right to challenge the prosecution.[19]

This key issue has meant dismissing innumerable cases. These may be of original jurisdiction (charges against defendants with the right to a hearing before the Supreme Court),[20] or of regular judicial review (*habeas corpus*).[21] Here it is not even possible to talk about preclusion if the issue has been discussed before the verdict.

Although an imprecise charge is covered by preclusion when argued after the conviction, this guideline does not apply if the verdict is reached while *habeas corpus* is still pending.[22]

The Supreme Court has been softening the nature of `precise charges` in cases of corporate crime by imposing a requirement for detailed facts in each accusation. This was based on the argument that `precise charges` could give rise to impunity. It would now be enough to show that the accused had in some way been responsible for running the corporation allegedly responsible for offense.[23]

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[19] See HC 70.763/DF, Rep. Min. Celso de Mello, *DJ* of 9-29-1994; HC 86.879/SP, Rep. for decision Min. Gilmar Mendes, *DJ* of 6-16-2006; HC 85.948/PA, Rep. Min. Carlos Britto, *DJ* of 6-1-2006; HC 84.409/SP, Rep. Min. Gilmar Mendes, *DJ* of 8-19-2005; HC 84.768/PE, Reporting Judge for the decision Min. Gilmar Mendes, *DJ* of 5-272005, Inq. 1.656/SP, Rep. Min. Ellen Gracie, *DJ* of 2-27-2004.

[20] Inq. 1.656/SP, Rep. Min. Ellen Gracie, *DJ* of 2-27-2004; Inq. 1.578/SP, Rep. Min. Ellen Gracie, *DJ* of 4-24-2004.

[21] HC 84.409/SP, Rep. Min. Gilmar Mendes, *DJ* of 8-19-2005; HC 84.768/PE, Rep.. Min. Gilmar Mendes, *DJ* of 5-27-2005; HC 86.879/SP, Reporting Judge for the decision Min. Gilmar Mendes, *DJ* of 6-16-2006.

[22] HC 70.290/RJ, Rep. Min. Sepúlveda Pertence, *DJ* of 6-13-1997.

[23] RHC 65.369/SP, Rep. Min. Moreira Alves, *DJ* of 10-27-1987; HC 73.903/CE, Rep. Min. Francisco Rezek, *DJ* of 4-25-1997; HC 74.791/RJ, Rep. Min. Ilmar Galvão, *DJ* of 5-9-1997; HC 74.813/RJ, Rep. Min. Sydney

However, this development has been greeted with some reservation. Certain decisions have accepted that, even in cases of corporate crime, conduct by each individual must be described in order to allow an effective defense. As the concept that criminal responsibility usually derives from individual action permeates Brazilian law, it is not always possible to assume collective responsibility for an offence.

When unacceptable offense to citizens does occur, leading to unjust criminal prosecution, then the principle of the dignity of the human person has been violated (Article 1, III).

In some situations, the Court requires that a charge will in theory include specific elements of a case. Thus, in the charge against President Collor de Mello, the crime alleged was passive corruption (Criminal Code, Article 317). The Court responded that the charge was inadequate because "there was no evidence that the alleged electoral assistance was the result of requests made directly or indirectly by the accused, but also because it did not show any official act that constituted a transaction or commercial operation with the office he then occupied."[24]

e) Conviction based exclusively on a police investigation – Supreme Court jurisprudence is consistent when considering that conviction is invalid if based exclusively on material from a police investigation, because this clearly violates the principle of challenging the prosecution (Article 5).

To avoid accidental return to Inquisition methods, the judge today cannot dismiss evidence resulting from the rigorous, dialectical debate between prosecution and defense. The criminal process, understood here as a forum for accomplishing fundamental rights to due process, full defense and the right to challenge the prosecution, (Article 5,

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Sanches, *DJ* of 8-29-1997; HC 75.263/MA, Rep. Min. Néri da Silveira, *DJ* of 2-25-2000.

[24] AP 307/DF, Rep. Min. Ilmar Galvão, judged on December 13, 1994, *DJ* of October 13, 1995.

LIV), represents a procedural and institutional safeguard for all involved in state activity against crime.

f) Right to Defense and Police Investigation – The right to challenge the prosecution and full defense under police investigation generate much controversy.
Prevailing doctrine and jurisprudence consider it impossible to apply such rights, on the basis that such a process is not aimed at settling litigation.[25] However, this position does not prevent recognizing a defendant`s right for his or her defendant attorney to have access to records before the date scheduled for deposition. The right to be assisted by counsel is constitutionally guaranteed (Article 5, LXIII).

