CORRUPTION AND COPING POLICIES IN BRAZILIAN ELECTORAL LAW: INITIAL LINES

CORRUPÇÃO E POLÍTICAS DE ENFRENTAMENTO NO DIREITO ELEITORAL BRASILEIRO: LINHAS INICIAIS

CORRUPCIÓN Y POLÍTICAS PARA COMBATIRLA EN EL DERECHO ELECTORAL BRASILEÑO: LÍNEAS INICIALES

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ABSTRACT: This article seeks to outline initial lines on themes that involve developments and irradiation of corruption in the scope of electoral law, inaugurating a necessary debate on the matter, in particular on actions that involve preventive measures in the political party scope. In this context, we seek to answer the following problem: based on the empirical feeling of the collapse of the Brazilian party system, with corruption and the absence of a spirit of integrity as the main reason, how to recover voter credibility in political parties? To do so, initially some aspects of corruption were addressed, a multifaceted phenomenon that radiates to electoral law, including political parties. Afterwards, it dealt with internal party democracy as a way to combat corruption, passing through considerations about the barrier clause and compliance policies and, finally, the repression of electoral crime was analyzed as an instrument to combat corruption. The method used was deductive and it was concluded, in the end, that from the emphasis on strengthening compliance practices with medium-term policies such as the barrier clause and the incentive to combat electoral crime, it is fully possible to recover voter credibility on partisanship.

KEYWORDS: Compliance. Corruption. Democracy. Electoral. Prevention.

***RESUMO**: Este artigo busca traçar linhas iniciais sobre temáticas que envolvem desdobramentos e irradiações da corrupção no âmbito do direito eleitoral, inaugurando um necessário debate sobre a matéria, em especial sobre as ações que envolvem medidas preventivas no escopo político partidário. Neste contexto, busca-se responder o seguinte problema: a partir do sentimento empírico de colapso do sistema partidário brasileiro, tendo como grande motivo a corrupção e a ausência de um espírito de integridade, como recuperar a credibilidade do eleitor nos partidos políticos? Para tanto, inicialmente abordou-se alguns aspectos acerca da corrupção, fenômeno multifacetado que se irradia para o direito eleitoral, incluindo os partidos políticos. Após, tratou-se sobre a democracia interna partidária como forma de combate à corrupção, perpassando por considerações sobre a cláusula de barreira e as políticas de compliance e, por fim, analisou-se a repressão ao crime eleitoral como instrumento de combate à corrupção. O método utilizado foi o dedutivo e concluiu-se, ao final, que a partir da ênfase no fortalecimento das práticas de compliance com políticas de médio prazo como a cláusula de barreira e o incentivo ao combate ao crime eleitoral, é plenamente possível a recuperação da credibilidade do eleitor ao partidarismo.*

***PALAVRAS-CHAVE**: Compliance. Corrupção. Democracia. Eleitoral. Prevenção.*

***RESUMEN**: Este artículo busca trazar líneas iniciales sobre cuestiones que involucran el desenvolvimiento y la irradiación de la corrupción en el ámbito de la legislación electoral, inaugurando un necesario debate sobre el asunto, especialmente sobre acciones que involucren medidas preventivas en el ámbito de la política partidaria. En este contexto, el objetivo es responder al siguiente problema: a partir de la sensación empírica de que el sistema de partidos brasileño está colapsando, siendo la corrupción y la ausencia de un espíritu de integridad las principales razones, ¿cómo se puede restaurar la credibilidad de los votantes en los partidos políticos? Para ello, examinamos en primer lugar algunos aspectos de la corrupción, un fenómeno polifacético que se irradia a la legislación electoral, incluidos los partidos políticos. A continuación, examinamos la democracia interna de los partidos como forma de luchar contra la corrupción, incluyendo consideraciones sobre la cláusula de barrera y las políticas de cumplimiento y, por último, analizamos la represión del delito electoral como instrumento de lucha contra la corrupción. El método utilizado fue deductivo y la conclusión fue que haciendo énfasis en el refuerzo de las prácticas de cumplimiento con políticas a medio plazo como la cláusula barrera y fomentando la lucha contra la delincuencia electoral, es totalmente posible restaurar la credibilidad de los votantes en el partidismo.*

***PALABRAS CLAVE**: Cumplimiento. Corrupción. Democracia. Electoral. Prevención.*

Introductory notes

The purpose of this reflection is to outline the themes that involve the unfolding and irradiation of corruption within the scope of electoral law and, based on the demarcation of this scenario, to list some responsive actions to confront the malady, inaugurating a necessary debate on the matter, especially on actions that involve preventive measures within the scope of party politics.

In this context, we seek to answer the following problem: based on the empirical feeling that the Brazilian party system is collapsing, the main reason being corruption and the lack of a spirit of integrity, how can voter credibility in political parties be restored?

To this end, it is important to bear in mind that corruption in the electoral sphere is a broad and lateralized path, involving candidates and voters, i.e. those who are voted for and those who vote.

Likewise, it is important to demarcate the concept of "party system failure" in order to define the scope of the approach articulated below:

Regarding the "collapse of the party system", Bolognesi (2012, p. 15, our translation) states that the diagnosis of this phenomenon stems from the consideration that political parties are an "archetype of the mass party as the ideal for the functioning of Western democracies":

> A closer look at the changes in European parties, for example, leads the authors to perceive the same movement that Panebianco notes: parties are becoming less about representing society and are moving closer to the professional-electoral logic, giving room for the creation of a qualified bureaucracy and maintaining more general and latent objectives than those expressed by the mass parties. [...] In short, we need to look at political parties as an organization capable of maintaining its internal features and the intra-party balance of power, while at the same time competing for votes in elections (Panebianco, 2005). This last characteristic is what distinguishes political parties from other organizations that are also capable of exerting cohesion and coercion on individuals and maintaining relations within the state apparatus (BOLOGNESI, 2012, p. 15, our translation).

