The Brazilian Prosecutor's Office

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Abstract: This article explores the rise of prosecutorial independence in Brazil and its impact on its democratic landscape. Focusing on the period after the 1988 Constitution, it examines the Public Prosecutor's Office (PPO) role within the criminal justice system, its historical evolution, and its organizational dynamics. We focused on the tension between the PPO's increasing independence and its interactions with other state entities, such as the judiciary, non-governmental organizations, and the media.

While traditionally characterized by autonomy, legal adherence, and controlled discretion, the PPO has shifted in recent decades. Since the 1990s, the Brazilian criminal justice system has embraced negotiation techniques and mechanisms, empowering prosecutors' power while fostering transparency and oversight. However, this trend has also presented a contemporary challenge: the need for effective collaboration in complex corruption and organized crime cases, especially considering the risk of overlapping initiatives across various jurisdictions.

Ultimately, the study delves into the pivotal role and significance of the PPO in shaping modern Brazilian politics. It analyzes its counter-majoritarian functions and prerogatives and considers how they interact with the principles of democratic balance and accountability.

Keywords: Brazilian Prosecutor's Office; Criminal justice system; Independence.

1. Introduction

The 1988 Federal Constitution is a milestone for Brazilian Democracy and human rights, with undeniable influence on the criminal justice system, whether in defining its vocation for the promotion and protection of rights and safeguards or in its organization through decentralization and division of powers, as well as in establishing reciprocal controls.

It is worth noting, in this sense, the banishment of cruel punishments, the impartiality and passivity of the judge, the dialectical and adversarial nature of the process, the equality of arms, and, most importantly, the recognized role of the Public Prosecutor's Office, which holds the authority over public criminal prosecution.

The Brazilian criminal procedural system arises from an evident inquisitorial tradition. The Criminal Code of 1832 was influenced by the ordinances of the king of Portugal during the colonial period. The current Code of Criminal Procedure, in effect since 1941 and adopted during a period of dictatorship in Brazil, was also influenced by the Rocco Code, which similarly had an inquisitorial origin.

However, despite more than 80 years since its enactment, the Brazilian Code of Criminal Procedure has undergone structural changes, primarily motivated by the post-World War II internationalization of human rights and the 1988 Federal Constitution. It incorporated the universally conceived model of a fair process, which is more transparent, controllable, participatory, and adversarial—a process where the parties play a prominent role and a judge's reduced role.

The origin of the Brazilian criminal procedural system is associated with the debate over the evolution of inquisitorial[1] and accusatorial[2] models, which is not the subject of this study. It is important to note that both models were profoundly influenced in the second half of the 20th century by the framework of international human rights documents.

Such a framework reveals the ideal of a fair process model, characterized by principles of judge impartiality, respect for the accused person, publicity as a rule, the right to be heard, and the inviolability of the defense. Violating these principles compromises the fairness of the process[3], regardless of whether the adopted procedural system is of an inquisitorial or accusatorial origin.

It is worth highlighting, in this sense, the separation of the functions of accusation and judgment in the 1988 Federal Constitution. The function of accusation is exclusively reserved for the Public Prosecutor's Office and, exceptionally, in cases expressly provided for by Law, for the victim. On the other hand, the function of judgment and the trial of common crimes is reserved for the judiciary, and the legislative branch is responsible for cases of political crimes, such as impeachment cases.

The function of investigation, which is part of the criminal prosecution cycle, was regulated in Article 144 of the Federal Constitution and assigned to the federal and State police forces and the police force of the Federal District. The question in Brazil is whether this assignment to the police excludes the possibility of other entities conducting investigations, such as the Public Prosecutor's Office. This issue will be addressed in a separate topic later.

Starting from the 1988 Federal Constitution, critical legislative changes have taken place to enhance the framework of fair process safeguards, among which the role of the parties is particularly noteworthy. In this regard, the new democratic 1988 Constitution introduced negotiation tools such as plea bargains, conditional Suspension of proceedings, plea cooperation, and, more recently, non-prosecution agreements.

These changes expand the powers of the Public Prosecutor's Office, especially in the interpretation of meeting the objective and subjective elements required in each of these situations. On the other hand, this reinforces the importance of oversight to reduce the risk of abuse of power.

The approach proposed in the text encompasses the analysis of the historical evolution of the Brazilian Public Prosecutor's Office, its organization since the 1988 Federal Constitution, and the role of the Public

[1] See also, A. Cassese, *International Criminal Law*, New York, 2003, 365-367.
[2] G. Ubertis, *Principi di procedura penale europea. Le regole del giusto processo*, 2 ed., Milan, 2009, 9-14.
[3] G. Ubertis, *Principi di procedura penale europea. Le regole del giusto processo*, cit., 15.

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Prosecutor's Office in the criminal justice system, both as a party and as a guardian of the Law, in investigation and criminal prosecution.

In addition to outlining the historical institutional process, we will delve into the evolution of the Public Prosecutor's Office as a counter-majoritarian institution, which offers mechanisms for scrutiny, accountability, and oversight over political representatives. Pierre Rosanvallon's concept of counter-democracy influences our understanding of this point. Counter-democracy denotes a modern iteration of Democracy that incorporates vital institutional complements to temper the majoritarian facets of electoral Democracy, achieved through the skepticism prompted by the continuous functions of professional oversight bodies such as the PPO. This entails structured modes of control, monitoring, and supervision, all of which harbor a significant undercurrent of mistrust toward the majoritarian institutions, thus counterbalancing the dynamics of a pure electoral democratic system[4].