With specific regard to the scope of police investigation, Supreme Court jurisprudence has moved towards ensuring an invulnerable constitutional right to defense during investigation, and also to the routine verification of all evidence essential to state activity against crime.[26]

g) Respect for the Principle of Criminal Legality - In domestic and comparative doctrine, there are well-known debates about the application of criminal law to new situations, those not initially considered within the legal framework.

In Inquiry 1,879, the Supreme Court reviewed a case of alleged abuse on a Senate Panel, where the act committed became illegal only retrospectively. In this case, the Supreme Court Plenary simply rejected the charge because the action was not a crime when committed.

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[25] Among the authors who support the idea that instituting a police investigation as a mere administrative procedure and that therefore the application of the principle to challenge the prosecution an wide defense during the phase of police investigation does not apply, please see: MIRABETE, Júlio Fabbrini. *Processo penal*, São Paulo: Atlas, 1991, p. 75; e MARQUES, José Frederico. *Elementos de direito processual penal*, Rio de Janeiro: Forense, 1961, v. I, p.157. Also on this topic, see, RE 136.239, Rep. Min. Celso de Mello, *DJ* of 8-14-1992.

[26] HC 90.232/AM, Rep. Min. Sepúlveda Pertence, *DJ* of 3-2-2007; HC 82.354/PR, Rep.. Min. Sepúlveda Pertence, *DJ* of 9-24-2004.

Also discussed was whether or not "electronic cheating" (the activity of using electronic communication to gain information vital for passing exams to universities and state positions) constituted a crime. In Inquiry no. 1.145/PB, the full Court ruled that it was not (by a majority of 7 to 4), although it was `socially deplorable`. In short, even when behaviour is widely condemned as unethical, it only counts as criminal when previously defined as such.

h) The Right to Consider Each Case Individually: new content – In the case of *Habeas Corpus* 82.959/SP, a ruling that a custodial prison sentence must last full term was declared as unconstitutional. This decision enhanced protection of the right to have case by case sentencing, as provided for in Article 5, XLVI of the Constitution. In other words, case-by-case sentencing is no longer restricted only to *in abstracto* process by the legislator and *in concreto* application by the judge. It now includes how the sentence itself is to be served.

i) Easing Preventive Arrest for Extradition – Preventive arrest is essential for the normal processing of a request for extradition.[27] This is recognised in Article 84, Law no. 6,815/80 ("The imprisonment will last until final decision by the Supreme Federal Court, with supervised freedom, in-house arrest and freedom to go to work or school accepted") and reiterated in Supreme Court jurisprudence,

However, in trial HC 91.657/SP,[28] a majority decision by the Court granted *habeas corpus* to a Colombian national supposedly accused of money laundering and association with international drug trafficking. This allowed his freedom while awaiting the

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[27] See Ext. 845, Rep. Min. Celso de Mello, in monocratic decision, *DJ* of 4-5-2006; Ext. 987, Rep. Min. Carlos Britto, in monocratic decision, *DJ* of 8-31-2005; HC 85.381/SC, Rep. Min. Carlos Britto, *DJ* of 5-5-2006; HC 81.709/DF, Rep. Min. Ellen Gracie, *DJ* of 5-31-2002; HC 90.070/GO, Rep. Min. Eros Grau, *DJ* of 3-30-2007; Ext. 1.059, Rep. Min. Carlos Britto, *DJ* of 4-9-2007; Ext. 820, Rep.. Min. Nelson Jobim, *DJ* of 5-3-2002; HC 82.920/BA, Rep. Min. Carlos Velloso, *DJ* of 6-18-2003, among others.

[28] HC 91.657/SP, Rep. Min. Gilmar Mendes, *DJE* of 3-14-2008.

result of the extradition request filed against him by the government of Panamá.

Although Law no. 6,815/1980 determines that arrest be maintained until a final decision by the Supreme Court, preventive arrest for extradition purposes had to be reviwed because of the unique importance of individual rights in the Brazilian Constitution.

The review emphasised that imprisonment is an exceptional measure in our legal system and so cannot be used to restrict civic freedoms. There is no justification, either in the Constitution or in international treaties on human rights and dignity, for not applying such an understanding in cases of preventive arrest for extradition purposes.