In the same vein, the party system is, according to Lamounier (2013), "an institutionalized political competition", which overcomes the problem of "democracy without parties", predicting, back in 1980, that "political parties will continue to play the same role in the future as they did in the past".

The methodology used is deductive, based on research into the works of thinkers and scholars of the phenomenon, articles in specialized doctrine, investigation of legal developments (and bills on the subject) and case law on the analysis of the phenomenon of corrupt practices in the field of electoral law, and ways of combating them, through preventive and modern practices such as party compliance, and modernization of repressive procedures, such as the anti-crime package law.

This diagnosis begins by considering how corruption, as a multidisciplinary phenomenon, affects electoral law.

Corruption as a multifaceted phenomenon and its impact on electoral law

Corruption is a phenomenon that has long been studied and evaluated. In this regard, various scientific reflections and investigations have been established, but surely no conclusion is more certain than the one that says that corruption cannot be summarized by a single cause or conduct, nor can it be measured objectively.

On the contrary, there is a catalog of plausible diagnoses for analyzing it and, to this end, as Leal (2013, p. 80-81, our translation) points out, "it is a phenomenon with multiple foundations and causal links, dealt with by various fields of knowledge (politics, economics, sociology, anthropology, legal science etc.), and it is not easy to understand or define".

The multifaceted nature of this pathology, as Leal (2013) calls it, with its rapid contamination and quick mutation potential, finds an appetizing host in elections, not least

because the raison d'être of corrupt practices, in most cases, is to perpetuate their agents in the exercise of political power.

In this sense, Trujillo (2002, p. 21) warns of the difficulty of establishing a causal link between the results of corrupt relationships if analyzed in isolation:

> The literature on the causes of corruption has made it possible to study the problem in a formal language that allows us to analyze the behavior of different variables in isolation, as well as the relationship between the phenomenon and different economic, political and institutional conditions. Although in general the different practices of corruption are not taken into account, but rather the common phenomenon [...], these investigations have produced results that help to identify the explanatory variables (or causes) of corruption and to analyze them. A major problem with this literature is the difficulty in establishing causal relationships from the results of econometric correlations. There are wide-ranging debates surrounding claims about the causes and consequences of corruption, since while some authors believe they have sufficient evidence of causality, for others it has not yet been demonstrated whether the variables in question are a consequence or a cause of corruption, or even a parallel phenomenon. While acknowledging this debate, below are some of the variables that have been repeatedly pointed out in the literature as causes of corruption. Bringing together the contributions of various authors, we can speak of three types of causes of corruption: economic, political-institutional and cultural (TRUJILLO, 2002, p. 21, our translation).

In electoral law, we should therefore not limit studies on corruption and how to deal with it to mere criminal types (not ignoring, much less ignoring their relevance), as in the case of articles 299[3] and 302[4] of the Electoral Code or article 41-A[5] of Law 9.504/95. Nor should corruption in the political-electoral sphere be abridged to campaign financing or the industrialization of political lies, also known today as fake news.

Rotberg (2003) rightly reveals corruption as one of the causes of a failed state:

> Corruption flourishes in many states, but in failed states it often does so on an unusually destructive scale. There is widespread petty or lubricating corruption as a matter of course, but escalating levels of venal corruption mark

[3] Art. 299. To give, offer, promise, request or receive, for oneself or for another, money, a gift or any other advantage, in order to obtain or give a vote and to obtain or promise abstention, even if the offer is not accepted: Penalty - imprisonment for up to four years and payment of a fine of between five and fifteen days.

[4] Art. 302. Promote, on election day, with the aim of preventing, hindering or defrauding the exercise of the vote, the concentration of voters, in any form, including the provision of free food and public transportation.
Penalty - imprisonment from four (4) to six (6) years and payment of a fine of 200 to 300 days.

[5] Art. 41-A. With the exception of the provisions of art. 26 and its subsections, it constitutes suffrage capture, prohibited by this Law, for a candidate to donate, offer, promise or deliver to a voter, with the aim of obtaining their vote, a good or personal advantage of any nature, including a job or public function, from the registration of the candidacy until the day of the election, under penalty of a fine of one thousand to fifty thousand Ufir, and revocation of the registration or diploma, observing the procedure provided for in art. 22 of Complementary Law no. 64, of 18 May 1990.

> failed states: kickbacks on anything that can be put out to fake tender (medical sup-plies, textbooks, bridges, roads, and tourism concessions); unnecessarily wasteful construction projects arranged so as to maximize the rents that they generate; licenses for existing and nonexistent activities; and persistent and generalized extortion. In such situations, corrupt ruling elites mostly invest their gains overseas, not at home, making the economic failure of their states that much more acute (ROTBERG, 2003, our translation).

Therefore, based on the scenario outlined above, some responsive actions to mitigate the corruptive phenomenon should be discussed, with a view to establishing, in general and initial lines, without in any way pretending to exhaust the matter, some actions that are already being taken and others that can be intensified, which will be done below.

Internal party democracy as a policy to fight corruption

Since the end of bipartisanship, at least, Brazilians have empirically found it difficult to develop a party consciousness in politics. Along these lines, Gimenes (2018, p. 117) presents studies with concrete diagnoses of the Brazilian party system and its distance from the electorate.

Among the reasons for this, the author highlights: **a)** the low degree of institutionalization of the parties; **b)** the electorate's distrust of political parties; **c)** the ineffectiveness of Brazilian political institutions, including the parties; **d)** allegations of corruption and; **e)** the high number of parties in the national legislature (GIMENES, 2018, p. 118).