From this perspective, institutions and actors monitoring and exerting external control over elected representatives have been pivotal in triggering a notable shift in public opinion toward state institutions. This shift contributes to the weakening authority of the elite, a phenomenon observed in political science literature and emphasized by Rosanvallon (2008) and other liberal thinkers as a prevailing tendency across modern democratic systems worldwide. This shift also enhances citizens' awareness of public matters. However, the outcome of these broad political processes is not always beneficial for the stability of democratic regimes, as institutional mistrust can empower populist and autocratic leaders. Despite acknowledging the potential adverse impact of mistrust in public institutions, particularly the representative framework of the State, the establishment and advancement of counter-majoritarian institutions are an inherent aspect of any contemporary democracy. These institutions function as a harmonizing influence, enforcing institutional accountability, and advocating for more effective policies.

The role of the Prosecutor's Office as a "fourth branch of state powers" has been the subject of an intense debate among legal scholars. Tushnet (2021), in his book "The New Fourth Branch," provides a critical perspective on this concept, offering insights into the evolving dynamics of state powers and the implications for Democracy. Although Tushnet provided a thought-provoking perspective on the evolving dynamics of state powers, particularly the role of the Prosecutor's Office as a "fourth branch," we would like to critically analyze the author's argument considering the dynamics of the public opinion formation and its impact over political allayment's. Arguably, the rising influence of the power of the Prosecution Officer in the political system directly impacts the *elite partisan polarization* and the *public opinion formation* process in issues such as the support for Democracy. Tushnet's argument accounts for the influence of elite partisan polarization on the perceived role of the Prosecutor's Office and its legitimacy in the eyes of the public, which are central aspects of the Brazilian political debate during 2020, although with unclear consequences so far.

[4] P. Rosanvallon, A. Goldhammer, *Counter-Democracy: Politics in an Age of Distrust*, Cambridge, 2008.

Furthermore, the relationship between the Prosecutor's Office and public opinion is relevant here. Public awareness in the face of criminal justice policies highlights the existent interplay between prosecutorial activities and public opinion. Similarly, a locally relevant issue in the Brazilian political context is how the ongoing criminal justice transformations and intended reforms reflect or are shaped by the influence of public opinion. We will debate the intricate connections between the Prosecutor's Office actions and public sentiments and perception.

We intend to provide an encompassing view of the transformative path taken by the Brazilian Prosecutor's Office. It attempts to provide a comprehensive exploration of its institutional development. It aims to discuss the Prosecutor's Office's dual role: a significant force within the criminal justice system and a counter-majoritarian political institution. These intertwined roles have had a pivotal influence on shaping the course of contemporary Brazilian Democracy.

From a normative standpoint, counter-democracy does not oppose electoral democratic institutions but complements them. However, in the political context, particularly within the framework of the transition from military to democratic governance we are currently describing, the evolution of the PPO stands out remarkably. Its significance extends beyond the confines of the criminal justice system, influencing the very fabric of contemporary Brazilian politics and the underlying rationale behind our intention to interlink these dual facets in our analysis of the PPO's evolution in Brazil.

2. Historical Evolution of the Brazilian Public Prosecutor's Office up to the 1988 Federal Constitution: organization; independence; relationship with the Executive, Legislative, and Judicial branches

The initial traces of the Public Prosecutor's Office in Brazil originate from Portuguese Law due to the historical colonization process starting in 1500. Although the Manueline Ordinances of 1521 and the Philippine Ordinances of 1603 mentioned Public Prosecutors, who were responsible for overseeing the Law and promoting criminal prosecution, the concept of the Public Prosecutor's Office as an institution in Brazil did not exist during the colonial and imperial periods.

Only in 1890, during the republic era, did the Public Prosecutor's Office begin to be recognized as an institution in Brazil through Decree No. 848 of November 11, 1890.

In the 1934 Federal Constitution, for the first time, the Public Prosecutor's Office was explicitly outlined in its chapter in a Federal Constitution (Articles 15, 96, and 97). This Constitution stipulated that the Attorney General of the Republic is the head of the Federal Public Prosecutor's Office, appointed by the President of the Republic with the Senate's approval. At this point, the Public Prosecutor's Office was equated with the judiciary regarding attributions and safeguards, making its members irremovable and with a lifelong tenure, with no possibility to decrease their salaries. The Public Prosecutor's Office transitioned from

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being a mere government delegate to representing society with its own characteristics and independent prerogatives.

However, the Constitution granted during Vargas's dictatorship on November 10, 1937, imposed severe setbacks on the Public Prosecutor's Office. The position of Attorney General of the Republic became subject to the President's free choice and dismissal (Article 99).

In the Democratic Constitution of 1946, the Public Prosecutor's Office was outlined in its section (Articles 125 to 128), which defined its organization at the federal and State levels (Article 128), assigned the institution the representation of the Union, established entry rules into the career through competition, and ensured stability and non-removability safeguards (Article 127), as well as progression in rank (Article 128).

With the military coup in 1964, the Public Prosecutor's Office faced persecution and attempts to weaken it, but it managed to maintain its autonomy and even expand its responsibilities. The new Constitution, promulgated on January 24, 1967, positioned the Public Prosecutor's Office as a section within the Judicial Power chapter under its Articles 137 to 139. 1988, following the country's democratization and the birth of the Constitution, the Public Prosecutor's Office gained even more autonomy and played a crucial role in safeguarding citizens' rights and overseeing the government.

Unlike previous constitutions, the 1988 Federal Constitution devoted a separate chapter to the Public Prosecutor's Office, distinct from the other powers, and explicitly recognized in Article 127 that it is a "permanent institution, essential to the State's judicial function, responsible for defending the legal order, the democratic regime, and the social and individual interests that cannot be waived."

Federal Law No. 8,625, dated February 12, 1993 (National Organic Law of the Public Prosecutor's Office), establishes general rules for defining the organization, attributions, and statute of the Federal and State Public Prosecutor's Offices. Each of these enacted their respective organic laws.

