REVISTA ESMAT
25

CONTROLE DE CONSTITUCIONALIDADE DO *DECRETI-LEGGE* ITALIANO

CONTROL OF THE CONSTITUTIONALITY OF THE ITALIAN DECREE-LEGGE

Esmar Custódio Vêncio Filho

Mestre em Prestação Jurisdicional e Direitos Humanos, pela Esmat. Doutorando do Programa de Doutorado Interinstitucional UNICEUB/ESMAT – Escola Superior da Magistratura Tocantinense –, 2021-2024. Juiz de Direito do Poder Judiciário do Estado do Tocantins, desde 1996. E-mail: esmarfilho@uol.com.br.

RESUMO

O presente artigo comparará os institutos constitucionais do decreti-legge italiano e da medida provisória brasileira. Para tanto, verificaremos a estrutura de cada um desses institutos. Comparamos os elementos de cada sistema jurídico em seus vários aspectos, como iniciativa, requisitos, pressupostos, eficácia entre outros. O sistema constitucional da Itália e do Brasil será comparado especificamente quanto ao controle de constitucionalidade do decreti-legge e da medida provisória. Para tanto, também faremos uma breve exposição sobre o Tribunal Constitucional italiano e o brasileiro, sua composição e competências. O enfoque constitucional comparativo entre o direito italiano e o brasileiro faz surgir intrigantes questões, mormente no que se referem à natureza jurídica, limitações materiais, eficácia e, especialmente, o contencioso de constitucionalidade. Na esteira dessa perquirição, procederemos à comparação do referido instituto com o correspondente na Constituição Federal brasileira. Utilizaremos o método exploratório/descritivo para comparar aspectos constitucionais. Este método familiariza o pesquisador com o problema o que o torna mais evidente na construção das hipóteses e a descrição permite identificar variáveis (GIL, 2010, p. 27). Tecnicamente utilizamos a coleta bibliográfica e documental, com arrecadação de material doutrinário, assim como levantamento de julgados de tribunais internacional e nacional, especialmente os de competência constitucional.

Palavras-Chave: Direito Constitucional Comparado. Decreto-Lei Italiano. Medida Provisória. Controle de Constitucionalidade.

ABSTRACT

The article deals with human rights, understood as a set of ideals and mechanisms of protection of man from his relationship with the other. Thus, emphasizing its classifications, history and creation of specific mechanisms of protection, not forgetting to highlight the issue of human sexuality and its necessary preservation in dignity. A bibliographic investigation was carried out, using the

deductive method and qualitative analysis. The study concludes by perpetuation of practices that hinder respect for human rights. Thus, continuous efforts are needed to allow the real protection and enforcement of the rights commented, in favor of a more just, egalitarian and solidary society.

KEYWORDS: Dignity. Protection. Efforts. Problems

1 INTRODUCTION

The comparative study of legal institutes, especially between the legislations of countries that are closely related in the formation of their law, is extremely relevant to their understanding. Further on, when dealing with the legal nature of the decreti-legge and the provisional measure, we will see that comparative law directly influences their conceptualization.

Rocha (2006, p. 9) highlights that the comparative analysis of law, especially constitutional law, is essential to the understanding of supranational sovereignty and dogmatics. He adds that the integration of the constitutional law of nations enables the separation of institutionalized power and allows good political practices to enhance modern international thinking (Ibid., p. 11).

The use of legal institutes by different countries stems from a cultural and historical alignment. Brazil, by essence, adopted the Roman-Germanic legal system with normative/positivist subordination. Along these lines, we have incorporated various international institutes from nations based on the same legal system, such as those of Italy and Germany.

The comparison between the various legal systems, regardless of their nature, whether Anglo-Saxon or Roman-Germanic, is not a new fact. This differentiation of systems is one of the factors that has generated comparative studies. In our legal system, this tendency is clear, and has long been assimilated, when the use of the common law is allowed in the absence of legislation, as is the case in Article 4 of the Law of Introduction to the Rules of Brazilian Law: "When the law is silent, the judge shall decide the case in accordance with analogy, custom, and the general principles of law" (BRAZIL, Decree-Law 4657, of September 4th, 1942).

Comparative law allows homogeneous solutions with the search for pacification and conflict resolution, which results in the security of legal relations arising from the universalization of law, through this comparative method (BETTINI, 2007, p. 35).

The study of comparative law observes social, historical, and political structures of the legal systems studied (REIS, 2007, p. 267). This interpretative analysis has become more accessible, complete and robust nowadays. The globalization of information has more easily exposed social problems faced by law (crimes, commerce, etc.), resulting in the approximation and union of technology with the comparative method (Ibid.).

It is in this comparative universe that the present article will seek to relate the Italian decreti-legge and the Brazilian provisional measure. Two institutes united by the same legal system, but with some points of distinction. After demonstrating some of these intersections, we will address the forms of control of constitutionality of these institutes.

2 DECRETI-LEGGE AND PROVISIONAL MEASURE. COMPARATIVE LAW.

The relationship between similar legal systems logically ends up generating identity in several aspects. Comparative law is useful for seeking solutions to domestic problems (Amaral Júnior, 2012, p. 215).

The relationship between similar legal systems logically ends up generating identity in several aspects. Comparative law is useful for seeking solutions to domestic problems (Amaral Júnior, 2012, p. 215).

> Os juízes e os tribunais observarão: I - as decisões do Supremo Tribunal Federal em controle concentrado de constitucionalidade; II - os enunciados de súmula vinculante; III - os acórdãos em incidente de assunção de competência ou de resolução de demandas repetitivas e em julgamento de recursos extraordinário e especial repetitivos; IV - os enunciados das súmulas do Supremo Tribunal Federal em matéria constitucional e do Superior Tribunal de Justiça em matéria infraconstitucional; V - a orientação do plenário ou do órgão especial aos quais estiverem vinculados. (BRASIL, Lei 13.105, de 16 de Março de 2015)

On its turn, the Federal Constitution of 1988 predicts in its Article 103-A that:

> O Supremo Tribunal Federal poderá, de ofício ou por provocação, mediante decisão de dois terços dos seus membros, após reiteradas decisões sobre matéria constitucional, aprovar súmula que, a partir de sua publicação na imprensa oficial, terá efeito vinculante em relação aos demais órgãos do Poder Judiciário e à administração pública direta e indireta, nas esferas federal, estadual e municipal, bem como proceder à sua revisão ou cancelamento, na forma estabelecida em lei. (BRASIL, Constituição Federal de 1988)

In this scenario, the Roman-Germanic origin of our legal system is gradually influenced by the Anglo-Saxon system. Consequently, the institutes assimilated from similar legal systems are adapted to the evolution of Brazilian law.