However, from 2013 onwards, with the street demonstrations, Gimenes (2018, p. 124) states that a phenomenon he calls "anti-partyism" began to develop, that is, the complete lack of representativeness of Political Parties to the wishes of the people.

> Anti-partyism is a multifaceted phenomenon, which can stem from the voter's belief that their way of thinking is not represented by any existing party, indifference or even disenchantment with politics and, as a result, a generalized and radical rejection of political parties as a political organization (PAIVA; KRAUSE; LAMEIRÃO, 2016, p. 638, apud GIMENES, 2018, p. 125, our translation).

In conclusion, anti-partisanship ends up being the application of the wrong remedy for the diagnosis. The party system is essential for democracy, but the misuse of purpose resulting from this state of affairs (including corrupt practices) due to legal leniency, ends up making partisanship one of the villains in this story. In fact, it is the excesses - which have given rise to

this web of corrupt acts, abuses of power and complete lack of respect for the law - that make the party groups, and not the people in charge of them, the causes of the problem.

It is important to reflect on the fact that society itself is not prepared for direct democratic exercise, let alone representative (party) democratic exercise.

Leal (2020, p. 22) points to the dissonance of interest between voters and candidates: while voters are uninterested in the programmatic content of the parties, candidates are concerned with the party structure as "a mere instrument for attracting votes".

In this line of reasoning, not only anti-partisanship, but also indifferentism is an ingrained sentiment in a large part of the population. Bobbio (1997, p. 56-57, our translation) tackles this issue with precision:

> There is no point in hiding the fact that this is a process that has only just begun (direct democracy), of which we are not in a position to know either the stages or the duration. We do not know if it is destined to continue or to be interrupted, if it will proceed in a straight line or in an interrupted line. There are some encouraging symptoms and others not so much. Alongside the need for self-government there is the desire not to be governed and to be left alone. The effect of over-politicization can be the revenge of the private. Multidirectional participation has its downside, which is political apathy. The cost of the commitment of a few is often the indifference of many. The activism of historical or non-historical leaders can be matched by the conformism of the masses. Nothing corrodes the spirit of the participating citizen more than the indifferentism [*qualunquismo*] of those who cultivate their "particular". This was something that had already been clearly perceived by the ancients: "We regard anyone who does not take part in the life of the citizen," says Pericles in a famous sentence recorded by Thucydides, "not as one who is concerned only with his own affairs, but as a useless individual". Rousseau, too, was fully aware of the fact: "As soon as someone says of the affairs of state: 'What do I care about them', one can be sure that the state is lost" (original emphasis).

The equation, therefore, needs to be put down on paper, rationally: there is already a predisposition on the part of the individual to avoid politics. Added to this is the party system occupied by a political class that grows in this vacuum of citizen indifference and, in the face of this behavior, makes decisions that are increasingly dissonant with their will and sometimes of dubious origin.

And why is the solution not precisely to move towards actions aimed at rationalizing Political Parties, reducing their numbers, strengthening their internal democracy, especially in terms of programmatic and administrative transparency, and specialized judicial control?

Along these lines, stimulating internal party democracy in a rational way, with the creation of wings and departments of effective action that represent small internal differences

in worldview, but which converge in their programmatic essence, can be a preventive way of fighting corruption.

It is easy to see that the Party Statutes do not deal with the subject of party democracy with the importance it should have. In this vein, Blaszak (2018) points out that the internal structures of political parties need to be improved and modernized to encourage compliance practices, not least to arouse voter interest and consequent adherence.

> The organization, discipline and functioning of parties must follow rules. The statutes already spell out orderly procedures for this, and they must be improved. For good internal party discipline to be accepted, the procedures must pass through the sieve of transparency, ample defense and adversarial proceedings. Voting and being voted for with clarity of candidacies (campaigns and counting), a fixed period of validity for provisional committees, limitation of the powers of committees and, above all, limitation of the powers of leaders, as well as the obligation for decisions to be supported by members at conventions. Guaranteeing greater participation by members in the party's guidelines is a matter that cannot be postponed in party statutes (BLASZAK, 2018, 323, our translation).

The consequence of the lack of party democracy is the domination of Political Parties by a political class that is distant and dissonant from the population and, by extension, the reduction of these associations to mere protective banners for political leaders or groups, serving as a shield and not as a spokesperson between the voter and the elected official and, as a direct consequence, greater ease for the practice of corrupt acts.

It is enough to analyze that in January 2019, the Superior Electoral Court[6] reports that 75 new parties are in the process of being formed. We need to shine a spotlight on this anomaly. Not least because it is not difficult to draw a parallel between an environment at this level of disrepute and the promotion of corrupt practices, resulting mainly from cultural and sociological elements, the profile of the voter and the elected official.

In this sense, the barrier clause proves to be an effective medium-term means of preventing corruption, as we will see below.

[6] Available: http://www.tse.jus.br/imprensa/noticias-tse/2019/Janeiro/brasil-tem-75-partidos-politicos-em-processo-de-formacao. Access: 02 May 2020.

Barrier clause and its role in fighting corruption

Against a backdrop of a crisis in multi-party politics, even the presence of anti-party politics in the voter's imagination and the need to combat corruption in the electoral (party) spectrum, it is necessary to rationalize and reduce the number of political parties, as already established in article 13[7] of Law 9.096/95 and the parameters established therein.