Although the Public Prosecutor's Office is not integrated into the structure of the other branches of the State, there is a symmetrical relationship with them, as it enjoys administrative, political, and financial autonomy. For instance, the budget proposal is originally drafted within the Public Prosecutor's Office before being sent to the legislative and executive branches and any other initiatives related to the career organization. Judges and prosecutors share the same safeguards: lifetime tenure, non-removability, and functional independence. This triple autonomy of the Public Prosecutor's Office ensures its independence from the other branches to prevent undue interference.

The Brazilian Public Prosecutor's Office is divided into the Federal Public Prosecutor's Office and each State's Public Prosecutor's Office. In turn, the Federal Public Prosecutor's Office comprehends the Military Public Prosecutor's Office, the Labor Public Prosecutor's Office, and the Public Prosecutor's Office of the Federal District and Territories. Additionally, there is the Public Prosecutor's Office of Accounts, which operates alongside the Federal and State Courts of Auditors.

The Head of the Federal Public Prosecutor's Office is the Attorney General of the Republic, appointed by the President of the Republic through

free choice from among the Federal Public Prosecutor's Office members, subject to prior control and approval by the Federal Senate.

The State Attorneys General and the Attorney General of the Federal District are appointed by the respective Governors of the States and the Federal District after a three-candidate list is formed through internal elections by the members of the Public Prosecutor's Office from within the career members.

Although the legal regime of the Public Prosecutor's Office in the 1988 Federal Constitution assured independence from the other branches, there is apparent reciprocal oversight, as seen in the scenario of appointing the head of the Public Prosecutor's Office.

Entry into the Public Prosecutor's Office career occurs through public competitive exams based on tests and titles, with a designated percentage allocated to Afro-descendants and disabled individuals. Career progress occurs vertically through promotion and horizontally through voluntary transfers, with criteria based on seniority and merit. In exceptional cases, career movement can be imposed as a disciplinary sanction in the public interest, for instance, in cases involving criminal conduct.

3. Internal and External Oversight Functions and Its Relationship with the Media and Civil Society

Prosecutors of justice must guide their actions by the unrestricted observance of the Law, including the duties and obligations outlined in the Federal Constitution, the organic laws of the Public Prosecutor's Office, resolutions of the National Council of the Public Prosecutor's Office, and the internal normative acts of each Public Prosecutor's Office unit, with emphasis on the code of ethics[5].

The oversight is continuous, both internal and external. Regarding internal oversight, it is worth highlighting the oversight bodies, which primarily monitor and investigate deviations in exercising their roles. It is important to note that due process always precedes any penalty, ensuring the right to a defense and a fair trial. Similarly, it should be noted that the process of disciplinary punishment is conducted by a processing committee, which is not part of the oversight body but consists of elected members with mandates. The applicable sanctions include warning, Suspension, compulsory removal, or placement on leave.

On the other hand, external oversight by the National Council of the Public Prosecutor's Office, established by Constitutional Amendment No. 45 of 2005, is not part of the Public Prosecutor's Office organization. It is an external control body for the Federal and State Public Prosecutor's Offices. It is composed of fourteen members, notably the Attorney General of the Republic, who serves as the President of the Council, a representative from the Federal Public Prosecutor's Office, a representative from the Labor Public Prosecutor's Office, a representative from the Military Public Prosecutor's Office, a representative from the Public Prosecutor's Office of the Federal District and Territories, three representatives from the State

[5] https://www.cnmp.mp.br/portal/images/2023/abril/codigo_etica.pdf

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Public Prosecutor's Offices, two representatives from the Brazilian Bar Association, a representative from the Supreme Federal Court, a representative from the Superior Court of Justice, a representative from the Federal Senate, and a representative from the Chamber of Deputies.

Among the competencies of the National Council of the Public Prosecutor's Office, as per Article 130-A, §2, of the Federal Constitution: ensuring the functional and administrative autonomy of the Public Prosecutor's Office, including issuing regulatory acts within its jurisdiction or recommending actions; ensuring compliance with Article 37 of the Federal Constitution and reviewing the legality of administrative acts carried out by members or agencies of the Federal and State Public Prosecutor's Offices; receiving complaints against members or organs of the Federal and State Public Prosecutor's Offices, including their auxiliary services, without prejudice to the disciplinary and corrective authority of the institution, and potentially taking over ongoing disciplinary processes, ordering the removal, transfers or retirement with proportional subsidies or benefits based on length of service, and applying other administrative sanctions, while ensuring the right to a fair defense; reviewing disciplinary proceedings of members of the Federal and State Public Prosecutor's Offices that were concluded less than a year ago; preparing an annual report, proposing necessary actions concerning the State of the Public Prosecutor's Office in the country and the activities of the Council.

Furthermore, in addition to being overseen by internal oversight bodies and the National Council of the Public Prosecutor's Office, the Public Prosecutor's Office is constantly subject to judicial review of its actions in criminal prosecution, whether the investigation or the criminal proceeding.

Regarding the relationship between the Public Prosecutor's Office and the media, the National Council of the Public Prosecutor's Office established the national policy on social communication, guided by the principles of impartiality, publicity, transparency, respect for fundamental rights, truth, and accessibility[6]. In this context, it is essential to strictly observe the citizen's and society's right to information and preserve the privacy and intimacy of the subjects under investigation.

As political agents, prosecutors must adhere to these standards of conduct, even in their private capacity, including on social media platforms. In addition to the importance of the institution's reputation and image, even when the professional is not on regular working hours, it is a fact that inappropriate behavior can influence public opinion, such as when a prosecutor publicly expresses their political-electoral preference.

In this regard, the National Council of the Public Prosecutor's Office has recommended that Brazilian prosecutors control their exposure on social media, especially concerning political party opinions[77].