The Italian decree-law is a precursor to our provisional measure with itself, having relevant points in common, but with its own nuances. The provisional measure tailored according to the Italian model resembles it in its exceptionality, its assumptions and requirements (BRANCO, 2021, position 1.052).

We will evaluate comparatively the characteristics regarding the control of constitutionality of provisional measures before the aspects of the Italian Decree-Law.

2.1 Legal Nature

The Italian Decree-Law was specially provided for in the Italian Constitution as an instrument available to the head of the Executive Branch in special situations that need urgent solution.

For the most part, Italian doctrine does not place the decreti-legge as an illegitimate act in the face of legislative incompetence of the government (SOBRINHO, 2017, p 225). The decree of urgency as a fact that gives rise to the decreti-legge is a strict element of responsibility of the head of state, which does not configure an act of government (Ibid., p. 231). With the enactment of the Italian Constitution of 1947, the decreti-legge ceased to be mere business management by the Executive (Cléve, 2021, position 1.287).

Sobrinho (Ibid., p. 253-261) understands that the Italian Decree-Law is a primary act of government, along the lines of the material law, which, after its conversion, becomes formal law. It stands out:

> Dessa maneira, o decreto-legge é ato normativo primário do Governo, ocupando, no sistema de fontes do direito italiano, a mesma posição da lei formal do Parlamento. Deve-se ressaltar que, ainda que tenha a mesma posição da lei formal do Parlamento, o decreto-legge não é formalmente lei. Somente é lei materialmente. Porém, evidentemente, após exitoso processo de conversão em lei, o decreto-legge transforma-se em lei formal do Parlamento.

In this sense, the Italian Decree-Law consubstantiates itself as a primary normative act (Material Law) of Government situated in the same position as the formal laws of the parliament (SOBRINHO, 2017, p. 257).

The provisional measure already had a similar provision in our previous constitutional system. The Brazilian Constitution of 1937 introduced the name Decree-Law in our legal system. It so happens that at that historical moment the referred legal instrument was foreseen for several situations, to be handled by the President of the Republic by authorization of the Parliament. In verbis: "Art.12 - The President of the Republic may be authorized by Parliament to issue decree-laws, subject to the conditions and within the limits set by the authorizing act" (BRASIL, Constitution of the United States of Brazil, of November 10th, 1937).

Amaral Júnior (2012, p. 114), when discussing the legal nature of the provisional measure and analyzing other doctrinal stances, positions himself in the sense that it is, materially, a primary normative act and with the force of law. Citation is made:

> Segue sendo, a um só tempo, a) em face de seus destinatários, ato normativo primário e provisório em razão da força de lei que lhe é atribuída em quanto não rejeitada expressamente ou caduca por decurso de prazo, e b) em face do Congresso Nacional, projeto de lei de conversão de normas provisórias em normas permanentes, desde a edição.

By materially configure law, the provisional measure has always functioned as an anticipation of bill of exceptional initiative of the Chief Executive and dependent on necessary subsequent parliamentary pronouncement (SOBRINHO, 2017, position 1.222).

Branco (2021, p. 1053) mentions that the Brazilian Constitution of 1988, when dealing with the legal nature of the provisional measure, emphasizes that

> [...] sua índole normativa emergencial, como se percebe do caput do art. 62. De outro lado, se ela não for aprovada no prazo constitucional, pelo Legislativo, perde a sua eficácia desde a edição (art. 62, § 3º). Ostenta, portanto, o caráter provisório e resolúvel. À medida provisória aplica-se o que disse Pontes de Miranda do decreto-lei: trata-se de uma 'lei sob condição resolutiva'.

Branco (Ibid.) continues, in an exceptional conceptual summary of provisional measures, highlighting their legal nature:

> [...] as medidas provisórias são atos normativos primários, sob condição resolutiva, de caráter excepcional no quadro da separação dos Poderes, e, no âmbito federal, apenas o Presidente da República conta o pode de editá-las. Ostentam nítida feição cautelar. Embora produzam o efeito de concitar o Congresso a deliberar sobre a necessidade de converter em norma certo trecho da realidade social, não se confundem com meros projetos de lei, uma vez que desde quando editadas já produzem efeitos de norma vinculante.

In view of these doctrinal positions, it is concluded that the provisional measure is a primary normative act, of material nature. It has the force of law arising from the exceptional delegation of the power to legislate granted to the Executive, which configures a governing tool. However, it is subject to the resolutive condition, because it depends on the approval of the National Congress to confirm its effects and become law.

2.2 Material Limitation

The Italian Decree-Law is admitted in cases of necessity and urgency that have the force of law, which must be converted within 60 days from its publication. The Chamber will proceed to regulate the legal relationships that arose when said Decree-Law was in force if not converted. This constitutional provision is found in Art. 77 of the Italian Constitution in the following terms:

> [...] Os decretos perdem eficácia desde o início se não forem convertidos em lei no prazo de sessenta dias desde a sua publicação. As Câmaras podem, todavia, regular com a lei as relações jurídicas que surgem na base dos decretos não convertidos. (ITALIA, Constituição da República Italiana, de 22 de Dezembro de 1947)

In principle, it can be concluded that this institute can deal with any matter, as stated in article 117 of the Italian Constitution ("The regulatory power belongs to the State in matters of exclusive legislation, except for the delegation to the Regions").

However, the Constitution itself, as well as the doctrine and the Constitutional Court do not have a pacific position in this regard. In view of this and in an attempt to better define the issue, the Italian Legislative enacted Law no. 400 of 1988, expressly establishing the limitations of the Government in issuing Decree-Laws. Among several limitations, this law provides that

> Por decreto do Presidente da República, prévio resolução do Conselho de Ministros, ouvido o parecer do Conselho de Estado que deverá pronunciar-se no prazo de noventa dias a contar da pedido, podem ser emitidos regulamentos para regulamentar: a) a execução de leis e decretos legislativos, bem como regulamentos comunitários; b) a implementação e integração de leis e decretos legislação que contenha princípios de princípio, excluindo os relativos a matérias reservadas à competência regional; c) as matérias em que não haja disciplina por lei ou por atos com força de lei, desde que não sejam matéria porém reservado por lei; d) a organização e funcionamento das administrações público de acordo com as disposições ditadas por lei [...]. (ITÁLIA, Lei 400, de 23 de Agosto de 1988, Artigo 17)

The Law helped, but did not totally eliminate abuses, which has been a constant target of pronouncements of the Italian Constitutional Court.

