

Incipience of Constitutional Parity Norms on the Guarantees and Prerogatives of the Members and Auditors of Courts of Accounts with Those Typical of Judiciary Magistrates

Alex Pereira Menezes

Undergrad in Law by the Faculty of Administration and Business of Sergipe (2014), Accounting Sciences by Tiradentes University (2006) and Data Processing by Tiradentes University (1998). Graduate in Public Law by the Faculty Estácio de Sá (2015), in Governmental Audit and Public Accounting by the Faculty of Administration and Business of Sergipe (2009) and in Statistics by the Federal University of Sergipe (2001). Analyst in Finances and Control at General Controller of the Union (CGU).

ABSTRACT

This article examines the concept of constitutional parity of members (ministers or councilors) and auditors who substitute for members of the Brazilian courts of accounts with magistrates of the Judiciary Branch. Parity stems from art. 73, *caput* and §§ 3 and 4, and art. 75, *caput*, of the Constitution, which perceives as inadmissible that, in the forefront of neo-constitutionalism, norms of constitutional root lack concrete application. Driven by this intention and with a slight doctrinal tone, this study summarizes the guarantees, benefits and prohibitions of Judiciary magistrates to be conferred to members and auditors of the eminent *Tupiniquin*¹ audit courts.

Keywords: Members. Auditors. Courts of accounts. Parity. Magistrates. Judiciary Branch.

1 HISTORICAL ARCHETYPES

The constitutional provision for a Federal Court of Accounts in Brazil came about during the Imperial period through the 1891 Charter, under the direct influence of Ruy Barbosa who was Minister of Finance during the Deodoro da Fonseca government. He upheld the creation of the Federal Court of Accounts (TCU), which was then materialized through Decree 966-A, on November 7, 1890.

However, the subsequent Constitution of 1934 went beyond its predecessor and equated Justices of the Federal Court of Accounts (TCU) with superior court Justices, a provision that was

1 Tupiniquim is the name of an indigenous tribe of Brazil. The term has come to mean "Brazilian" or "national"

maintained in subsequent Constitutions and broadened considerably in the 1988 Constitution, which established parity between auditors of the Brazilian court of accounts and Judiciary Branch magistrates. Indeed, the 1988 Constitution, at the caption of its art. 73, states that “*The Ministers of the Federal Audit Court shall have the same guarantees, prerogatives, impediments, remuneration, and advantages as the Justices of the Superior Court of Justice*” (art. 73, § 3), and that “*the auditor, when substituting for a Minister, shall have the same guarantees and impediments as the incumbent Minister, and, when in exercise of the other duties of the judicature, those of a Judge of a Federal Regional Court.*”; (art. 73, § 4). Moreover, it imposed the symmetry of the federal model to the state courts of accounts, according to *article. 75*.

Notably, the process of re-democratization, which is deeply rooted in the 1988 Constitution, strengthened the category of auditors (substitute Federal Court of Accounts (TCU) Ministers and counselors from other courts of accounts) by creating parity between them and magistrates of the highest career level, as are considered judges of the federal regional courts. Moreover, it determined parity of Ministers from the Federal Court of Accounts and Justices of the Superior Court of Justice (STJ) and, *ipso facto*, counselors of state courts of accounts equivalent to judges of local justice courts.

Thus, ever since the enactment of the first Constitution - and subsequently all others that were proclaimed and ratified - finally culminating in the 1988 Constitution, we observe this unwavering determination to ensure parity between members and auditors of any court of accounts in Brazil and the magistrates of the Judiciary Branch (as can be observed given the force of constitutional norms, supported mainly by neo-constitutionalism). This extends to state constitutions and organic laws and especially to the respective internal norms of the courts of accounts, even though it has not always come to fruition.

An issue, which, regardless of being constitutional, has not been commonly supported by the doctrine, established the area of public administration. Thus, impelled by this doctrinal deficiency - as well as by the incompatibility of the infra-constitutional rules of the country's courts of accounts and the provisions of the Federal Constitution (notwithstanding the advent of neo-constitutionalism) - the work details the essential aspects in order to effectively achieve constitutional parity of members of courts of accounts and magistrates. Lastly, it demonstrate results and opportunities that support the improvement of the legislation of courts of accounts.