The Federal Supreme Court, in its ruling on Direct Action for Constitutionality No. 1.351/DF, decided to establish a conflict between the aforementioned article and the fundamental rights of minorities, which are constitutionally guaranteed and supposedly put at risk by the failure of political parties representing these minorities to obtain sufficient votes:

> POLITICAL PARTY - PARLIAMENTARY FUNCTIONING - FREE PARTY PROPAGANDA - PARTY FUND. A law that, in view of the gradation of votes obtained by a political party, is in conflict with the Federal Constitution, removes parliamentary functioning and substantially reduces free party advertising time and participation in the apportionment of the Party Fund. STANDARDIZATION - UNCONSTITUTIONALITY - VACUUM. When laws are declared unconstitutional, it is important to pay attention to the inconvenience of a regulatory vacuum, projecting the validity of a transitory precept over time, in order to await further action by the Houses of Congress (STF, ADI nº 1.351, Excerpt from Minister Marco Aurélio Mello's vote, *DJe* 29-06-2007, p. 31, our translation)

According to Bernardino (2018, p. 65, our translation), the above decision led to a proliferation of political parties in Brazil, "created in extremely dubious situations", without clear programmatic flags; and only dedicated to entering the business counter, with TV time and reserves from the electoral and party fund.

The dilemma was only corrected by Article 3[8] of Constitutional Amendment 97/2017, which established an effective barrier clause that tends to improve the party and democratic

[7] Art. 13: The party that, in each election to the Chamber of Deputies, obtains the support of at least five percent of the votes counted, not counting blank and null votes, distributed in at least one third of the states, with a minimum of two percent of the total of each state, is entitled to parliamentary functioning in all legislative houses to which it has elected a representative.

[8] Art. 3 The provisions of § 3 of art. 17 of the Federal Constitution regarding political parties' access to party fund resources and free radio and television advertising will apply from the 2030 elections.
Sole paragraph. Political parties that:
I - in the legislature following the 2018 elections:
a) obtain, in the elections to the Chamber of Deputies, at least 1.5% (one and a half percent) of the valid votes, distributed in at least one third of the units of the Federation, with a minimum of 1% (one percent) of the valid votes in each of them; or
b) have elected at least nine Federal Representatives in at least one third of the Federation's units;
II - in the legislature following the 2022 elections:
a) obtain, in the elections to the Chamber of Deputies, at least 2% (two percent) of the valid votes, distributed in at least one third of the units of the Federation, with a minimum of 1% (one percent) of the valid votes in each of them; or
b) have elected at least eleven Federal Representatives in at least one third of the units of the Federation;
III - in the legislature following the 2026 elections:

system. In view of this, the following must go hand in hand: a) a rational party system (in order to filter out the creation of political parties that represent absolutely no one and no programmatic content), this being a preventive anti-corruption policy; and also b) an objective legal mechanism to combat party corruption.

For this reason, one cannot lose sight of the fact that Law 9.096/95 itself, in the words of Ré and Batini (2016, p. 4) when analyzing the ten measures against corruption presented by the Federal Public Prosecutor's Office, has very few mechanisms for controlling and punishing Political Parties:

> The projects contained in the 10 Measures to Combat Corruption proposed by the Federal Public Prosecutor's Office include, among the proposals for legislative changes, the establishment of a complementary system for holding political parties accountable, in order to fill these gaps and make the system more coherent. In summary, the proposal is that political parties, as legal entities governed by private law that deal directly with public funds, should fall under the same system of accountability currently in force for other legal entities: Law n. 12.846/2013, known as the Anti-Corruption Law. [...] In fact, it seems reasonable to admit that the nature of the parties' activities can harm or threaten to harm the public administration and it would not be lawful for the legal system to treat political parties in an anti-union way in relation to other associations. Not only because they are recipients of public funds, but also because, as intermediaries in the conquest of power, they can allow themselves to be used as instruments for fraud and corruption. The aim, therefore, is to make political parties, like other legal entities, objectively liable in the civil, administrative and electoral spheres for acts against the public administration, as provided for in Law n. 12,846/2013. It also proposes punishing the organization in cases of "*caixa 2*" (parallel accounting). To this end, it expressly provides for the concealment, concealment and use of funds from prohibited sources or that are the proceeds of crimes as illicit (RÉ; BATINI, 2016, p. 4, our translation).

That's why, under no circumstances, can we fail to direct the incandescent beacons of the debate on corruption in the electoral sphere towards preventive practices such as encouraging voters to practice party politics, stimulating internal party democracy, as well as policies aimed at rationalizing partisanship, through the barrier clause and, as we'll see below, compliance.

a) obtain, in the elections to the Chamber of Deputies, at least 2.5% (two and a half percent) of the valid votes, distributed in at least one third of the units of the Federation, with a minimum of 1.5% (one and a half percent) of the valid votes in each of them; or
b) have elected at least thirteen Federal Deputies in at least one third of the Federation's units.

Electoral compliance policies in the fight against corruption

It is also clear that the fight against corruption is based on the need to toughen inspections and the application of punishments that already exist in the legal system, always observing the fundamental rights and guarantees of the defense, but without synonymous with impunity.

Leal (2013, p. 101) warns of the need for the state to set up effective mechanisms to guarantee the electoral process, in order to combat corrupt actions such as vote-buying, abuse of economic power, among others.

In this sense, in the electoral sphere, the prevention of the fight against corruption must be focused on the same level of intensity and priority as repressive policies of this nature, with the encouragement of party compliance practices being a relevant vector in the search for satisfactory results to the desired end.

Baqueiro (2018, p. 256, our translation) conceptualizes "compliance as the act of acting in conformity, in accordance with existing laws and rules; it is complying with, obeying internal and external regulations. These are the good practices required not only in the market, but in life in society as a whole". What's more, compliance consists of a real cultural revolution in the mentality of the agents involved in the democratic process - from voters and candidates, as well as contesting candidacies.

It can be said that it is a minimum ethical pact of correct practices. Gonzalez (2015) defines compliance as follows:

> In Spain, the concepts of "compliance" and "regulatory compliance" tend to be confused. [...] it should be noted that compliance is more than regulatory compliance. It is, in fact, submission to those rules of legislative origin, but also to those self-imposed, derived from higher standards than those required by law (GONZALEZ, 2015, our translation).