As for the material limitation of the Decree-Law, the Italian doctrine understands to be free and subjective the configuration of the extraordinariness of the situation of necessity and urgency to justify the edition of the said institute, regardless of the matter (SOBRINHO, 2017, position 334). Another doctrinal position excludes from the scope of the Decree-Law the matters referred to in Article 72, item IV, of the Italian Constitution of 1947 , is cited:

> O procedimento normal de exame e de aprovação direta por parte da Câmara é sempre adotado pelos desenhos de lei em matéria constitucional e eleitoral e por aqueles de delegação legislativa, de autorização para ratificar tratados internacionais, de aprovação dos orçamentos previsionais e dos resultados orçamentais. (ITÁLIA, IDEN).

Thus, the cases in which the ordinary process of examination and approval of the matter necessarily depends on the House of Representatives are excluded from the scope of the Decree-Law (SOBRINHO, 2017, id.). The considerable range of material exclusions of the Italian Decree-Law requires caution in its issuance, with emphasis on the analysis of the assumptions of necessity and urgency with the Constitution itself. This relative freedom of the Chief Executive in relation to the use of Decree-Law should be subject to strict admissibility criteria as was well established by Legge nº 400, 1988 (AMARAL JÚNIOR, 2012, p. 57).

In the Brazilian law, the original 1988 constitutional text did not provide any material limitation to the issuance of provisional measures. It only required the occurrence of the requirements of

relevance and urgency. With Constitutional Amendment No. 32 of 2001, through evident and harmful abuses, especially with regard to reissues, a series of material limitations were established in article 62, paragraph 1, of the Federal Constitution, in addition to the express reduction of the possibility of reissues (paragraph 10). About it:

> 1º É vedada a edição de medidas provisórias sobre matéria: I - relativa a: a) nacionalidade, cidadania, direitos políticos, partidos políticos e direito eleitoral; b) direito penal, processual penal e processual civil; c) organização do Poder Judiciário e do Ministério Público, a carreira e a garantia de seus membros; d) planos plurianuais, diretrizes orçamentárias, orçamento e créditos adicionais e suplementares, ressalvado o previsto no art. 167, § 3º; II - que vise a detenção ou sequestro de bens, de poupança popular ou qualquer outro ativo financeiro; III - reservada a lei complementar; IV - já disciplinada em projeto de lei aprovado pelo Congresso Nacional e pendente de sanção ou veto do Presidente da República. [...] § 10º É vedada a reedição, na mesma sessão legislativa, de medida provisória que tenha sido rejeitada ou que tenha perdido sua eficácia por decurso de prazo. (BRASIL, IDEM, Artigo 62).

As mentioned above, the Decree-Law inserted in the constitutional text of 1937 is a precursor of the current provisional measure and was intensely used (about 9,900 Decree-Laws were issued). In view of this abuse, its insertion was rejected in the text of the 1946 Constitution, whose function was exclusively attributed to the National Congress ("Article 36 - [...]; § 2º - Any of the Powers is forbidden to delegate attributions") (SOBRINHO, id, position 1105).

The Brazilian Decree-Law re-emerged with the military coup of 1964, with the publication of the Institutional Acts: "Art. 30 - The President of the Republic may issue complementary acts to the present, as well as decree-laws on matters of national security" (BRAZIL, Institutional Act #2, of October 27th, 1965), and it was again inserted into the constitutional text in the 1967 Constitution and Constitutional Amendment #1, of 1969. The provision was repeated in the Constitution of 1988, with further refinement given by the Constitutional Amendment No. 32 of 2001.

Even if the doctrine sustains that there are implicit material limits for the issuance of provisional measures, the original constitutional text of 1988 did not establish any limitation. This is concluded from the literal reading and interpretation of the text:

> Em caso de relevância e urgência, o Presidente da República poderá adotar medidas provisórias, com força de lei, devendo submetê-las de imediato ao Congresso Nacional, que, estando em recesso, será convocado extraordinariamente para se reunir no prazo de cinco dias. Parágrafo único. As medidas provisórias perderão eficácia, desde a edição, se não forem convertidas em lei no prazo de trinta dias, a partir de sua publicação, devendo o Congresso Nacional disciplinar as relações jurídicas delas decorrentes. (BRASIL, IDEM, Art. 62 antes da redação dada pela Emenda Constitucional nº 32, de 2001)

Doctrine has always inclined to a systematic interpretation of the 1988 Constitution, denying to the provisional measure matters reserved exclusively to the National Congress, such as, e.g., acts of exclusive competence of the National Congress, as well as those of private competence of the House of Representatives and the Federal Senate; matter reserved to supplementary law; organization of the Judiciary and the State Prosecution Office; legislation on nationality, citizenship, individual, political and electoral rights and on multi-year plans, budgetary guidelines and budgets (SOBRINHO, 2017, position 1.394).

In view of this generic authorization to issue provisional measures, the legal and legislative environment has become increasingly anxious to limit it. It was in this scenario that Constitutional Amendment No. 32 of September 11th, 2001, emerged as a brake on the excessive use of provisional measures by the Executive, establishing material limits and regulating the procedure for conversion into law (LIMA AND LIMA, 2013, p. 88).

Several significant changes were incorporated into article 62 of the Federal Constitution of 1988, in light of the Complementary Amendment number 32. About these changes, Lima and Lima (Ibid.) mention that

> Essa redação também foi modificada de novo prazo constitucional de vigência (de 30 maneira na nova redação) também modificou de maneira diversa a redação original contida no texto constitucional. Assim, o prazo passou a ser contatado a partir da publicação da medida provisória, suspendendo-se, no entanto, durante os períodos de recesso parlamentar, diferentemente do que ocorria antes, quando, no caso de medida provisória durante o recesso parlamentar, o Congresso deveria ser convocado extraordinariamente para reunir no prazo de cinco dias.

It can be seen, therefore, that both the Italian Decree-Law and the Brazilian Provisional Measure have undergone evolutions and limitations, especially with regard to the matters allowed to be the object of these institutes, precisely because of the exceptional nature that derives from them, since they are delegated constitutional activities, originating in the Legislative Branch.

2.3 Initiative

The Italian Constitution establishes that the Government (generically) is legitimized to issue the Decree-Law. Sampaio (2007, p. 40) explains that

> O governo, em senso estrito, na Itália, é composto de um gabinete de ministros, chefiado pelo primeiro–ministro, constituindo-se em expressão da maioria parlamentar. Nesse sentido, ainda que se dê análise semelhante ao presidencialismo de coalização, o governo, em regimes parlamentares, é dependente da vontade da maioria do parlamento, porque delegatário seu. Sempre, assim, em princípio, mesmo com a sistemática da excepcionalidade adotada pela redação do art. 77 da constituição da República Italiana, um decreto-lei nasce como ato de delegado do parlamento, porque nasce do governo, que daquele é dependente.