2 COURTS OF ACCOUNTS

The courts of accounts, in Meirelles's view (2014: 73), are “*functionally independent bodies and their members are in the same category as political agents*”, given that they originate directly in the constitutional text from which they also draw their institutional mandate and are not subordinates of any hierarchy or functionality.

These courts, by virtue of the *caput* in art. 71 of *Lex Fundamentalis*, assist the Legislative in its exercise of external control of Public Administration, however, according to the terms previously affirmed and now ratified (MENEZES, 2014, p.88):



One should not confuse, therefore, the aid it provides to this Power concerning external control with any apparatus of submission or subordination. In fact, the Supreme Court has even recognized the existence of implicit precautionary power for the courts of accounts.

For this reason, Alexandrino and Paulo (2014: 902) argue *“there is no hierarchy between courts of accounts and the Legislative Branch.”*

Within the scope of fiscal control introduced by Supplementary Law 101, from May 4, 2000, nationally recognized as the Law of Fiscal Responsibility (LRF), as with the verification of the limit of expenditure with personnel and indebtedness, according to Piscitelli (2012, 229), the Court acts *“as a technical body at the disposal of the other Powers, aiming for greater control and accountability in the management of public spending.”*

Its importance is also evident when its functions are broken down – all of which derived from the Constitution - and described didactically by Lima (2013, p. 116). They are oversight, opinionative, judgement-issuing, sanctioning, corrective, consultative, informative, adjudicator and normative. Currently, the Federal Republic of Brazil comprises 34 courts of accounts, including the Federal Court of Accounts (TCU), 26 state courts of accounts, the Federal District Court of Accounts (TCDF), and four municipal courts of accounts from the states of Bahia, Ceará, Goiás and Pará, and two municipal courts of accounts, one in Rio de Janeiro and one in São Paulo.

The Federal Court of Accounts (TCU), under the terms of art. 73, *caput* and § 2, of the Federal Constitution, is composed of nine Ministers, one third of which are appointed by the President of the Republic (PR), two of whom are alternately chosen from among auditors and members of the Court's Public Prosecution (MPTCU), indicated through a three-fold list by the Court, in accordance to criteria of seniority and merit; and two thirds by the National Congress (CN).

Given the aforementioned constitutional symmetry inserted in art. 75, *caput*, the other courts of accounts follow the same identical proportionality for the selection of their components, one third appointed by the head of the local Executive Branch and two thirds by the local Legislative Branch.

As the Constitution itself determines that these courts of accounts be composed of seven councilors, the proportionality above does not result in exact figures. When this question was submitted to the guardian of the Constitution, it was interpreted as follows:

In the state court of accounts, that are composed of seven councilors, four must be appointed by the legislative assembly and three by the head of the state executive branch. The latter must appoint one from among the auditors and one from the members of the Public Prosecutor's Office (Ministério Público), and the third is his/her prerogative. (Summary STF 653)

Nevertheless, those chosen as TCU ministers or counselors in the case of the other courts, including those who are auditors and members of the Public Prosecutor's Office, must meet the requirements set forth in art. 73, *caput* and § 1, which are: to be a of Brazilian nationality; between 35 and 65 years of age; have moral integrity and spotless reputation; have notable



knowledge of the law, accounting, economics and finance or public administration; and more than ten years of exercise in office or actual professional activity which requires the knowledge mentioned in the preceding item.

3 ADMINISTRATIVE DUTIES OF THE AUDIT COURTS

The provisions of art. 73, caput, combined with art. 75, caput, from the Federal Constitution, state that the courts of accounts must exercise, when appropriate, the duties of the Judiciary courts, pursuant to art. 96. The provision covers the administrative powers of the judiciary courts, which are invariably exercised by courts of accounts. These are generally recorded in the organic laws and/or internal regulations of the 34 Brazilian courts of accounts.