Moreover, since the Brazilian Public Prosecutor's Office's constitutional mission is to realize citizens' rights, engaging with civil society, whether organized or not, is crucial. This engagement is not only essential for identifying problems but also for collaboratively developing

[6] https://www.cnmp.mp.br/portal/todas-as-noticias/10505-cnmp-estabelece-a-politica-nacional-de comunicacao-social-do-ministerio-publico-brasileiro

[7] https://www.cnmp.mp.br/portal/images/2023/abril/codigo_etica.pdf

solutions. In this context, the role of ombudsmen as a gateway for various types of societal demands is noteworthy, as well as the resolution-oriented approach of the Public Prosecutor's Office, promoted by the National Council through networks, which enhances dialogue and legitimizes decisions.

4. Public Prosecutor's Office and Criminal Prosecution

The 1988 Federal Constitution internalized the model of a fair process established in the major international human rights documents[8]. Characterized by the separation of roles between the judge and the prosecutor, it is recognized that the Public Prosecutor's Office plays a central and structural role in the criminal prosecution system.

In this sense, the Public Prosecutor's Office was granted the exclusive authority to pledge public criminal actions, carry out external oversight of police activities, and exercise any other function compatible with its constitutional mission.

The following sections will analyze the main issues related to the functions performed by the Public Prosecutor's Office throughout the criminal prosecution process.

4.1 Principle of ex officio action: Criminal Investigation and Criminal Action

The investigation of civil Law in traditional countries takes place ex officio, meaning it is centralized and led by the State. Similarly, the Federal Constitution, in Article 144, assigns the investigative role to the federal, State, and Federal District police forces.

The principle of ex officio action, in force in Brazil, encompasses the monopoly of criminal prosecution by the State, whether it is in investigation or criminal action. It is the duty of the State, through its agencies, to investigate and indict individuals suspected of committing crimes.

This principle means criminal prosecution does not solely depend on the victim's will or private interests. On the contrary, it is the State's duty, represented by the Public Prosecutor's Office and other entities, to defend the legal order and society as a whole, seeking the punishment of those responsible for crimes and the protection of citizens' fundamental rights.

Thus, the Brazilian legislator, adhering to this principle, expressly stipulated that investigations will be carried out by official agencies (Judicial Police), as per Article 144, § 1, IV of the Federal Constitution and Article 4 of the Code of Criminal Procedure (CPP), when it concerns a police inquiry, the usual form of its development, as well as through other forms of investigation, for example, by the Public Prosecutor's Office, as in the case of the Criminal Investigatory Procedure (PIC), provided for in Resolution No. 181 of 07/08/2017, as amended by Resolution No. 183 of 01/24/2018,

[8] United Nations, *Universal Declaration of Human Rights*; Inter-American Convention on Human Rights.

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by the National Council of the Public Prosecutor's Office, and by Parliamentary Inquiry Commissions.

The Supreme Federal Court recognized the power of investigation held by the Public Prosecutor's Office in the proceedings of Extraordinary Appeal 593727/MG and 468523/SC – SANTA CATARINA, and Writ of Habeas Corpus 94173/BA – BAHIA. The exclusive clause inscribed in Article 144, § 1, IV of the Constitution of the Republic does not inhibit the criminal investigation activity of the Public Prosecutor's Office since its sole purpose is to confer priority investigative status to the Federal Police, among the various police agencies that make up the repressive apparatus of the Federal Union (federal police, federal highway police, and federal railway police), in the investigation of crimes outlined in the Fundamental Law itself or international treaties or conventions. In the same sense, it is the responsibility of the Civil Police of the state members and the Federal District, subject to the Federal Union's competence and except for military crime investigations, to conduct investigations into criminal offenses (crimes and misdemeanors) without prejudice to the investigative power available, as a subsidiary activity, to the Public Prosecutor's Office. The functions of judicial police and criminal investigation are distinct, which also justifies recognizing the Public Prosecutor's Office's investigatory power in criminal matters.

Along the same lines, the prosecution through public criminal action, whose exclusivity is recognized by the Public Prosecutor's Office in Article 129, paragraph I, of the Federal Constitution.

However, it occurs that the principle of ex officio action in the Brazilian criminal process is "elasticized" in the following situations:

a) Defensive investigation of a private nature is recognized by Resolution 18 of the Brazilian Bar Association's Federal Council;

b) Exclusive private criminal action by the victim, in which case the legislator has expressly and exceptionally delegated them the legitimacy to indict, as well as to exercise the right of action;

c) Subsidiary private criminal action to the public one, in which case the Federal Constitution recognizes as a fundamental right, in the event of the Public Prosecutor's Office's failure to file a public criminal action, the possibility for the victim to do so, however, without the right of action is subject to disposition.

Regarding public criminal action, the right is exclusive to the State, which monopolizes *jus puniendi*, meaning the State, through the Public Prosecutor's Office, has to seek the punishment of those responsible for crimes, regardless of the victim's will.

As for private criminal action, the observance of the principle of ex officio action is implemented through the necessary intervention of the Public Prosecutor's Office as *custus legis*, which entails the role of overseeing and monitoring the course of the criminal process, ensuring that all acts comply with legality and observe the interests of society.

4.2 Compulsory or Discretionary Prosecution?

Commonplace among scholars is the notion that in the Public Prosecution Office in Brazil, the principle of compulsory prosecution prevails (Article 129, I of the Federal Constitution)[9].

Our understanding is that the principle of compulsory prosecution does not exist in public criminal prosecution, as the role of the Public Prosecutor's Office is guided by the primacy of the Law.

The expansion of consensus spaces in Brazilian criminal procedural Law since the 1990s, notably with the Law of special, small claims, criminal courts (Law No. 9099/95), up to the present day (Laws No. 12.850/2013 and 13.964/2019), in which the Public Prosecutor's Office plays a central and leading role, has opened the possibility for a more in-depth reflection on the practical existence of the compulsory prosecution principle.

The general principles of Public Administration provided for in Article 37, paragraph 1, of the Federal Constitution apply to the Public Prosecutor's Office, including the principle of legality, which means that its members are only allowed to do or not do what the Law prescribes, whether in formal or material terms.