Article 77, II, combined with Article 87, V, both of the Italian Constitution institutionally confer the Italian practice that gives the head of State the same prerogative of resend the Decree-Law to the Council of Ministers. This possibility of referral to the parliament also occurs in relation to the law for further deliberation (AMARAL JÚNIOR, 2012, p. 59).

The adoption of the Italian Decree-Law comes from the deliberation of the Council of Ministers, but, formally, it is issued by the President of the Republic. The president issues the Decree with the indication of the need and urgency that justifies its adoption, as well as the deliberation of the Council of Ministers (Ibid.). It was in this sense that was established in Article 15, paragraph 1, of Legge No. 400 of August 23, 1988, in verbis:

> As medidas provisórias com força de lei ordinária adaptadas nos termos do artigo 77.º da Constituição são apresentadas para emissão ao Presidente da República com a designação de "decreto-lei" e com a indicação, no preâmbulo, das circunstâncias extraordinárias da necessidade 'e urgência que justificam a sua adoção, bem como a resolução do Conselho de Ministros.

No entanto, o chefe de Estado deve agir com prudência no exercício de sua prerrogativa de reenvio do Decreto-Lei ao Conselho de Ministros, a fim de evitar embate partidário e desgaste político (SOBRINHO, 2016, posição 587). A Doutrina italiana posiciona-se no sentido de que o presidente da República não pode se negar a editar o Decreto-Lei que fora confirmado pelo Conselho de Ministros, salvo no caso de explícita ilegitimidade (Ibid.).

Já na Constituição brasileira há indicação expressa de que a iniciativa para edição da medida provisória é do presidente da República. O artigo 62 e parágrafos estabelecem que:

> Em caso de relevância e urgência, o Presidente da República poderá adotar medidas provisórias, com força de lei, devendo submetê-las de imediato ao Congresso Nacional. [...] As medidas provisórias, ressalvado o disposto nos §§ 11 e 12 perderão eficácia, desde a edição, se não forem convertidas em lei no prazo de sessenta dias, prorrogável, nos termos do § 7º, uma vez por igual período, devendo o Congresso Nacional disciplinar, por decreto legislativo, as relações jurídicas delas decorrentes. (BRASIL, Constituição Federal de 1988, Artigo 62, caput e § 3º)

In the Brazilian presidential regime, the verification of the assumptions of the provisional measure and its application reflect the very characteristic of this regime. A peculiar fact is that the power to legislate, typical of the parliamentary regime, is exceptionally granted to the President of the Republic to issue provisional measures, breaking, constitutionally, the independence between the powers.

It can be seen that the main distinction between the initiative for issuing decreti-legge and the provisional measure is strongly based on the government regime of the two countries. While in the Italian parliamentarian regime, the initiative depends on an act of the government coming from the Council of Ministers, in the Brazilian presidential regime, the initiative is assigned to the President of the Republic alone (CLÉVE, 2021, p. 46).

2.4 Requirements/suppositions

In the Italian parliamentary system, the government may resort to the presumption of urgency even in the absence of parliamentary confidence. The urgency assumption refers more to the momentary issue to be provided and verified even if the effects are later. Necessity, on the other hand, is subject to a subjective evaluation exercised by the Government itself. In this regard, Sobrinho (id. position 267-276) states that

> Assim, a necessidade, conforme faz referência a doutrina italiana, não é objetivamente determinável, não tendo, portanto, caráter absoluto, mas sim relativo, isto é, dependente de uma valoração política confiada ao Governo29. Do mesmo modo, a urgência refere-se ao "prover" e não ao provimento em concreto, o que justifica também a não imediata eficácia do decreto-legge30. De fato, uma dada situação pode ser urgente de modo a requerer imediata intervenção legislativa, ainda que os respectivos efeitos jurídicos sejam deixados para um momento sucessivo31. Esta interpretação é confirmada pela prática do decreto-legge italiano; ademais, conforma-se à leitura lata que se faz da "necessidade", assim como explica, ao menos em parte, a frequência que a decretação de urgência conheceu na prática italiana32. No entanto, o fato de o decreto-legge veicular medidas não suscetíveis de imediata aplicação enseja o aprofundamento da pesquisa quanto à real ocorrência dos pressupostos constitucionais da decretação de urgência.

However, the frequency with which the Italian Decree-Law had been used led doctrine to advocate the need for more objective control regarding the assumptions (SOBRINHO, 2017, position 290). Article 15, paragraph 1, of Legge no. 400 of 1988 itself states that the preamble of the Decree-Law must demonstrate the extraordinary circumstances of necessity and urgency evidencing its adoption (Ibid.).

The inevitability of controlling the assumptions of the decreti-legge is a matter received by the Italian Constitutional Court or that this control is done when it is converted into law (AMARAL JÚNIOR, 2012, p. 67). Even if the urgency is implicit in the need for the Italian Decree-Law, only in the occurrence of both does its edition become legitimate (Ibid.).

In the Brazilian constitutional structure, even if the assumptions of relevance and urgency are, in a first moment, of the President's political discretion, they are submitted to the control of both the Legislative and the Judiciary.

In this regard, Sobrinho (id., position 1328-1332) refers to the assumptions of relevance and urgency in the following terms:

> [...] são circunstâncias de natureza puramente política. Num primeiro momento, dizem respeito ao Presidente da República, mas são passíveis de verificação, em toda sua extensão, pelo Congresso Nacional [...] quando a medida provisória versa assunto próprio de lei, na grande maioria das vezes é indiscutível a ocorrência de relevância a legitimar a adoção da medida301. Por isso, dos dois requisitos constitucionais, o juízo político de relevância é o menos suscetível de discussão nos tribunais. [...] Por outro lado, entende-se que era possível extrair do próprio texto constitucional – inclusive no modelo originário previsto na Constituição brasileira de 1988, critérios objetivos para demonstrar a ocorrência, ou não, da urgência a legitimar a adoção de medida provisória em matéria tributária.

It is noteworthy from the Brazilian constitutional permissive that the authorizing assumptions of the provisional measure work as legitimizing sources of extraordinary and atypical action of the President of the Republic (CLÉVE, 2021, p. 67). In view of this caveat regarding the power to legislate, even if in an atypical legislative procedure, Cléve (2021, p. 67) emphasizes that the provisional measure requires formal and circumstantial assumptions.

The doctrinaire lists the following as formal assumptions: "(i) issuance by the president of the Republic; and (ii) immediate submission to the National Congress", and circumstantial assumptions: "(i) relevance; and (ii) urgency" (Ibid.).