If we restrict ourselves to item I of art. 96, we may extract the following list of mandates that are exclusively the competence of judiciary courts:

Art. 96. It is the exclusive mandate of:

I – the courts:

- a) to elect their directive bodies and draw up their internal regulations, in compliance with the rules of proceedings and the procedural guarantees of the parties, and to regulate the competence and the operation of the respective jurisdictional and administrative bodies;
- b) to organize their secretariats and auxiliary services, as well as those of the tribunals connected with them, guaranteeing the exercise of the respective inspection activities;
- c) to fill, under the terms of this Constitution, offices of career judges within their respective jurisdiction;
- d) to propose the creation of new courts of first instance;
- e) to fill, by means of a civil service entrance examination of tests, or of tests and presentation of academic and professional credentials, according to the provisions of art. 169, sole paragraph, the offices required for the administration of justice, except for the positions of trust as defined in law;
- f) to grant leave, vacations and other absences to their members and to the judges and employees who are immediately subordinated to them.

Therefore, the courts of accounts are the ones that elect their own governing bodies, draft and approve their internal regulations, and promote administrative decentralization within their scope. They discipline the procedures of their cases, which must be mandatorily observed by all under their jurisdiction, organize their secretariat, establish their internal affairs office. They also promote public entry examinations, both for vacant positions for auditors and auxiliary

services, while equally observing the limits imposed by the LRF for expenses with personnel in the Legislative Branch (art. 169 of the Constitution, combined with art. 20, items I, “a”, II, “a” and III, “a”, from Complementary Law 101 from May 4, 2000). Furthermore, they must adopt all necessary measures to fill the vacancies for ministers and counselors, communicating these to the constitutionally competent appointment authorities, and grant leave, vacations and other absences to its members and other civil servants who are members of their staff.

In the same vein, there are no discernible differences between the duties of the courts of the judiciary, as per art. 96, item I of the Constitution, and those of the Brazilian courts of accounts.

Having established this, our focus now shifts to the examination of item II from the same constitutional article:

II- the Supreme Federal Court, the Superior Courts and the Courts of Justice, to propose to the respective Legislative Power, with due regard for the provisions of article 169:

- a) alteration in the number of members of the lower courts;
- b) creation and extinction of positions and remuneration of auxiliary services and of the courts connected with them, as well as the establishment of the compensation for their members and for the judges, including those of the lower courts, if existent;
- c) creation or abolishment of lower courts;
- d) alteration of the judicial organization and division.

In this case, as we are dealing with the mandates of specific courts that make up the Judiciary, which do not have the same constitutional structure of the courts in this present study, the supposed correlation is not as perceivable.

And this could not be different since, according to art. 92 of the Federal Constitution, the Judiciary is composed of the following bodies: Federal Supreme Court (STF), National Council of Justice (CNJ), Superior Court of Justice (STJ), federal regional courts and federal judges, labor courts and judges, electoral courts and judges, military courts and judges, courts and judges of the states and the Federal District and Territories. The courts of accounts, however, are not invested with the national scope of Political Power, as they are independent and their jurisdiction is restricted to the corresponding federal entity, without any judicial subordination within their strict jurisdiction or any other, except regarding the protection of constitutional rights and guarantees. Thus, there are no lower courts of accounts.

With regard to item III of the constitutional article in question (*“the Courts of Justice, are to try judges of the state, of the Federal District and of the territories, as well as members of the Public Prosecution, for ordinary crimes and crimes of malversation, except in those cases under the jurisdiction of the Electoral Courts”*), it is clear that the competence to judge common crimes

and crimes of malversation committed by members of the courts of accounts is outlined at the constitutional level. Therefore, within this scope, there are no incompatibilities with the aforementioned item, since the same law defines both jurisdictions.

Therefore, as supported in art. 102, item I, “c”, the Supreme Federal Court will judge members of the Federal Audit Court, regarding crimes of malversation and ordinary crimes, while the judgment of crimes of the same nature committed by members of other courts of accounts shall be judged, in accordance with art. 105, item I, “a”, shall be judged by the Superior Court of Justice.

Given this constitutional determination of mandates, there are no further contradictions regarding the consistency of the application of art. 96, item III, within the scope of courts of accounts.

4 THE MAGISTRACY IN COURTS OF ACCOUNTS

The introduction of this paper brought to light the evolution of the constitutional text regarding parity between auditors and members of courts of accounts and the judges of the Judiciary, regarding their guarantees, prerogatives, impediments, salaries and advantages.