Because fact-finding is often a lengthy process, applying the law to foreign nationals is often done even more carefully than with Brazilian nationals, always bearing in mind what the Code of Criminal Procedures determines concerning preventive arrest.

Recent decisions by the Supreme Court suggest essential revisions to preventive arrest for carrying out extradition cases. [29]

j) Due process in extradition requests – In Extradition judgment 986/Bolívia, [30] applying due process and its wide-ranging protections was vital. Due process imposes a fair trial not only for those who are party to procedural action or directly active in a trial, but also for all individuals, institutions, and bodies public or private composing the jurisdictional apparatus. Directly or indirectly, this apparatus is what carries out duties essential for justice, as deemed by the Constitution.

In this way, the Court has reaffirmed that the absence of due process in a state requesting extradition, especially in terms of natural wisdom, will always prevent

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[29] HC 91.657/SP, Rep. Min. Gilmar Mendes, *DJE* of 3-14-2008; Injunction (QO) 70/RS, Reporting Judge Sepúlveda Pertence, *DJ* of 3-12-2004; Ext 1054 (QO), Reporting Judge Marco Aurélio, *DJ* of 2-22-2007.

[30] Ext. 986/Bolívia, Rep. Min. Eros Grau, *DJ* de 5.10.2007.

granting the request.

l) Presumption of Innocence and its Consistency with Arrest Pending Appeal and with the Unacceptability of Provisional Freedom – Under the present constitutional system, the Supreme Court now recognises that an imprisonment ruling is acceptable as grounds for appeal.

This issue was much discussed in *Habeas Corpus* 72.366/SP, when the Full Court unanimously recognized the validity of Article 594 of the Code of Criminal Procedure in view of the Constitution of 1988:

This understanding began to be extended to special laws which impose custody on a convicted individual in order for an appeal to be filed. However, insofar as this custody is not based on a sound legal basis and material facts, it is inconsistent with presumption of innocence, a key constitutional principle. Premature punishment is no response to the fact that a final conviction is still pending.

There are other reasons to justify precautionary arrest (see Article 312 of the Code of Criminal Procedure). However, restricting personal freedoms should not be a punishment for those who await final sentencing.

Premature punishment in criminal matters constitutes a serious violation of the very concept of human dignity. If it is accepted that this concept means maintaining a citizen`s status as full subject rather than mere object in a state`s legal procedures, then premature criminal punishment is clearly unacceptable.

With regard to human dignity in criminal matters, one should add extra emphasis to its importance as a key postulate of the constitutional order (Article 1, III, of the Federal Constitution).

It seems evident that for a legislative body to simply adopt an abstract formula, one which deems custody for those with a criminal background, may also turn out to be inconsistent with human dignity. One fixed code, which may have to address multiple concrete situations in everyday life, appears unworkable.

IV. CONCLUSIONS

The Brazilian Constitution of 1988 gives special prominence to the dignity of the human person, one of the fundamentals of the democratic rule of law (Article 1, III). Moreover, it ascribes immediate effect to fundamental rights, and emphasises the state`s duty to fulfil and uphold them.

Therefore, the importance of respecting human rights for constitutional order in general, of respecting judicial fundamental rights, is supreme. Only successful application and effective judicial protection of such rights will allow us to continue upholding and strengthening the democratic rule of law.

As already mentioned, subjecting a citizen to indefinite trial and/or his humiliation as mere object of the state abuses both effective judicial procedure (*rechtliches Gehör)* and human dignity. The effective state of the rule of law may be judged insofar as these safeguards are effectively applied. The right to judicial protection becomes mere rhetoric without appropriate procedural rules. Moreover, ensuring this right is key to guaranteeing adequate jurisdictional protection for all other legally-defined rights.

The struggle to ensure fundamental rights arises from the very concept of the rule of law. Examples of this effort are both clear and common in Supreme Court jurisprudence, as described previously. Constitutional adjudication in Brazil is continually working toward enhancing and accomplishing judicial safeguards.

Finally, Supreme Court decisions demonstrate a strong commitment to defending fundamental rights in a democratic society. The Court assumes responsibility for social inclusion and the effective protection of fundamental rights, it strengthens belief in the value of citizenship, and it makes continuous efforts to achieve expedited and effective justice. Throughout this work, citizens` constitutional safeguards remain inviolate.

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