Even if the Brazilian constitutional provision has replaced the Italian "necessity" by "relevance", we have that both this requirement and urgency have an eminently political nature of high discretion within the material limits established by the Federal Constitution itself (AMARAL JÚNIOR, 2012, p. 152).

2.5 Effectiveness

In the Italian Constitution, article 77 provides that

> Os decretos perdem eficácia desde o início se não forem convertidos em lei no prazo de sessenta dias desde a sua publicação. As Câmaras podem, todavia, regular com a lei as relações jurídicas que surgem na base dos decretos não convertidos. (ITÁLIA, Constituição da República Italiana, de 22 de Dezembro de 1947, Art. 77)

Amaral Júnior (Ibid., p. 57), when discussing the effectiveness and not the validity of the Italian decree-law mentions that "Therefore, the decree-law is a legitimate act in view of the occurrence

of an extraordinary case of necessity and urgency, whose subsequent effectiveness - and not validity - is subject to conversion into law within the constitutional deadline".

In the Brazilian constitutional system, article 62, paragraph 3 of the Federal Constitution provides that

> As medidas provisórias, ressalvado o disposto nos §§ 11 e 12 perderão eficácia, desde a edição, se não forem convertidas em lei no prazo de sessenta dias, prorrogável, nos termos do § 7º, uma vez por igual período, devendo o Congresso Nacional disciplinar, por decreto legislativo, as relações jurídicas delas decorrentes. (BRASIL, Constituição Federal de 1988)

The effectiveness period of the provisional measure adopted an objective criterion which starts to count from its publication in the Federal Official Gazette, which avoids any fraud in the enjoyment of its term, because this is extremely important for its subsequent effects (AMARAL JÚNIOR, 2012, p. 158).

There are some situations expressly provided for in the Brazilian constitutional text providing for the extension of the effectiveness time of the provisional measure. The Federal Constitution, after Constitutional Amendment no. 32 of 2001, establishes the following extension deadlines: during the National Congress recess ("The term referred to in paragraph 3 shall be counted from the publication of the provisional measure, being suspended during the National Congress recess periods"); once only and for the same period if voting has not been concluded in the National Congress ("A provisional measure shall be extended once only for the same period of time if voting has not been concluded in the two houses of the National Congress within sixty days of its publication) and in the period between the presidential sanction and its publication in law (BRAZIL, Federal Constitution of 1988, Article 62, §§ 4 and 7).

Even if the Italian decree-law and the Brazilian provisional measure are exceptional legislative measures, their effectiveness is temporary if not submitted to the Legislative Branch.

3 CONSTITUTIONALITY CONTROL

3.1 Comparative Law

In the Italian and Brazilian constitutional controls, the analysis of the Decree-Law and the Provisional Measure, respectively, can be done both in view of their necessity and urgency/relevance and urgency requirements, and in the political aspects (by the Houses/Congress or by the president at the moment of approval) and judicial aspects (by the Constitutional Court/Supreme Federal Court). These and other issues related to the control of constitutionality of these institutes will be demonstrated below, and in a comparative manner.

3.1.1 Italian constitutional law

Regarding the Italian control of constitutionality, the already mentioned article 134 of the Constitution of the Italian Republic establishes that it is the responsibility of the Constitutional Court to judge, among other occurrences, "controversies regarding the constitutional legitimacy of laws and acts, with the force of law, of the State and the Regions", here logically included the Decree-Law.

The Italian Constitutional Court is composed of 15 judges, for a nine-year term, originated and appointed by the three branches of government.

> O Tribunal Constitucional é composto por quinze juízes nomeados por um terço pelo Presidente da República, por um terço pelo Parlamento em sessão comum e por um terço pelas supremas magistraturas ordinárias e administrativas. Os juízes do Tribunal Constitucional são escolhidos por entre os magistrados também reformados das jurisdições superiores ordinárias e administrativas, os professores catedráticos de universidades em matérias jurídicas e os advogados após vinte anos de exercício. Os juízes do Tribunal Constitucional são eleitos por nove anos, a contar a partir do dia do juramento para cada um, não podendo ser novamente eleitos.(ITÁLIA, Constituição da República Italiana, de 22 de Dezembro de 1947, Artigo 135).

In addition to the judgment of constitutional legitimacy, the Italian Constitutional Court is also competent to decide regarding conflicts of attributions between the powers of the state (CICCONETTI E TEIXEIRA, 2018, p. 149). The authors also draw attention to the danger of this competence, in view not only of the principle of impartiality of the judge but also the fact of depositing this function to a body (Constitutional Court) whose components belong to one power. (Ibid.).

The Italian constitutionality control can be exercised either in a concentrated way, with the matter being directly challenged before the Constitutional Court, or in a diffuse way, in any court. However, if this incident is accepted by the magistrate and is not manifestly unfounded, it will be instructed and sent to the Constitutional Court for judgment.

The control of constitutionality of the Italian decreti-leggi has always been accepted by the doctrine, even by constitutional support, as seen above in the reading of article 134, which establishes the constitutional court to settle "controversies regarding the constitutional legitimacy of laws and acts, with the force of law, of the State and the Regions".

This Italian constitutional control over the Decree-Law has the particularity of taking place in the face of the "conversion law". However, as already mentioned above, the Italian doctrine and judgments understand that the control of the converted law does not ratify the previous Decree-Law, which can be examined as well as the converted law.

The conversion does not prevent the unconstitutionality of the original Decree-Law from being declared with repercussions on the converted Law. Consequently, the judicial analysis of the assumptions of necessity and urgency, even if they integrate the institute as a kind of political discretion of the sender, may also be subject to constitutionality control as to their adequacies.

About this particular, Cléve (2021, p. 173) highlights that:

> Na Itália, há doutrina no sentido de que os pressupostos de habilitação da medida provisória substanciam conceitos cuja valoração compete, exclusivamente, ao Governo, que a edita, e ao Parlamento, que a converte em lei. A doutrina mais recente, entretanto, admite a possibilidade de controle jurisdicional. É o caso de Zagrebelsky, por exemplo, para quem o controle, por parte da Corte Constitucional, haverá de ater-se não ao mérito da valoração política em relação à necessidade e urgência, mas à congruência em relação ao escopo constitucionalmente estabelecido. Este tipo de controle, que atende a uma hipótese de excesso de poder, na forma de desvio, foi entendido como admissível quando os pressupostos "revelem-se manifestamente insubsistentes, ou quando ocorra um contraste evidente entre a alegada situação de necessidade e o conteúdo do próprio provimento".

It can be seen, therefore, that this judicial control of constitutionality predicted in the Italian incident system operates not only over the Decree-Law and its conversion law, but especially over the assumptions of necessity and urgency, both in the primary legislative phase of the Decree-Law

and in relation to the subsequent law, which clearly indicates the intention to avoid excess in the use of the exceptional legislative power of the Government.