In fact, the Federal Court of Accounts is composed of nine Ministers, who as a result of art. 73, paragraph 3, of the Federal Constitution, are endowed with the same guarantees, prerogatives, impediments, salaries and advantages as the Justices of the Superior Court of Justice, while the other courts of accounts are composed of seven councilors, who, given the parity determined in art. 75, *caput*, are equal in the same way to the judges of the respective courts of Justice.

Despite the auditor (substituting a Federal Court of Accounts Minister or counselor in any of the other courts of accounts) not being considered, in Constitutional terms, a member of the Court, as is reflected in art. 73 and 75, sole paragraph of the Federal Constitution, he/she does have parity, in terms of guarantees and impediments, with a judge of the Federal Regional Court, according to art. 73, § 4 (in the case of the auditors from the Federal Audit Court), or to the state court judge of last entrance or special entrance, in accordance with the symmetry imposed by art. 75, *caput*, combined with art. 73, § 4 (in relation to the auditors in other courts of accounts). And, as Lima (2013, p. 68) asserts once again, “*when, substituting a counselor, the auditor has parity with a judge of the Court of Justice.*”

Regarding this topic, Fernandes (2012, p.819) concludes:

It is important to note that the Constitution was very careful in defining the ordinary duties of the auditor, qualifying them, not without reason, as ‘judiciature’, given the judicial aspect of the decisions rendered by courts of accounts. This argument reinforces the fact that ministers and counselors, and the Court of Accounts itself, exercise jurisdictional and other functions. Thus, the auditors, by virtue of a constitutional provision, have ordinary judicature duties, that is, of a judge and of the exercise of their judiciary careers.



This conclusion is in harmony- free of any anachronism- with Ruy Barbosa's definition in the explanatory memorandum of Decree 966-A, dated November 7, 1890, which institutionalized the Federal Court of Accounts (TCU):

Body of magistrates, intermediary between Administration and Legislation, not belonging, therefore, to either, but in an autonomous position, with the jurisdiction of revision and judgment, surrounded by guarantees against any threats.

This perception is literally stated in the study of jurisprudence from the country's judicial courts, as reiterated by Mourão and Ferreira (2014, p.165):

In these spheres it is understood that courts of accounts are composed of magistrates specialized in accounting, finance, budget, operational and proprietary issues of direct and indirect Administration from the states and entities, being the Ministers, counselors and auditors (substitute ministers and substitutes counselors) of the courts of accounts, hereinafter referred to as accounts magistrates.

In addition, given the normative force of the constitutional text, the infra-constitutional legislator is subordinate to this parity in his work, which reflects in the practical life of the Brazilian courts of accounts, in line with Barroso's neo-constitutionalist lessons (2005: 851):

Because of this process, the constitutionalizing of the Law affects the irradiation of values that are enshrined in the principles and rules of the Constitution throughout the legal system, notably through constitutional jurisdiction at its different levels. This results in the direct applicability of the Constitution to various situations, the unconstitutionality of norms incompatible with the Constitutional Charter and, above all, the interpretation of the infra-constitutional norms according to the Constitution, which confers them their meaning and scope.

4.1 EXAMINATION OF PARITY REGARDING CONSTITUTIONAL GUARANTEES OF THE MAGISTRACY

The Federal Constitution clearly lists the guarantees and prohibitions of the judges from the Judiciary branch, among which are included the ministers of the higher courts, such as those of the Superior Court of Justice, since such courts are bodies of the aforementioned Political Power.

The constitutional aim when establishing these guarantees was to uphold their independence, as elucidated by Branco and Mendes (2009, p.975):

The guarantees of the Judiciary, in general, and of the Magistracy, in particular, have the intention of granting and confirming the independence that the constitution intends to concede to judicial activity.

Along the same lines of reasoning, Lenza states (2015, p. 844):

The guarantees assigned to the Judiciary take on a very important role in the scenario of the three-fold division of Powers, ensuring this body's independence, which can make decisions freely, without being overwhelmed by any kind of pressure that comes from the other Powers.

The *numerus apertus* list of the guarantees is found in art. 95, caput, namely:

Art. 95. Judges are granted the following guarantees:

I- life tenure, which, at the first instance shall only be acquired after two years in office, loss of office being dependent, during this period, on deliberation of the court to which the judge is subject, and, in other cases, on a final and unappealable judicial decision;

II – irremovability, save for reason of public interest, under the terms of article 93, VIII;

III – irreducibility of compensation, except for the provisions from articles 37, X and XI, 39, §4, 150, II, 153, III, and 153, §2, I.