Specifically, regarding the role of the Public Prosecutor's Office in criminal prosecution, where it represents and exercises part of the punitive power of the State in investigation, prosecution, and sentence execution, its regulation is subject to strict legal controls approved by the National Congress and sanctioned by the President of the Republic.

The current legal regime applicable to the Public Prosecutor's Office, in compliance with the legal Constitutional compliance in criminal and criminal procedural matters, encompasses not only the chapter dedicated to it in the Federal Constitution (Article 127 and following) and the respective national and State organic laws, but also the constitutional guarantees of due process, access to justice, and adversarial proceedings, as well as codified and special legislation that shape the actions of its members.

In summary, stricto sensu legality constitutes the primary reference guiding the Public Prosecutor's Office's mode of operation, where various forms of intervention can be identified based on different stages of criminal prosecution, always exercised with freedom and subject to control, specifically:

- Request for a police inquiry and initiation of a criminal investigative procedure, at which point the existence of a hypothesis to be investigated is identified;
- Recommendation for filing when not convinced of the existence of cause for criminal prosecution;
- Request for investigative actions and representation for precautionary measures in cases where the need for additional investigation is seen to confirm or dismiss the hypothesis under investigation;
- Offer of a proposal for penal transaction, conditional Suspension of the process, and non-prosecution agreement in cases where the Law allows for the formalization of legal arrangements;

[9] R.B.d. Lima, *Manual de processo penal: volume único*, 4 ed., Salvador, 2016, 329; A. Lopes Júnior, *Direito Processual Penal*, 12 ed., São Paulo, 2015, 186.

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• Negotiation of a plea bargain agreement;
• Filing of the indictment when convinced of the confirmation of the investigative hypothesis;
• Request for acquittal in final arguments;
• Filing of appeals and initiation of challenge actions, including in favor of the defendant;
• Execution of fines.

Despite its dogmatic reproduction in procedural penal literature, no constitutional provision or infra-constitutional legislation expressly refers to the so-called principle of compulsory prosecution[10].

Both Article 100, §1 of the Criminal Code and Article 24 of the Code of Criminal Procedure have similar wording in stating that in public prosecution crimes, it will be initiated by the Public Prosecutor's Office, depending on the victim's representation as a condition of procedural admissibility when required by Law. Similarly, Article 129, section I of the Constitution only lists the exclusive exercise of public criminal prosecution as one of the institutional roles assigned to the Public Prosecutor's Office.

The compulsiveness in exercising public criminal prosecution seems more like a procedural custom in Brazilian Law than a normative, imperative, and unavoidable mandate[11].

However, even though it does not exist as an express normative provision and is not codified in the constitutional text or infraconstitutional legislation, it constitutes a clear manifestation of the principle of legality, which establishes the circumstances of doing or not doing something[12]. Its meaning translates to the impossibility or absence of an unreasoned discretionary power over public criminal prosecution.

The connection to public interest criteria – theoretically embodied by legislative labor – does not replace the convenience and opportunity of the Public Prosecutor's Office, as long as the decision-making space adheres to the parameters defined by Law, as is the case with instances of negotiated justice.

On the other hand, the principle of legality mandates the Public Prosecutor's Office's action in the face of its conviction regarding the materiality and commission of the offenses[13]. For no other reason, the so-called principle of compulsory prosecution does not qualify as an autonomous principle but rather a derivation of the principle of legality, which encompasses its content and constitutes one of its manifestations as long as expressly provided by Law and subject to jurisdictional control[14].

This implies an expectation of predictability and legal certainty regarding its holder's bound and compulsory exercise of public criminal prosecution based on the concrete factual situation that meets the criteria

[10] T.L.d.M. Oliveira, *O mito da obrigatoriedade da ação penal pública no ordenamento jurídico brasileiro*, in *Boletim Científico ESMPU*, a. 16, jan. /jun. 2017, 239-240.
[11] A.H.G. Suxberger, *A superação do dogma da obrigatoriedade da ação penal: a oportunidade como consequência estrutural e funcional do sistema de justiça criminal*, in *Revista do Ministério Público do Estado de Goiás*, 2017, 39-40.
[12] J.A. da Silva, *Curso de Direito Constitucional Positivo*, 37 ed., São Paulo, 2014, 423.
[13] E. Pacelli, D. Fischer, *Comentários ao Código de Processo Penal e sua jurisprudência*, 10ª ed., São Paulo, 2018, 64
[14] J.F. Marques, *Elementos de Direito Processual Penal*, 2 ed., Campinas, 2000, 374-375.

previously selected by the legislator as criminally relevant. The Law defines the parameters of opportunity and convenience[15], notably as observed in the regulations of Law 9.099/1995, Law 12.850/2013, and Article 28-A of the Code of Criminal Procedure, as amended by Law 13.964/2019.

4.3 Public Prosecutor's Office in the Courts

The role of the Public Prosecutor's Office in Criminal Proceedings, when formalizing the indictment, is to act as a party and have all the means and resources available derived from all adversarial proceedings. In cases where the Public Prosecutor's Office appeals a decision from the first instance to the second instance, the Brazilian Code of Criminal Procedure provides that the Public Prosecutor's Office, before the judgment by the respective competent Court, shall present an opinion.

This opinion presented by the Public Prosecutor's Office in the context of an appeal has its constitutionality questioned since if the Public Prosecutor's Office is a party in the criminal proceedings, it could not express its opinion once again after the defense, under penalty of violating the principle of equality of arms.

Although the basis of the questioning raised is reasonable and coherent, the prevailing understanding is contrary since case law recognizes the Public Prosecutor's Office's role in the second instance exclusively as a guardian of the Law and not as a party. In this regard, the Brazilian Supreme Court (STF) in the HC 163972 / MG, published on 11/29/2010 (Rapporteur Minister Maria Thereza Rocha de Assis Moura). According to the minister, the Public Prosecutor's Office's role as a guardian of the Law derives from an express provision in the Federal Constitution, article 127.