There are three bills in Brazil's National Congress that aim to include compliance practices in the Law on Political Parties: the first is Bill n. 60/2017, already approved in the Senate and being processed in the Chamber under n. 10.219/2018, presented by Senator Ricardo Ferraço, which inserts articles 30 - A and 37 - B into Law n. 9.096/95:

> Art. 30-A. Political parties are objectively liable for acts committed against the public administration by their leaders in this capacity.
> § 1 The liability of the political party does not exclude the individual liability of its leaders or administrators or of any natural person who is the author, co-author or participant in an illegal act.

> § 2 The political party will be held responsible regardless of the individual responsibility of the persons referred to in § 1.
> § 3 Managers or administrators will only be held responsible for unlawful acts to the extent of their culpability.
> § 4 Acts against the Public Administration are those that attack public assets or the principles of the Public Administration, as defined below:
> I - promising, offering or giving, directly or indirectly, an undue advantage to a public official or a third party related to them;
> II - financing, funding, sponsoring or in any way encouraging the practice of illegal acts provided for in this Law;
> III - using an intermediary, whether a natural or legal person, to conceal or disguise their real interests or the identity of the acts carried out;
> IV - hinder the investigation or inspection activities of public bodies, entities or agents, or intervene in their activities.
> Art.37-B. In applying the penalties referred to in this Title, the existence of internal integrity mechanisms, audits and incentives to report irregularities and the effective application of codes of ethics and conduct within the political party shall be taken into account (BRASIL, 2017, our translation).

This bill received some criticism from Pinheiro (2018, p. 245-246), among them: 1) not establishing the penalties for political parties for the illicit acts typified in the bill; 2) not establishing the competent body to carry out the administrative trial to establish the penalty; 3) low typification of the acts subject to objective accountability; and 4) the limitation of the very concept of integrity program inserted in the bill.

Bill 60/2017 (n. 10.219/2018, in the Chamber of Deputies) is joined by Bill 2.086/2019, authored by Federal Deputy Kim Kataguiri, which adds paragraph 15 to article 37 of Law 9.096/95:

> Art. 37. [...] § 15. The application of sanctions will consider the existence of internal mechanisms and procedures for integrity, auditing and encouraging the reporting of irregularities and the effective application of codes of ethics and conduct within the political party, as well as the respective institute or foundation for research and indoctrination and political education. (BRASIL, 2019, our translation).

In the justification for this bill, Congressman Kim Kataguiri highlights the need for legislative progress in the fight against corruption, developing the following arguments:

> In addition, political parties form pressure groups in parliaments - because they group together in blocs and structure themselves in party leaderships - and act strongly in the executive branch - appointing members to occupy commission positions in direct or indirect administration.
> There are many accusations of corruption involving political parties, many of which are unfortunately often associated with real criminal organizations.
> Unscrupulous people use the party's affiliation to gain undue advantages from the government, and it is often difficult to find proof of their misconduct (BRASIL, 2019, our translation).

The latest Bill is n. 429/2017, presented by Senator Antônio Anastasia, and consists of the most extensive insertion of compliance practices into the Law on Political Parties. It inserts articles 15 - B; 15 - C; 22, item VI; 37 - B; 37 - C and 37 - D into Law n. 9.096/95:

> Art. 15-B. The party's Statute must provide for the existence of an integrity program, under the terms of Article 37-B of this Law, which will be evaluated as to its existence and effectiveness according to the following parameters:
> I - commitment of the top management of all party bodies, including party leaders, as defined in the statute;
> II - standards of conduct, code of ethics, integrity policies and procedures, applicable to:
> a) all members, employees and administrators, regardless of their position or function;
> b) third parties, such as suppliers, service providers and intermediary agents;
> III - periodic training on the integrity program for members, employees and managers, no less frequently than every two years;
> IV - accounting records that fully and accurately reflect the party's transactions;
> V - an internal control structure that ensures security in the achievement of objectives related to operations, disclosure and compliance with the legislation in force and best practices;
> VI - an internal auditing structure, with an independent and objective evaluation, capable of analyzing and improving the effectiveness of control and governance processes, guaranteeing the reliability of the party's reports and financial statements;
> VII - independence, structure and authority of the internal body responsible for applying the integrity program, monitoring and inspecting compliance with it;
> VIII - irregularity reporting channels, preferably external, widely disseminated to employees, affiliates and third parties, and mechanisms designed to protect people who report irregularities in good faith, including identity confidentiality;
> IX - a standard procedure for internal investigations that ensures the prompt interruption of irregularities or infractions detected and the timely remediation of the damage generated;
> X - disciplinary measures in the event of a proven violation of the integrity program, ensuring a full defense, and the party may proceed to expel the offenders, under the terms of item VI of article 22 of this Law;
> XI - appropriate steps to contract and, as the case may be, supervise third parties, such as suppliers, service providers and intermediary agents;
> XII - verification, during the processes of merger and incorporation of party organizations, of the commission of irregularities or illicit acts or the existence of vulnerabilities in the political parties involved;
> XIII - periodic review and continuous monitoring of the integrity program;
> XIV - specific and detailed integrity policies, in the case of party expenditures considered to be more vulnerable to the occurrence of irregularities;
> XV - carrying out appropriate due diligence and transparency regarding donations received and considered to be of high value, with parameters to be established in a TSE resolution;
> § 1 In the due diligence assessment of donations considered to be of high value, the following specificities, among others, will be considered:

I - the origin of the funds;
II - the market sector in which the donor operates, including through the legal entities of which he is the owner, partner, controller, shareholder, administrator or final beneficiary;
III - the donor's degree of interaction with the public sector, including through the legal entities of which it is the owner, partner, controller, shareholder, administrator or final beneficiary, and the importance of authorizations, licenses, permits and concessions or other administrative or governmental acts in its operations;
§ 2º The Statute should also provide for the internal body described in item VII to report directly to the party President, or to the Ethics Committee, in the event of a denunciation of possible involvement by the President in irregularities, or when the latter shirks the obligation to adopt the necessary measures in relation to the situation reported to him.
Art. 15-C. Under the terms of items II and III of Article 15-B, a Code of Conduct and Integrity must be drawn up and published, which provides for:
I - the political party's principles, values and mission;
II - guidelines for the prevention of irregularities and conflicts of interest; and
III - conduct prohibited to party members or collaborators.
§ 1 Upon joining the party, every new member will receive a copy of the Code of Conduct and Integrity and must sign an acknowledgement of its content and meaning, which will be kept on file at the party for the duration of their membership.
§ 2 The Party will offer specific training every two years on electoral legislation, internal controls, governance, standards of conduct, code of ethics, integrity policies and procedures, and other topics related to the Party's activities.
Art. 22. [...] VI - violation of the integrity program.
Art. 37-B. For the purposes of this Law, an integrity program consists, within the scope of a political party, of a set of internal mechanisms and procedures for integrity, control, auditing and encouraging the reporting of irregularities, and the effective application of codes of ethics and conduct, policies and guidelines, including those extended to third parties, with the aim of detecting and remedying deviations, fraud, irregularities and illicit acts practiced by or attributed to the political party.
Art. 37-C. If the Electoral Justice finds that the integrity program is not effective or does not exist, based on a representation made under the terms of art. 96 of Law 9.504/97, the party will be subject to the following sanctions:
I - in the event of ineffectiveness, suspension from receiving the Party Fund for a period of three to twelve months;
II - if there is no integrity program, suspension from receiving the party fund for a period of twelve months;
Sole paragraph. The Public Prosecutor's Office and the Political Parties are entitled to propose the representation provided for in the caput.
Art. 37-D. The national directory shall be exempt from the sanctions referred to in Article 37-C in the event of proof of the effectiveness of its integrity program, including the application of measures to suspend transfers to state and municipal directories, when they are responsible for the irregularity or illegality, and this is verified in an internal investigation procedure.
Sole paragraph. Items III, V, VI, VII, XII, XIII and XIV of art. 15-B will not be required in the assessment of state or municipal management bodies (BRASIL, 2017, our translation).

In the justification for this Bill, Senator Antônio Anastasia puts forward the following arguments:

> The area of compliance (integrity) in Brazil took on legal form with the advent of Law n. 12.846 of 2013, known as the Anti-Corruption Law, as well as its regulatory Decree n. 8.420 of 2015, and the trend is for the incentive to apply it to extend to political parties as well.
> At the international level, it is worth mentioning that the mandates of Article 7(3) and Article 26(1) to (4) of the United Nations Convention to Combat Corruption (UNCAC), rectified and promulgated in Brazil under the terms of Decree n. 5.687 of 31 January 2006, already provided guidelines for the accountability of legal entities and the need to increase transparency regarding the financing of political parties and candidates for elective public office.
> Like any legal entity, political parties must also have robust procedures and controls, based on national and international best practices, in order to avoid irregularities and illicit acts - especially since they deal with public funds (BRASIL, 2017, our translation).

In spite of the criticism that can be leveled, the passing of these bills aimed at adopting structural preventive policies to combat corruption within the scope of electoral law is, in itself, a decisive step towards reviving the electorate's hope in the party system, reassuring them that the procedures are transparent and reliable.

However, the matter must always be monitored and enforced by internal and external mechanisms, from the individual exercise of citizenship to the control bodies. It is noteworthy that in the justifications for the bills, there is a sense of progress in modern, preventive policies to combat corruption in the area of electoral law.

Preventive practices to combat corruptive pathologies fill a significant part of the problem, but obviously punitive repression such as the fight against electoral crime must go hand in hand, as we will see below.

Cracking down on electoral crime as a way of fighting corruption

In addition to the preventive measures mentioned above, there is absolutely no denying the need to toughen up the repression of electoral crimes linked to corrupt practices - and here it is important not to limit ourselves to the criminal type of corruption, but to all criminal offenses that distort and contaminate the ethical smoothness of democratic exercise.

There is no denying that the famous cases of corruption in Criminal Action no. 470 (*Mensalão*) and the unfolding of Operation Car Wash, by condemning part of the political and business elite that plundered the public purse and fed itself back through overpriced contracts, which even generated legal donations that were accounted for by the Electoral Court

(information that can only be obtained through a plea bargain), were elements that gave ordinary people back a certain symbolic hope that it would be possible to see powerful people convicted and actually serve sentences.

However, it is necessary to prevent major investigations from running out of steam (and let's be clear, they should only be carried out through processes and procedures that strictly observe all individual rights and guarantees, such as due process of law, adversarial proceedings and a full defense), as well as the criminalization of *Caixa 2*, which is already being worked on in the Federal Senate, through Bill No. 1,865/2019.

Teodoro (2018, p. 300) states that *Caixa 2*, as well as criminal conduct related to money laundering, harms democratic competition and thus the criminalization of this unfair electoral competition, resulting from the abuse of economic power, has its model in existing extra-criminal legal provisions.

Law n. 13,964/2019, which instituted the so-called "Anti-Crime Package", brought significant advances in criminal legislation in the sense of streamlining and speeding up procedures in the fight against crime. Nucci (2020, p. 2-3) gives the following compliments on the design of this recent law:

> Fighting organized crime, white-collar crime and corruption in Brazil are extremely sensitive and important goals, but, as we have always maintained, respecting individual rights and guarantees. The principle of legality must be tolerated, because it is constitutional, and followed rigorously. Corruption cannot be tackled, as many believe, with the support of public opinion; we no longer live in the era of the Roman circus, when the population decided the fate of those in the arena. [...] For our part, I applaud Law n. 13,964/2019, which, if it was not the best law in terms of specific reforms to criminal legislation, was certainly not the worst. We do not see any unconstitutionality in any of its provisions (NUCCI, 2020, p. 2-3, our translation).