The life tenure that is acquired after two years in office is limited to first level jurisdiction, that is, to the initial years in a judges' career when in the condition of substitute, as based on art. 93, item I, of the Federal Constitution. Consequently and in view of the fact that the members of the courts of accounts are invested in public offices equivalent to those of Justices at the Superior Court of Justice or judges of the Courts of Justice, bodies which as a rule, are not covered under the first instance, they are expropriated if the period for obtaining the guarantee is expired. Life tenure should therefore be immediately attributed to the positions of the members of the courts of accounts.

Likewise, it is not legitimate to require that auditors have two years in office in order to obtain life tenure, as in the District Courts (art. 75 of Complementary District Law 1/1994) and in the state of São Paulo (art. 2, § 1, of the State Complementary Law 979/2005), or three years in office, as according to the state courts of Amapá (art. 285 of Normative Resolution 115/2013-TCE / AP), of Santa Catarina (art. 99 of Complementary State Law 202/2000) and the municipalities of Pará (art. 20 of the Complementary State Law 84/2012). As mentioned above, they are in a position equivalent to that of final entrance magistrates, who, by logical consequence have already passed the phase of substitute judge. Therefore, norms contrary to this are out of line with Constitutional text.

The irremovability of judges does not adequately conform to courts of accounts, not because of the lack of potential of a real need to access the aforementioned guarantee (since institutional performance fully covers the respective federal entity), but, due to the fact that all 34 Brazilian courts of accounts, the collegiate, both those in Plenary as well as Chambers or Sections, work at the headquarters of the court, being the same place where the offices of members and auditors are located.

The irreducibility of wages, in turn, has a visible application, given that the establishment and scheduling of the limit to benefits of STF justices are precisely provided for in art. 93, item V, of

the 1988 Constitution. Indeed, what in fact takes place is the practically automatic, increase of the wages of members and auditors of courts of accounts according to occasional adjustments conferred in sequence to the raises in Supreme Federal Court benefits.

Thus, the Federal Court of Accounts Ministers receive a wage corresponding to 95% of that of the Supreme Federal Court, due to the provisions in the aforementioned constitutional article. While the counselors of other courts of accounts earn wages limited to 90.25% of the subsidies of the ministers of the Supreme Court, as provisioned in art. 37, item XI, of the Constitution.

The auditors, on the other hand, receive wages equal to those of the highest level magistrates in the same state sphere, normally stipulated in the local Code of Judicial Organization, except when they are replacing the ministers (in the Federal Court of Accounts) or the counselors (in the other courts of accounts) according to art. 73, § 4, combined with art. 75, caput, they take over the guarantees of the holders of the positions

Constitutional art. 93, item XV, declares another guarantee for judges, the immediate distribution of cases at all levels of jurisdiction. This said and considering the judicious nature of the ministers, counselors and auditors of courts of accounts, it is urgent to include the guarantee in the work methodology of the courts.

In practice, members of the courts of accounts regularly instruct and preside over the proceedings before them, as is the case in the courts of the Judiciary. The same applies to auditors substituting members of courts.

However, the controversy arises when taking into account the proceedings sent to auditors who are not substituting Federal Court of Accounts Ministers nor counselors of other courts of accounts. Incidentally, it is common knowledge that auditors perform duties of the judiciary, whether when exceptionally substituting Federal Court of Accounts Ministers or counselors in other courts of accounts, or during their routine work, when not substituting, since, as stipulated in art. 73, § 4, *in casu*, they shall carry out "the other duties of the judiciary".

Well, during substitution they take on the main role in cases under the responsibility of the holder of the position, including right to vote, in judgements of the plenary session or their respective special body, depending on the structural organization of the audit court. Judgment in which the auditor will participate effectively, and in which his vote must be computed when, in the same way, he is effectively replacing the member, for reasons of leave, vacations, absences or other legal departures.

However, there is a lack of standard regarding the rules regarding auditors conducting proceedings when they are not replacing members of the courts of accounts or as described in the 1988 Constitution.