Another vital discussion to highlight concerns the Public Prosecutor's Office's role in the higher courts, whose jurisdiction is established in the Federal Constitution.

The Brazilian Public Prosecutor's Office, as mentioned above, although founded on the principles of unity and indivisibility, is divided between the Federal Public Prosecutor's Office and the State Public Prosecutor's Office, whose functions are distributed according to specialization and levels of jurisdiction.

In the higher courts, constitutional compliance controls are carried out in the case of the Supreme Federal Court, and infraconstitutional controls are carried out in the case of the Superior Court of Justice.

According to the Federal Constitution, it is the Federal Public Prosecutor's Office that officiates in these courts; however, the State Public Prosecutor's Offices have always claimed their legitimacy, arguing that there is no functional relationship between the units, as well as the fact that the Public Prosecutor's Office, as a party, must have complete legitimacy to appeal at all instances.

The Public Prosecutor's Office's role in the higher courts, according to the National Organic Law of the Public Prosecutor's Office (Law No. 8625/93), is carried out by the Federal Public Prosecutor's Office through

[15] H.N. Mazzilli, *O princípio da obrigatoriedade e o Ministério Público*, in *Revista Justitia, do Ministério Público do Estado de São Paulo*, n. 197, 2007, 289.

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the Republic's Attorney General. This role includes not only opinions but also the legitimacy of oral arguments and the filing of internal appeals, such as the interlocutory appeal and the appeals based on dissenting opinions.

However, according to the current prevailing understanding, to the contrary, the State Public Prosecutor's Offices, as well as the other Public Prosecutor's Offices of the Union, except for the Federal Public Prosecutor's Office, also have legitimacy for oral arguments, filing of internal appeals, and complaints, as the Supreme Federal Court and the Superior Court of Justice are not federal courts, but courts of the federation, which is quite different.

In effect, furthermore, there is no hierarchical functional relationship between the State Public Prosecutor's Offices and the Federal Public Prosecutor's Office, not even between the Attorneys General of the States and the Attorney General of the Republic, but only a division of attributions by subject matter.

4.4 Non-retroactivity, Suspension, and Interruption of Criminal Prosecution

The Public Prosecutor's actions during criminal prosecution are bound by the principle of legality, meaning they must have a clear basis in Law. This applies to both suspending or interrupting the proceedings.

Agreements leading to Suspension, like plea bargains or conditional suspensions, are legal innovations that can lead to the Suspension of the prosecution's course of action. The landmark in this process is Law No. 9,099 of September 26, 1995, which established the creation of the Special Civil and Criminal Courts and sought to introduce a new criminal justice model into the Brazilian legal system based on *legal consensus*. To this end, it regulated alternative penal measures to imprisonment, applicable for non-aggravated offenses. It provided the possibility of a penal transaction consisting of the immediate application of an alternative penalty, such as restriction of rights or fines, at the proposal of the Public Prosecutor's Office.

Conditional suspension mechanisms, in turn, allow the ordinary course of the process to be interrupted after the accusation has been formalized (the indictment has been offered), always with the defendant's consent. This means that the defendant could go directly to the negotiation of alternative sanctions, such as the obligation to compensate the victim. Although common in the adversarial criminal justice systems, these mechanisms represented important legal innovations in the Brazilian context.

It is also essential to consider the possibility of Suspension due to the defendant's absence: If a defendant cannot be found and does not appoint a lawyer, the prosecution is suspended under Article 366 of the Brazilian Code of Criminal Procedure. This Suspension lasts until the defendant is found or appoints a lawyer, with a maximum duration equal to the statute of limitations. Once that time passes, the limitations period resumes, but the case remains suspended. In short, legal provisions mandate this Suspension, and a judge must confirm it.

Finally, the concept of retroactive application of laws in Brazilian criminal Law guarantees that newly enacted laws suspend or interrupt the

prosecutions of events before the new Law is enacted. Procedural Laws are considered to take effect immediately and to prevent unjust legal outcomes. The retroactive application of new laws is legally curbed.

4.5 Specialized Action in Serious Crimes

The Organic Law of the Brazilian Public Prosecutor's Office (Law No. 8625/1993) provides for the possibility of creating specialized action groups, such as those dealing with organized crime, corruption, money laundering, and gender-based violence, among others, whenever investigation and prosecution require specialized knowledge and dedicated effort on a particular crime, the seriousness of which justifies distinct treatment.

Each unit of the Brazilian Public Prosecutor's Office, at the federal and State levels, is responsible for regulating the creation and functioning of specialized action groups and task forces.

However, creating specialized action groups and task forces is not arbitrary. However, it is always motivated by the need for specialized action, and such a decision requires prior approval from the collegiate bodies of the higher administration of the Public Prosecutor's Office. The group's composition is designed objectively and democratically to prevent the risk of manipulation regarding the professionals who will be part of it.

Task forces of a temporary, exceptional, and determined nature involve the combination of material and human resources aimed at addressing a complex legal criminal situation or repeated patterns of criminality in a specific geographic area, justifying the joint and coordinated action of the State's prosecutorial apparatus[16].

On the other hand, specialized groups are permanent formations created to confront continuous and lasting threats, usually represented by the sequential and stable activity of criminal organizations[17].

5. The Public Prosecutor's Office and the Making of the Contemporary Brazilian Political System

The discourse concerning the pivotal role of the PPO as a central accountability institution and the ensuing response from other political entities is the subject we will briefly delve into now. This discussion is intricately intertwined with the broader exploration of democracy quality. Within this discourse, two definitions currently take center stage. The first

[16] It is recommended to read an important article on the topic, based on the success of the "Força-Tarefa CC 5", authored by Januário Paludo, Carlos Fernando dos Santos Lima, and Vladimir Aras. The members of the Federal Public Ministry delve into the history of task forces from a comparative law perspective and examine applicable legislation and structural and logistical issues, emphasizing the importance of addressed interinstitutional cooperation.