In short, we cannot ignore the need to integrate preventive policies to combat corruption, such as those dealt with previously, such as improving legislation and monitoring, with repressive policies, in a courageous manner, such as those that have brought to the dock even former Presidents of the Republic, former Ministers, Senators, Deputies, Governors, as well as owners of Brazil's largest contractors, bankers and all sorts of businesspeople linked to the schemes under investigation.

Although it deserves due applause, Law n. 13.964/2019 should have advanced in the fight against corruption beyond the streamlining of procedures provided for in the Anti-Corruption Law, taking advantage of the opportunity and establishing the criminal type of cash for election campaigns.

Despite the existence of Bill 1.865/2019, which has already been approved by the Federal Senate and is currently being processed by the Chamber of Deputies, with the aim of criminalizing the illegal use of cash (*caixa 2*) in electoral campaigns, there is still no medium-term prospect of this bill being closed, which creates insecurity and legal-electoral instability.

Final considerations

With a view to outlining how corruption directly affects political and democratic processes and, by extension, electoral law, this deserves to be observed with great focus and a long-term vision, according to the repercussions of the responsive actions addressed in this article.

Corruption, as a multidisciplinary and multifaceted phenomenon, must be tackled with realism, intellectual honesty and support for major preventive and repressive policies.

It must be evaluated as an ethical, moral and psychological phenomenon, starting with the conception of the ideology of voters and candidates (what they think, what they stand for, what they want and how), which goes through various paths such as the dramatic coexistence of the Brazilian people and the political class with the party system and ends in a distorted democratic system, with little identity between voter and elected official, thus opening the way for corrupt practices to perpetuate themselves in power.

The major battle that needs to be tackled is, starting with the naturalization of party compliance practices, which should enrich the Law on Political Parties in the near future, to stimulate internal democracy within political parties by encouraging voters to get to know their structures and procedures and thus have confidence and feel represented in what they believe to be suitable.

Toughening up electoral crime and encouraging a barrier clause, reducing the number of political parties (so that they do not become mere fundraisers for the electoral and party funds and spurious negotiators of radio and television time for coalitions) are also necessary and structuring policies to combat corruption.

But it's important to always be aware of the golden rule in the fight against corruption: it is a pathology that is easy to contaminate and mutate. Therefore, under no circumstances is its eradication and extinction envisioned (except as a pleasant dream), but rather its reduction as much as possible.

And, in this respect, one cannot fail to recognize that Brazilian legislation has made progress and this progress is clearly felt, according to the Bills currently before the National Congress, which tend to move even further forward, including in the area of Electoral Law.

Unequivocally, therefore, it can be seen that the sum of preventive and repressive practices in the fight against corruption can empirically give Brazilian voters back hope in the party system, but for this to actually be an effective gain in governance quality from compliance practices and internal party democracy.

REFERENCES

BAQUEIRO, F. R. A captação ilícita de sufrágio do art. 41 – A da Lei nº 9.504/97 como expressão da corrupção eleitoral e a necessária adoção dos programas de *compliance* partidária. *In*: FUX, L.; PEREIRA, L. F. C.; AGRA, W. M. (coord.); PECCININ, L. E. (org.). **Direito Penal e Processual Penal Eleitoral**. Belo Horizonte: Fórum, 2018. v. 8, p. 249-273.

BERNARDINO, L. M. O declínio do pluripartidarismo a partir da reforma política. *In*: FUX, L.; PEREIRA, L. F. C.; AGRA, W. M. (coord.); PECCININ, L. E. (org.). **Direito Partidário**. Belo Horizonte: Fórum, 2018. v. 2, p. 59-70.

BLASZAK, J. L. Democracia interna dos partidos. *In*: FUX, L.; PEREIRA, L. F. C.; AGRA, W. M. (coord.); PECCININ, L. E. (org.). **Direito Partidário**. Belo Horizonte: Fórum, 2018. v. 2, p. 307-326.

BOBBIO, N. *O* **Futuro da Democracia**. Uma defesa das Regras do Jogo. 6. ed. São Paulo: Paz e Terra, 1997.

BOLOGNESI, B. Institucionalização Partidária: a proposta de uma ferramenta bidimensional para indicadores empíricos. *In*: ENCONTRO ANUAL DA ANPOCS, 39., 2012, Águas de Lindóia. **Anais** [...]. [*S. l.: s. n.*], 2012. Available: https:// www.anpocs.com/index.php/papers-36-encontro/gt-2/gt25-2/8121-institucionalizacao-partidaria-a-proposta-de-uma-ferramenta-bidimensional-para-indicadores-empiricos/file. Access: 14 July 2023.

BRASIL. **Lei n. 4.737, de 15 de julho de 1965**. Institui o Código Eleitoral. Brasília, DF: Presidência da República, 19 jul. 1965. Available: https://www.planalto.gov.br/ccivil_03/leis/l4737compilado.htm. Access: 02 Sept. 2018.

BRASIL. **Constituição da República Federativa do Brasil**, de 05 out. 1988. Brasília, DF: Presidência da República, Casa Civil, Subchefia de Assuntos Jurídicos, 1988. Available: http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm. Access: 30 July 2018.