While maintaining the Judiciary paradigm unscathed, the cases of the courts of accounts are regularly distributed to the auditors, so they may preside over their investigation - and even determine pertinent proceedings - to then, forward proposals to the collegiate for voting and deliberation.

Unfortunately, contrary voices foster the perpetuation of anachronistic laws, which ultimately

reduce the auditor's duties to a mere issuer of legal opinions in the cases referred to them, as transcribed in art. 17 of the Organic Law of the Court of Accounts of the State of Acre - TCE-AC and in art. 14 of the Organic Law of the Court of Accounts of the State of Mato Grosso do Sul.

Combating a flagrant offense against the constitutional text, some judicial sentences stand out in support of the present thesis. One example of this is the driving vote in the Writ of Mandamus 5918-31.2009.8.06.0000 / 1st sentence, filed in the Court of Justice of Ceará, in detriment of the Court of Accounts of the municipalities of Ceará, which resulted in the recognition of the "total functional independence" of the auditors, including regarding the regular distribution of cases.

Accordingly, the preliminary injunction granted in the scope of Writ of Mandamus 2012.00107425, managed in the aspiration, then reached, of determining the immediate distribution of audit proceedings to the auditors of the Sergipe Court of Accounts, allotted in fairness and according to impersonal criteria to all magistrates of the Court of Accounts, so they may preside over the proceedings, reporting them to the members of the Plenary or of the Chamber for which they are appointed.

4.2 EXAMINATION OF PARITY REGARDING CONSTITUTIONAL PROHIBITIONS OF THE MAGISTRACY

The prohibition to the judges are contained in the sole paragraph of art. 95:

Sole paragraph. Judges are forbidden from:

I – hold, even when on paid availability, another office or position, except for a teaching position;

II – receive, on any account or for any reason, court costs or participation in a lawsuit;

III – engage in political or party activities;

IV – receive, on any account or for any reason, financial aid or contribution from individuals, and from public or private institutions, save for the exceptions set forth in law;

V – practice law in the court or tribunal on which they served as judges, for a period of three years following their retirement or discharge.

The prohibitions of the foregoing items I and III are reproduced in the internal norms of the courts of accounts, as opposed to the infrequency of those found in items II, IV and V.

Although having a Law degree is not a requirement to take office as a member of the courts of accounts - and not forgetting it is essential to have notorious legal knowledge, as claimed by art. 73, paragraph 1, item III, of the Federal Constitution, the prohibitive aspect of item V must be preserved, due to the proposed constitutional parity. Provision that is respected by the courts of

the states of Goiás (art. 22, item X, from State Law 16,168 / 2007), of Minas Gerais (art. 9, item VII, from the State Complementary Law 102/2008) of Paraná (art. 138, subsection VI, from the Complementary State Law 113/2005) and Sergipe (art. 22, item X, from State Complementary Law 205/2011).

4.3 EXAMINATION ON PARITY REGARDING INFRA-CONSTITUTIONAL BENEFITS OF THE MAGISTRACY

The national nature of the Judiciary is inherent and the Supreme Federal Court is the “highest body of the Judiciary Power”, as already stated by this same court ADI 3.367, judged on April 13, 2005. That is why there is a tendency to standardize the benefits granted to magistrates, regardless of the federal sphere to which they belong institutionally.

For these reasons, the constitution states in the heading of art. 93, the exclusive right of the Supreme Federal Court to initiate the legislative process that created the complementary law establishing the Statute of the Magistracy. In addition, it authorized the states of the Federation to organize their own Judiciary, without, however, failing to observe the principles established in the Federal Constitution and, as a logical consequence, in the Statute of the Magistracy. This authorization converged to the promulgation of existing Judicial Organization Codes in the Brazilian states.

Based on the proposed correspondence between the Judiciary and the courts of accounts, a broadened correlation can be traced between the benefits, including the financial ones that are stipulated by the laws or codes of judicial organization for its magistrates and those conferred on the members and auditors of courts of accounts from the same state. *Verbi gratia*, representation funds or bonuses granted by virtue of the exercise of the functions of president, vice president and magistrate.