3.1.2 Brazilian constitutional law

The Brazilian Constitution, in its article 102, item I, letter "a", delegates the competence to control constitutionality in the following terms:

Compete ao Supremo Tribunal Federal, precipuamente, a guarda da Constituição, cabendo-lhe: I - processar e julgar, originariamente: a) a ação direta de inconstitucionalidade de lei ou ato normativo federal ou estadual e a ação declaratória de constitucionalidade de lei ou ato normativo federal. (BRASIL, Constituição Federal de 1988)

The Supreme Federal Court is composed, as established by article 101 of the Federal Constitution, of eleven Justices, appointed by the President of the Republic, with a term of office until they reach the age of 75 ("The Supreme Federal Court is composed of eleven Justices, chosen from among citizens over thirty-five and under seventy years of age, of notable juridical knowledge and unblemished reputation") (BRAZIL, Federal Constitution of 1988).

The Brazilian constitutional system has both concentrated and diffuse control, which also includes provisional measures issued by the president of the Republic. This control can be exercised either previously, by the Federal Supreme Court, even in liminarily, or through a Direct Action of Unconstitutionality of the Conversion Law, with permissive analysis of the constitutionality of this law or of the provisional measure that gave rise to it. That is, in the latter case the Conversion Law does not validate eventual unconstitutionalities of the original provisional measure.

Considering the legal nature of the provisional measure, the President of the Republic, in his discretionary power, as well as the National Congress, when considering the conversion into law of the provisional measure issued, has the legitimacy of constitutional control of that institution. Under our constitutional system, the Federal Supreme Court may exercise control over the material constitutionality of provisional measures by means of a direct action of unconstitutionality.

It is argued that the constitutionality of the provisional measure already converted into law should be analyzed. There was a debate about the viability of the Federal Supreme Court evaluatively verifying the occurrence of the assumptions of relevance and urgency for the issue of the respective provisional measure. This was especially so because, even in the case of primary legislation with the force of law, these requirements would be at the discretion of the President of the Republic, given the political nature of the instrument. This rare diagnosis also aims to assess the occurrence of a patent deviation or abuse of the legislative power exceptionally delegated to the President of the Republic.

This possibility is clear from the contents of the vote given by Justice Sepúlveda Pertence, in the Direct Action for Unconstitutionality No. 1.753, in the following terms:

> O caso faz retornar à mesa do Tribunal a questão de sindicabilidade jurisdicional da concorrência dos pressupostos de relevância e urgência para a edição de medida provisória. Jamais lhes conferiu a Corte a carta de total imunidade à jurisdição; pelo contrário, desde a primeira vez – malgrado lhes reconhecendo o inegável coeficiente de discricionariedade – o Tribunal advertiu – invocando Biscaretti di Ruffia – a possibilidade de controlar o abuso de poder, que no ponto se manifestasse (ADIn/MC 162, 14/12/1989, Moreira Alves e também na ADInMC 1130, 21/9/1194, Velloso), fácil compreender, no entanto, que se cuide de reserva para hipóteses excepcionalíssimas – o que explica – malgrado a existência de votos vencidos em casos diversos – jamais haja

> o Plenário admitido a relevância das arguições a propósito suscitadas. (BRASIL, Supremo Tribunal Federal, Plenário, ADI 1753/DF, em 17 de Setembro de 1998).

Along the same lines, in the Direct Unconstitutionality Action no. 4.717/DF, the Federal Supreme Court unanimously understood the possibility of the Court, exceptionally, formally analyzing provisional measures. Reporting by Justice Carmem Lúcia, this possibility extended even after its conversion into law, declaring it unconstitutional in the case of abuse and/or deviation of the normative power of the Minister. In verbis:

Este Supremo Tribunal manifestou-se pela possibilidade e análise dos requisitos constitucionais para a edição de medida provisória após a sua conversão em lei. A jurisprudência deste Supremo Tribunal admite, em caráter excepcional, a declaração de inconstitucionalidade de medida provisória quando se comprove abuso da competência normativa do Chefe do Executivo, pela ausência dos requisitos constitucionais de relevância e urgência. Na espécie, na exposição de motivos da medida provisória não se demonstrou, de forma suficiente, os requisitos constitucionais de urgência do caso. (BRASIL, Supremo Tribunal Federal, Plenário, ADI 4.717/DF, em 05 de Abril de 2018).

An interesting issue related to this matter was dealt with in the Direct Unconstitutionality Action no. 2.58-9/ DF. Reporting by the then minister Aldir Passarinho, the Federal Supreme Court understood that, if the provisional measure is altered when converted, there is no way to proceed with the amendment of the direct action of unconstitutionality filed. The possibility of converting such action to oppose the Conversion Act was not recognized. This, even if the action was in an embryonic phase, that is, before the president had been notified to initially manifest on the direct action of unconstitutionality. This is how the Summary was worded:

> AÇÃO DIRETA DE INCONSTITUCIONALIDADE DA MEDIDA PROVISORIA N. 160/90 – SUA CONVERSAO SUPERVENIENTE, COM ALTERAÇÕES, NA LEI N. 8.033/90 – IMPOSSIBILIDADE DE ADITAMENTO DA INICIAL. A lei de conversão, derivada de medida provisória objeto de ação direta de inconstitucionalidade, tendo operado alterações no conteúdo material desse ato normativo editado pelo Presidente da Republica, constitui espécie jurídica diversa, não podendo ser impugnada na mesma ação, mediante simples aditamento da petição inicial. (BRASIL, Supremo Tribunal Federal. Plenário. ADI 258/DF, em 26 de Abril de 1991).

When the law is converted intercurrently, that is, during the processing of the direct action of unconstitutionality against the provisional measure, if it is of a material nature, the action may proceed provided that the content of the Conversion Law is exactly the same as the content of the provisional measure. If there is a change of content in this law, the direct action of unconstitutionality will be prejudiced, and a new action must be filed against the converted law. If the question of order is formal, even with the conversion into law, the direct action of unconstitutionality against the provisional measure will proceed, because such conversion does not validate the unconstitutionality of the provisional measure.

This understanding was established by the Brazilian Constitutional Court when judging ADI 6217, where the reporting judge highlighted several precedents of the aforementioned court, from which I highlight the following:

> [...] A conversão em lei de medida provisória impugnada, mesmo se introduzidas alterações substanciais, não necessariamente acarretará em perda de objeto da ação direta de inconstitucionalidade, cabendo a esta Corte prosseguir no julgamento da respectiva ação, quando forem questionados os pressupostos constitucionais – urgência e relevância – para a edição daquele ato normativo. Nesse sentido: AgR na ADI 5.599,

> Rel. Min. Edson Fachin, decisão monocrática proferida em 01.08.2017, DJe 03.08.2017. [...] (BRASIL, Supremo Tribunal Federal, ADI 6217/DF, Min. Relator Ricardo Lewandowski, voto em 30 de abril de 2021).