BRASIL. **Lei n. 9.096, de 19 de setembro de 1995**. Dispõe sobre partidos políticos, regulamenta os arts. 17 e 14, §3º, inciso V, da Constituição Federal. Brasília, DF: Presidência da República, 20 set. 1995. Available: http://www.planalto. gov.br/ccivil_03/LEIS/L9096.htm. Access: 04 May 2020.

BRASIL. **Lei n. 9.504, de 30 de setembro de 1997**. Estabelece Normas para as Eleições. Brasília, DF: Presidência da República, 1 out. 1997. Available: http://www.planalto.gov.br/cciviL_03/leis/L9504.htm. Access: 04 May 2020.

BRASIL. **Decreto n. 5.687, de 31 de janeiro de 2006**. Promulga a Convenção das Nações Unidas contra a Corrupção, adotada pela Assembléia-Geral das Nações Unidas em 31 de outubro de 2003 e assinada pelo Brasil em 9 de dezembro de 2003. Brasília, DF: Presidência da República, Casa Civil, Subchefia de Assuntos Jurídicos, 2006. Available: http://www.planalto.gov.br/ccivil_03/_ato2004-2006/2006/decreto/d5 687.htm. Access: 04 May 2020.

BRASIL. Supremo Tribunal Federal. **Ação Direta de Inconstitucionalidade n. 1.351**. Procuradoria Geral da República e Tribunal Superior Eleitoral. Relator: Ministro Marco Aurélio Mello. 29 jun. 2007. Brasília, DF: [s. n.], 29 jun. 2007.

BRASIL. Senado Federal. **Projeto de Lei n. 60/2017**. Brasília, DF: Senado Federal, 2017. Available: https://www25. senado.leg.br/web/atividade/materias/-/materia/128349. Access: 04 May 2020.

BRASIL. Senado Federal. **Projeto de Lei n 429/2017**. Brasília, DF: Senado Federal, 2017. Available: https://www12. senado.leg.br/ecidadania/visualizacaomateria?id=131429. Access 04 May 2020.

BRASIL. **Lei n. 13.964, de 24 de dezembro de 2019**. Aperfeiçoa a legislação penal e processual penal. Brasília, DF: Presidência da República, 24 dez. 2019. Available: http://www.planalto.gov.br/cciviL_03/leis/L13964.htm. Access: 04 May 2020.

BRASIL. Câmara dos Deputados. **Projeto de Lei n. 2.086/2019**. Brasília, DF: Câmara dos Deputados, 2019. Available: https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2197051. Access: 04 May 2020.

BRASIL. Tribunal Superior Eleitoral. **Brasil tem 75 partidos políticos em formação**. Brasília, DF: Tribunal Superior Eleitoral 2019. Available http://www.tse.jus.br/imprensa/noticias-tse/2019/Janeiro/brasil-tem-75-partidos-politicos-em-processo-de-formacao. Access 02 May 2020.

BUCCHIANERI, M. C. Tomemos a sério o debate em torno do *compliance* partidário: uma primeira reflexão crítica dos Projetos de Lei nºs 60/2017 e 429/2017. *In*: FUX, L.; PEREIRA, L. F. C.; AGRA, W. M. (Coord.); PECCININ, L. E. (org.). **Direito Partidário**. Belo Horizonte: Fórum, 2018. v. 2, p. 225-251.

GIMENES, É. R. Considerações sobre as relações entre eleitores e partidos políticos no Brasil. *In*: FUX, L.; PEREIRA, L. F. C.; AGRA, W. M. (Coord.); PECCININ, L. E. (Org.). **Direito Partidário**. Belo Horizonte: Fórum, 2018. v. 2, p. 109-133.

GONZÁLEZ, J. A. **Función de compliance y partidos políticos en España**. 2015. Available: http://www.debate21.es/2015/05/08/funcion-de-compliance-y-partidos-politicos-en-espana/. Access: 1 May 2020.

LAMOUNIER, B. Partidos políticos e redemocratização: notas para debate. **Rev. adm. empres.**, São Paulo, v. 20, n. 2, 1980. Available: https://www.scielo.br/j/rae/a/6Q998WfbbRBsmsQ9HQy6YNh/. Access 14 July 2023.

LEAL, R. **Déficits democráticos na sociedade de riscos e (des)caminhos dos protagonismos institucionais no Brasil**. 1. ed. São Paulo: Tirant lo Blanch, 2020.

LEAL, R. **Patologias Corruptivas nas relações entre Estado, administração pública e sociedade**: causas, consequências e tratamentos. 1. ed. Santa Cruz do Sul: EDUNISC, 2013.

NUCCI, G. S. **Pacote Anticrime Comentado**. 1. ed. Rio de Janeiro: Ed. Forense, 2020.

RÉ, M. C; BATINI, S. **Responsabilização dos Partidos Políticos**. 2016. On-line. Available: http://www.dezmedidas.mpf.mp.br/apresentacao/artigos/responsabilizacao-de-partidos - politicos-por-corrupcao-monica-e-silvana.pdf/view. Access: 03 May 2020.

ROTBERG, R. I. **Failed States, Collapsed States, Weak States**: Casuses and Indicatores. 2003. On-line. Available: https://www.brookings.edu/asset/wp-content/uploads/2016/07/statefailureandstateweaknessinatimeofterror_chapter.pdf. Access: 14 July 2023.

TEODORO, F. J. M. A criminalização do *caixa 2* e da lavagem de dinheiro no processo eleitoral. *In*: FUX, L.; PEREIRA, L. F. C.; AGRA, W. M. (coord.); PECCININ, L. E. (org.). **Direito Penal e Processual Penal Eleitoral**. Belo Horizonte: Fórum, 2018. v. 8, p. 291-304.

TRUJILLO, A. M. A. **La Corrupción Política**: una revisión de la literatura. 2002. Available: https://e-archivo.uc3m.es/handle/10016/38/. Access: 1 May 2020.

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