A similar subject of parity is the annual leave of the judges, which, as per art. 66 of the Organic Law of National Magistracy (*Lei Orgânica da Magistratura Nacional* -LOMAN) - materialized in Complementary Law 35, from March 14, 1979 -, are a total of 60 days. As a consequence, the members and auditors of the courts of accounts have the same right, which has however, not been reflected in legislation, save in the Organic Law of the Court of Accounts of the State of Acre (State Complementary Law 38/1993), which provides, in its art. 16, § 2, 30 days of annual leave for the auditors, as opposed to the 60 days stipulated, in art. 13, for the respective counselors.

5. FINAL CONSIDERATIONS

Ex postis, the coexistence of the Judiciary Branch magistracy and of the courts of accounts was made evident, and is intrinsic to the members and substitute auditors of TCU ministers and councilors from the other courts. Nevertheless, certain constitutional mandates, even more than 25 years after the enactment of the Federal Constitution, are still not being peacefully embraced by these courts, such as the guarantees of life tenure and immediate distribution of processes.

In reality, this disrespect only occurs in relation to the auditors and not to the members. Both, as herein established, are equivalent to judges and therefore should be treated equally in all the circumstances involved and related to the guarantees of the judiciary. The lack of immediate distribution of proceedings reflects an undue obstacle to ensuring that auditors preside over

cases, reducing their role to the role of issuers of legal opinions, a fact that can be observed in legislation pertaining to some state courts of accounts. Furthermore, we also identified that not all the restrictions included in the Constitution for judges are reproduced in the internal norms of Brazilian courts of accounts.

Once the flagrant inconsistencies that thwart the true equivalence of the Judiciary's magistracy and the courts of accounts are remedied, undoubtedly the normative force and effectiveness of the Federal Constitution, derived from constitutional supremacy, will in fact be fulfilled and therefore reinvigorated in the Federative Republic of Brazil.

REFERENCES

ALEXANDRINO, Marcelo; PAULO, Vicente. **Direito Administrativo descomplicado**. 22. ed. São Paulo: Método, 2014.

BARROSO, Luis Roberto. **Neoconstitucionalismo e constitucionalização do Direito**. **Revista Jus Navigandi**, Teresina, ano 10, n. 851, 1^o nov. 2005. Available at: <<http://jus.com.br/artigos/7547>>. Accessed on: May 23, 2016.

BRANCO, Paulo Gustavo Gonet; MENDES, Gilmar Ferreira de. **Curso de Direito Constitucional**. 4. ed. São Paulo: Saraiva, 2009.

BRASIL. Conselho Nacional de Justiça. **Resolução 199/2004**. Date of Publication: DJE 8/10/2014.

_____. Constituição (1891). **Constituição da República dos Estados Unidos do Brasil**. Rio de Janeiro, RJ, Senate, 1891.

_____. Constituição (1934). **Constituição da República dos Estados Unidos do Brasil**. Rio de Janeiro, RJ, Senate, 1934.

_____. Constituição (1937). **Constituição dos Estados Unidos do Brasil**. Rio de Janeiro, RJ, Senate, 1937.

_____. Constitution (1946). **Constituição da República dos Estados Unidos do Brasil**. Rio de Janeiro, RJ, Senate, 1946.

_____. Constitution (1967). **Constituição da República Federativa do Brasil de 1967**. Brasília, DF, Senado, 1967.

_____. Constituição (1969). **Emenda Constitucional 1**, October 17, 1969. Brasília, DF, Senado, 1969.

_____. Constituição (1988). **Constituição da República Federativa do Brasil**. Brasília, DF, Senado, 1988.

_____. **Decreto 966-A**, November 7, 1890. **Coleção de Leis do Brasil** - 1890, p. 3.440, v. XI.



_____. **Lei Complementar Distrital 1/1994. Lei Orgânica do Tribunal de Contas do Distrito Federal.** Diário Oficial do Distrito Federal, DF, May 9, 1994.

_____. **Lei Complementar do Estado de Goiás 16.168/2007. Lei Orgânica do Tribunal de Contas do Estado de Goiás.** Diário Oficial do Estado de Goiás, SE, Dec. 11, 2007.

_____. **Lei Complementar do Estado de Mato Grosso do Sul 160/2012. Lei Orgânica do Tribunal de Contas do Estado de Mato Grosso do Sul.** Diário Oficial do Estado de Mato Grosso do Sul, MS, Jan. 3, 2012.