[17] The "GAECO," Special Group for Combating Organized Crime, which has been structured at both the state and federal levels, is the representative model of these permanent special groups, which work in compliance with norms that regulate the labor of such groups and submitted to the principle of the "natural prosecutor.".

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encompasses procedural and political outcome dimensions[18]; the second focuses on evaluating institutional procedures[19].

The text highlights the modalities of "task forces," including from the perspective of binational or multilateral formation, based on protocols of understanding that regulate the functioning of joint investigative teams. Concisely, to emphasize the importance of "task forces" and the ideals that inspire them, the authors assert that these "(...) favor the ideas of concentration, mobility, specialization, coordination,

Let us start with the first view. Suppose we liken Democracy to a "product" or "service" crafted to meet consumer demands. In that case, it becomes evident that the notion of the quality of this "product" is grounded in the following criteria: a) well-established procedures (precise and controlled processes associated with each "product"); b) content aligned with its structural attributes (material design and functionality); and c) the outcomes manifested through customer satisfaction, regardless of the means employed to achieve them. This viewpoint, borrowed from Leonardo Morlino, serves as a framework for contemplating the role of the PPO as a shaper of the Brazilian political system.

We can move to the second dimension and consider evaluating institutional procedures. In political terms, the connection between the quality of Democracy and legal procedures can be understood by examining key elements of the political system: i. procedures that safeguard the rule of Law; ii. the practice of horizontal accountability (inter-institutional), involving oversight of the conduct of governing bodies by institutions, collective actors, and other political agents fulfilling this role; iii. the observance of mechanisms of vertical accountability (electoral), where voters determine whether to reward or penalize rulers through their votes; iv. the efficacy of institutions in delivering public services that meet public expectations. Within all these central elements, the Public Prosecutor's Office (PPO) assumes a pivotal role in the processes associated with the quality of Democracy:

As seen in the previous discussion, the PPO acts as the primary agent that actively and autonomously ensures that legal processes are adhered to and that the actions of individuals, including governing bodies, align with the 1988 National Constitution and other regulations. The Brazilian Constitution grants the PPO the authority to fulfill this role by simply initiating legal actions against those who violate the rule of Law, thereby contributing to the general observance of legal principles within a democratic society.

Secondly, the PPO exercises horizontal accountability (inter-institutional) by serving as a check and balance element within the governmental framework. It directly monitors the behavior of governing bodies and institutions, acting as the "fourth power" with the authority to scrutinize any indications of abuse of power, corruption, and unlawful activities within the Legislative and Executive branches. As such, the PPO

[18] L. Morlino, *Legitimacy and the Quality of Democracy*, UNESCO, 2010, 21; D.H. Levine, J.E. Molina, *The Quality of Democracy in Latin America*, Boulder, 2011.
[19] C. Claassen, *Does Public Support Help Democracy Survive?*, in *American Journal of Political Science*, n. 1, vol. 64, 2020, 118-134.

has become a vital institution that plays a crucial role in tempering the majoritarian elements of the political system.

The institution is pivotal in ensuring vertical accountability (electoral) mechanisms. The PPO is crucial in upholding these mechanisms, especially when elected officials or political candidates engage in unlawful activities that undermine the democratic process. The significance of the PPO's autonomy was underscored during the recent 2022 Brazilian General Elections crisis, which emerged following allegations of fraud made by one of the runoff candidates. This incident highlighted the PPO's autonomy as an entity authorized to investigate violations of electoral laws, enabling voters to decide whether to endorse or sanction leaders through their votes.

Finally, the role of the PPO in ensuring institutional responsiveness is twofold. Firstly, it can intervene in cases where public services are notably inadequate or delivered inappropriately due to corruption, mismanagement, or related issues. The PPO yields contradictory outcomes through investigations and prosecutions of those responsible for such shortcomings. On the one hand, the monitoring process enhances public trust in institutions. Simultaneously, the continuous investigative and denunciatory activities in response to misconduct contribute to pervasive mistrust in these institutions. The resulting representation of the political system that emerges from these conflicting scenarios is a matter we will address in the conclusion.

It is imperative to emphasize that as outlined in the 1988 Brazilian Constitution, the Public Prosecutor's Office has been designated a critical role in safeguarding fundamental aspects of the present democratic framework. It is a gatekeeper, ensuring transparency, accountability, and the rule of Law. In this context, the significance of responsive institutions becomes pivotal in addressing the very issue of democracy quality that we have raised. Responsive institutions reveal the extent of the nexus between democratic regimes and society at large. The essence of the matter pertains to the capability of governments, leaders, and other political entities to align their actions with the organized interests of individuals and groups within society through policy implementation. Particularly noteworthy is the centrality of controlling and monitoring institutions within this process.

A more comprehensive perspective regarding the role of the Public Prosecutor's Office in the Brazilian political system can succinctly be described as a potent and influential counter-majoritarian force. We perceive counter-majoritarian institutions as those possessing the authority to supersede or constrain decisions made by elected officials, safeguard individual rights, and provide checks and balances on executive powers[21]. Our interpretation of this process further acknowledges the significant influence of the United States on shaping a framework for criminal prosecution and political corruption that adheres to the adversarial legalism model. This model characterizes the formulation and execution of policies in the US, where the counter-majoritarian role of public prosecution's offices constitutes a prominent feature of the political system. The term "adversarial legalism" denotes a legalistic and adversarial approach to policy development and implementation driven by the anticipation of judicial review. This concept is elucidated in the influential 1991 paper by Robert

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Kagan[20]. In his perspective, "adversarial legalism results in (or threatens) substantial dispute-resolution expenses and procedural delays, which subsequently distort policy outcomes," ultimately reflecting a "deep skepticism towards governmental authority."