The Federal Supreme Court has acted punctually and precisely in the analysis of the regularity of the processing of provisional measures in the National Congress so that both houses that compose it repudiate provisional measures with matters in disagreement with its own constitutional essence (CRUZ, 2017, p. 201).

In this sense, the Supreme Court, despite the reservation of discretion in the motivation of the requirements of relevance and urgency of the provisional measure, admits the analysis of its constitutionality. The exceptional political character of the mentioned institute does not prevent this possibility even after the conversion of the provisional measure. It should be emphasized that this is done to safeguard the inalterability of the converted text, as well as to verify the constitutional adequacy of the Conversion Law itself. Concentrated and diffuse control of provisional measures prevents the automatic convalidation of eventual constitutional inadequacies, which may occur even preliminarily.

The Brazilian Constitutional Court has also expressed itself on the possibility of maintaining the analysis of the provisional measure even after its conversion into law. As can be extracted from the decision exposed in the vote of Justice Edson Fachin, in Direct Action for Unconstitutionality No. 5.599:

> [...] É pacífico o entendimento, nesta Suprema Corte, que da apreciação de medida provisória pelo Congresso Nacional e sua posterior conversão em lei não decorre imediato óbice ao prosseguimento de ação que questione a constitucionalidade de seu teor. Entretanto, ocorrendo alterações significativas de forma e matéria entre a medida provisória e seu projeto de lei de conversão, permite-se extinguir a ação direta de inconstitucionalidade por perda superveniente de objeto. [...]Resta, portanto, patente que as alterações introduzidas pelo Projeto de Lei de Conversão nº 34/2016, posteriormente transformado na Lei nº 13.415/2017 são significativas a ponto de interromper a continuidade normativa do texto primitivo da medida provisória ora impugnada, resultando na perda do interesse de agir por parte do partido político proponente. Ante o exposto, julgo extinta, por perda de objeto, a presente ação direta de inconstitucionalidade, com fundamento no inciso IX, do art. 21 do RISTF. (BRASIL, Supremo Tribunal Federal, ADI 5599/DF, Min. Relator Edson Fachin, voto em 20 de Abril de 2017).

It can be seen, therefore, that the position is that the mere conversion of the provisional measure does not validate any defects contained therein. In this sense, and as already mentioned above, if there are no changes in the text of the provisional measure upon its conversion into law, such conversion is not, roughly speaking, a reason that prevents the analysis of the claim of unconstitutionality of the original provisional measure.

4 COMPARATIVE CHART

The history of Brazil shows us that we have always drunk from foreign legal sources. Holanda (2014, p. 35) writes: "Bringing from distant countries our forms of coexistence, our institutions, our ideas, and endeavoring to maintain all this in an environment often unfavorable and hostile, we are still today some exiles in our land". Indeed, one should be very careful when analyzing foreign law institutes, because they are subject to different development from those compared (AMARAL JÚNIOR, 2012, p. 214).

Our legal complex based on the Roman-Germanic system assimilated several institutes, among them the model of the Italian decreti-legge that evolved into the provisional measure inserted into our constitutional law. Given the comparative constitutional analysis between the Italian Decree-Law and our provisional measure, even in the face of the intimate relationship of origin and identity of legal system, in some points they differ, especially in view of the regime of government of Italy and Brazil.

COMPARATIVE BOARD

	Provisional Measure	Decreti-Legge
Assumptions	Relevance and urgency	Necessity and urgency
Subject	Limitations (EC32/2001)	Without limitations
Legislative Process	Bicameral deliberation	Bicameral deliberation
Government system	Presidentialism	Parlamentarism
Initiative	President of the Republic	Council of Ministers, but edited by the Head of State
Judicial Nature	Primary normative act of a material nature and with the force of law	Primary normative act of a material nature and with the force of law
Effectiveness (deadline)	60 days	60 days

5 CONCLUSION

Our positive system, rooted in the Roman-Germanic model, logically sought inspiration in the Italian decree-law for the insertion of the provisional measure in our constitutional system. As seen above, when comparing the two institutions in light of their constitutional framework, there are several identities between them, but, likewise, there are nuances specific to each.

The formation and structure of the countries themselves (Italy and Brazil), starting with the government regime, already constitute a notable difference that influences the use of the Italian decree-law and the Brazilian provisional measure. Italian parliamentarianism and Brazilian presidentialism, as regimes in which the relationship between the powers, especially between the Executive and the Legislative, are essential in the use/abuse of these institutes and have little influence on their judicial control.

Other differences are also fundamental, but they correlate to merely procedural issues such as material limitations, processing before the Legislative Branch, re-editions, efficacy, etc.

However, when it comes to the control of these institutes, there are, with some discrepancies, identities between them. Generally speaking, this can be done both by the Legislative Branch itself, when examining the enactments issued, and by the Judiciary Branch. We have seen that this occurs especially in the face of the Decree-Law / Provisional Measure and its respective Conversion Law, as well as the occurrence of specific requirements.

The evolution of the Italian Decree-Law and the Brazilian Provisional Measure and the reduction of distortions do not constitute a weakening of the institutional and political structure of the respective countries (SOBRINHO, 2017, position 4.381). These institutes do not offend the principle of separation of powers or harm the legitimacy of the legislative process, nor do they shake the confidence of citizens. Their use with constitutional fairness does not violate, but guarantees the effectiveness of legal security (Ibid.).

Therefore, the two institutes constitute exceptional delegation of lawmaking power, which, even if subject to material limitations and legislative and judicial controls, represents, regardless of the government regime, an important governing tool.

REFERÊNCIAS

AMARAL JÚNIOR, José Levi de Mello. **Medida Provisória**: Edição e Conversão em Lei. Teoria e Prática. 2. ed. São Paulo: Saraiva, 2012.

BETTINI, Lúcia helena Polleti. **O direito constitucional comparado**: breve análise das Sociedades tribais e suas instituições. Estudos de Direito Constitucional Comparado. Garcia, Maria; Amorim, José Roberto Neves (Coord.). São Paulo: Elsevier Editora Ltda. 2007.

BRANCO, Paulo Gustavo Gonet; MENDES, Gilmar Ferreira. **Curso de direito constitucional**. 2021. 16. ed. São Paulo: Saraiva.