_____. **Lei Complementar do Estado de Minas Gerais 102/2008. Lei Orgânica do Tribunal de Contas do Estado de Minas Gerais.** Diário Oficial do Estado de Minas Gerais, MG, Jan. 18, 2008.

_____. **Lei Complementar do Estado de Santa Catarina 202/2000. Lei Orgânica do Tribunal de Contas do Estado de Santa Catarina.** Diário Oficial do Estado de Santa Catarina, SC, Dec. 15, 2000.

_____. **Lei Complementar do Estado de São Paulo 979/2005.** Diário Oficial do Estado de São Paulo, SP, Dec. 9, 2005.

_____. **Lei Complementar do Estado de Sergipe 205/2011. Lei Orgânica do Tribunal de Contas do Estado de Sergipe.** Diário Oficial do Estado de Sergipe, SE, July 7, 2011.

_____. **Lei Complementar do Estado do Acre 38/1993. Lei Orgânica do Tribunal de Contas do Estado do Acre.** Dec. 27, 1993.

_____. **Lei Complementar do Estado do Pará 84/2012. Lei Orgânica do Tribunal de Contas dos Municípios do Pará.** Diário Oficial do Estado do Pará, PA, Dec. 28, 2012.

_____. **Lei Complementar do Estado do Paraná 113/2005. Lei Orgânica do Tribunal de Contas dos Municípios do Paraná.** Diário Oficial do Estado do Paraná, PR, Dec. 15, 2005.

_____. **Lei Complementar 35, March 14, 1979. Diário Oficial da República Federativa do Brasil,** Poder Executivo, Brasília, DF, March 14, 1979.

_____. **Lei Complementar 101, May 4, 2000. Diário Oficial da República Federativa do Brasil,** Poder Executivo, Brasília, DF, May 5, 2000.

_____. Supremo Tribunal Federal. **Súmula 653. Plenary Session Date: 9/24/2003.** Publication Date: DJ 9/10/2003.

_____. Supremo Tribunal Federal. **ADI 3.367. Rapporteur: Min. Cezar Peluso. Judgement Date: 04/13/2005, Plenary Court.** Publication Date: DJ 9/22/2006.

_____. Tribunal de Contas do Estado do Amapá. **Resolução Normativa 115/2013-TCE-AP.** Regimento Interno do Tribunal de Contas do Estado do Amapá. Sessão de 10 set. 2003.

_____. Tribunal de Justiça do Estado de Sergipe. **Mandado de Segurança 2012.00107425**.
Date of Decision: 4/18/2012. Date of Publication: 4/22/2012.

DINIZ, Gilberto Pinto Moreira. **Auditor do Tribunal de Contas**: cargo público de extração constitucional. **Revista do Tribunal de Contas do Estado de Minas Gerais**, v. 83, n. 2, April/June 2012.

FERNANDES, Jorge Ulisses Jacoby. **Tribunais de Contas do Brasil** – jurisdição e competência. 3. ed. Belo Horizonte: Fórum, 2012.

LENZA, Pedro. **Direito Constitucional esquematizado**. 19. ed. São Paulo: Saraiva, 2015.

LIMA, Luiz Henrique. **Controle externo**: teoria, jurisprudência e mais de 500 questões. 5. ed. Rio de Janeiro: Elsevier, 2013.

MEIRELLES, Hely Lopes. **Direito Administrativo brasileiro**. 40. ed. São Paulo: Malheiros, 2014.

MENEZES, Alex Pereira. **Licitação & contratação de advogado pela Administração Pública** – sua inexigibilidade em face de limitações jurídicas. Curitiba: Juruá, 2014.

MOURÃO, Licurgo; FERREIRA, Diogo Ribeiro. **A atuação constitucional dos tribunais de contas e de seus magistrados (composição, atuação e deliberações)**: de Eisenhower a Zé Geraldo. In: LIMA, Luiz Henrique (Coord.). **Tribunais de Contas**: temas polêmicos: na visão de ministros e conselheiros substitutos. Belo Horizonte: Fórum, 2014.

PISCITELLI, Tathiane. **Direito Financeiro**. 3. ed. São Paulo: Método, 2012.

Received on 5/23/2016

Approved on 11/9/2018