Furthermore, public prosecution authorities are frequently considered veto players within the political system. Constitutional courts, often intertwined with public prosecution authorities, form the bedrock of counter-majoritarian institutions that maintain equilibrium between the power held by elected government bodies. As integral components of these institutions, public prosecutor's offices assume a pivotal role in upholding the rule of Law in a democratic regime. Nevertheless, it is noteworthy that the role of public prosecutor's offices as counter-majoritarian forces is not lacking controversy or unintended consequences. By potentially overriding the wishes of the majority and curtailing democratic decision-making, the inherent 'adversarial legalism' emulated from the actions of the PPO could introduce unpredictability, mistrust, and inefficiency into the policy process—an aspect we will revisit in conclusion.

Addressing the significance of the PPO as a constitutive element within the Brazilian consensual model of Democracy is equally crucial. The PPO plays an active role in safeguarding minority rights and upholding individual rights, even if these actions may not find favor with majority groups. The PPO has notably played a leading role in safeguarding diffuse rights, such as those of "quilombola" communities (evaded slave communities in rural areas that survived until the XXI Century), native populations, land rights movements, LGBTQA+ communities, and homeless interest groups, among other minority interests. By doing so, the PPO has contributed to fostering a more inclusive facet of contemporary Brazilian society.

In summary, the role of the public prosecutor's Office within the political system can be characterized as a counter-majoritarian force. They are pivotal in upholding the rule of Law, ensuring accountability, and safeguarding individual rights. While their authority to challenge and potentially override decisions made by elected officials might appear to oppose the majority's preferences, it is indispensable for preserving Democracy and safeguarding the rights of every individual.

However, this normative perspective needs to address the urgent crisis of trust in political institutions. Paradoxically, the continuous activities of control and investigation, which have become a permanent fixture of our political system, are intertwined with this crisis. The specific factors driving the legitimacy crisis we find ourselves in lie beyond the scope of this article. Nonetheless, it is crucial to establish an analytical link between expanding the mandates of professionally established and legally supported public agents and the ongoing political crisis, which has given rise to phenomena like national-populist parties and politicians with active anti-democratic agendas. These actors often manipulate anti-corruption investigations as political tools.

[20] R.A. Kagan, *Adversarial Legalism and American Government*, in *Journal of Policy Analysis and Management*, n. 3, vol. 10, 1991, 369.

Two emblematic examples: the federal prosecutor Deltan Dallagnol, who coordinated the Lava Jato operation, ran for Congress and got elected. The republic's attorney general, Augusto Aras, had his performance widely questioned due to his political alignment with the former President, Jair Bolsonaro.

6. Conclusion

The 1988 Federal Constitution represented a paradigm shift in the evolution of the Brazilian Public Prosecutor's Office (PPO), particularly in the prominent role it assumed in the operation and organization of the criminal justice system and the expansion of counter-majoritarian mechanisms within the Brazilian political system.

From the perspective of the PPO as a specialized agency in criminal prosecution, it is worth highlighting the expansion of its powers primarily due to the introduction of negotiation mechanisms for dispute resolution. However, this expansion also raises concerns and necessitates careful control and risk management due to potential abuse. Specialization through special groups or task forces has proven to be a functional approach due to the increasing interdisciplinarity of contemporary issues.

When we broaden the scope of analysis to understand the role of the PPO in reshaping the Brazilian political system, a challenging scenario emerges. In the current decade, national democratic institutions are undergoing a straightforward stress test; a diagnosis grounded in comparative studies of public opinion shows a continuous erosion in the support for Democracy as a political organization and a widespread decline in trust levels in public institutions. As mentioned earlier, the issue of democracy quality is at the heart of this controversy.

In our analysis of the role of the PPO, we identify that not only are mechanisms of electoral accountability at the core of the legitimacy crisis stemming from political polarization but also the role of justice and its intense interventions have contributed to increasing distrust in institutions. This is the paradox of counter-politics. While oversight, monitoring, and defense of diffuse interests and efficient investigation of corruption cases make the public decision-making process more secure and transparent and even potentially mitigate the adverse effects of Kaplan's adversarial legalism alert, the result is that the public is exposed to a political environment where accusations against elected representatives are routinely, and overwhelming served diary.

The most likely outcome of this process is a widespread erosion of the trust in institutions, paradoxically potentially leading to the democratic regime's erosion as it narrows the support base for centrist parties and opens space for more radical anti-political discourses. As long time learned from political science comparative literature on political regimes, without dominant centrist parties—whether center-left, center-right, moderate left, or moderate right, depending on each specific national context—the democratic regime can quickly enter a zone of strong instability, where erratic choices with severe consequences for society become increasingly likely.

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In conclusion, a growing array of issues demands the action of monitoring, control, and criminal prosecution institutions such as the PPO. However, there needs to be assurance that the outcomes of these actions will consistently be positive. The very nature of control institutions' involvement in overseeing and regulating other powers within the political system carries inherent instability.

Looking forward, the discourse about the future, especially in light of emerging threats spanning climate insecurity to cyber risks and multifaceted illicit activities with decentralized decision-making authority, necessitates rethinking cooperation, coordination, and alignment—primarily on the international stage. This discussion lies at the heart of contrasting perspectives on the role of the PPO as a pivotal entity within the criminal system, reshaping the dynamics between the public and state institutions.

This interpretation of current phenomena profoundly influences the functioning of the Public Prosecutor's Office, particularly in the Brazilian context, where its institutional structure encourages competition and calls for adjustments to ensure its adaptive responsiveness. This circumstance inherently presents a research challenge closely aligned with the overarching discussion carried out throughout this study.

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