BRASIL. **Ato Institucional Nº 2, de 27 de Outubro de 1965.** Mantém a Constituição Federal de 1946, as Constituições Estaduais e respectivas Emendas, com as alterações introduzidas pelo Poder Constituinte originário da Revolução de 31.03.1964, e dá outras providências. Disponível em http://www.planalto.gov.br/ccivil_03/ait/ait-02-65.htm. Acesso em: 22 set. 2022.

_____. **Constituição dos Estados Unidos do Brasil, de 10 de Novembro de 1937.** Disponível em http://www.planalto.gov.br/ccivil_03/constituicao/constituicao37.htm. Acesso em: 21 set. 2022.

_____. **Constituição da República Federativa do Brasil de 1988.** Disponível em: http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm. Acessado em: 23 nov. 2021.

_____. **Lei de Introdução às Normas do Direito Brasileiro**. Disponível em: http://www.planalto.gov.br/ccivil_03/Decreto-Lei/Del4657.htm. Acessado em: 21 ago. 2022.

_____. **Lei Nº 13.105, de 16 de março de 2015**. Código de Processo Civil. Disponível em http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2015/lei/l13105.htm. Acesso em:22 set. 2022.

_____. Supremo Tribunal Federal. **Ação Direta de Inconstitucionalidade – 258/DF**. Julgamento em plenário em 26.04.91. Publicação em 28.2.1992. Disponível em: https://jurisprudencia.juristas.com.br/jurisprudencias/post/stf-adi-258-qo-df-distrito-federal-questc3a3o-de-ordem-na-ac3a7c3a3o-direta-de-inconstitucionalidade. Acesso em: 25 nov. 2021.

_____. Supremo Tribunal Federal. **Ação Direta de Inconstitucionalidade 1753**. Relator Ministro Sepúlveda Pertence. Julgamento em 17.9.1998. Publicação em 23.10.1998. Disponível em: https://stf.jusbrasil.com.br/jurisprudencia/14698181/questao-de-ordem-na-acao-direta-de-inconstitucionalidade-adi-1753-df. Acesso em: 26 nov. 2021.

_____. Supremo Tribunal Federal. **Ação Direta de Inconstitucionalidade 4717/DF**. Relatora Ministra Carmem Lucia. Julgamento em 05.4.2018. Publicação em 13.4.2018. Disponível em:

https://stf.jusbrasil.com.br/jurisprudencia/768149784/acao-direta-de-inconstitucionalidade-adi-4717-df-distrito-federal-9940164-1720121000000. Acessado em: 28/11/2021.

_____. Supremo Tribunal Federal. **Ação Direta de Inconstitucionalidade 5599**. Relator Ministro Edson Fachin. Julgamento em 20.4.2017. Publicação em 24.4.2017. Disponível em: https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=12777867&prcID=5061012&ad=s#. Acessado em: 24 nov. 2021.

_____. Supremo Tribunal Federal. **Ação Direta de Inconstitucionalidade 6217/DF**. Relator: Ricardo Lewandowski, Data do Julgamento: 30/04/2021, Data de Publicação: 04/05/2021. Disponível em: https://stf.jusbrasil.com.br/jurisprudencia/1202683505/acao-direta-de-inconstitucionalidade-adi-6217-df-0027291-2220191000000/inteiro-teor-1202683512. Acesso em: 28/11/2021.

CICCONETTI, Stefano Maria; TEIXEIRA, Anderson Vichinkeski. **Jurisdição constitucional comparada**. 2. ed. Belo Horizonte: Fórum. 2018.

CLÈVE, Clèmerson Merlin. **Medidas provisórias** (livro eletrônico). 4. ed. São Paulo: Thomson Reuters Brasil, 2021. Edição do Kindle.

CRUZ, Fabrício Bittencourt da. **Medida provisória**: dogmas e realidades. São Paulo: Editora dos Tribunais. 2017.

GIL, Antônio Carlos. **Como elaborar projetos de pesquisa**. 5. ed. São Paulo: Atlas, 2010.

GODOY, Arnaldo Sampaio de Moraes. **Direito constitucional comparado**. Porto Alegre: Sergio Antônio Fabris Editor. 2006.

HOLANDA, Sérgio Buarque de. **Raízes do Brasil**. 27. ed. São Paulo: Companhia das Letras. 2014.

ITALIA. **Constituição da República Italiana de 22 de Dezembro de 1947**. Disponível em: https://www.senato.it/sites/default/files/media-documents/COST_PORTOGHESE.pdf. Acesso em: 23 nov. 2021.

_____. Corte Costituzinale. Sentença 29/1995. **Giudizio di legittimità costituzionale in via principale**. Relator: Antonio Baldassarre. Julgamento em: 12/11/1995. Publicado em: 01/02/1995. Disponível em: https://www.cortecostituzionale.it/actionRicercaSemantica.do. Acessado em: 23 nov. 2021.

_____. **Legge 400, de 23 de agosto de 1988**. Disciplina da atividade governamental e organização da Presidência do Conselho de Ministros. Publicada em 12/9/1988. Em vigor a partir de 27/9/1988. Disponível em: https://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=1988-09-12&atto.codiceRedazionale=088G0458&atto.articolo.numero=0&atto.articolo.sottoArticolo=1&atto.articolo.sottoArticolo1=10&qId=2b95d102-1333-4c88-b2d5-dcf18457b68b&tabID=0.22510467627873076&title=lbl.dettaglioAtto&generaTabId=true. Acesso em: 24 nov. 2021.

LIMA, Eduardo Martins de; LIMA, Virgínia Silame Maranhão. **Medidas provisórias e sistemas de controle**. Medidas Provisórias no Brasil. Origem, Evolução e Perscpectivas. José Alfredo Baracho Júnior e Eduardo Martins de Lima (coord.).Belo Horizonte: Editora Fórum. 2013.

POGREBINSCHI, Thamy. **Controle de constitucionalidade dos decreti-legge**: uma experiência italiana. Disponível em:

https://www2.senado.leg.br/bdsf/bitstream/handle/id/611/r147-09.PDF?sequence=4&isAllowed=y. Acesso em: 23 nov. 2021.

ROCHA, Maria Elizabeth Guimarães Teixeira. Prefaciante. **Direito constitucional comparado**. Arnaldo Sampaio de Moraes Godoy. Porto Alegre: Sergio Antônio Fabris Editor. 2006.

SAMPAIO, Marco Aurélio. **A medida provisória no presidencialismo brasileiro**. 1. ed. São Paulo: Malheiros Editores Ltda.: 2007.

SOBRINHO, Osvaldo. **Medida Provisória**: um paralelo entre os direitos brasileiro, italiano e argentino, sob a perspectiva da segurança jurídica. Edição digital. Cuiabá: Carlini & Caniano Editorial. 2017.