Revista ARACÊ
ISSN: 2358-2472

THE LEGALITY OF RESOLUTION NO. 976/2021, ISSUED BY THE COURT OF JUSTICE OF THE STATE OF MINAS GERAIS AND WHICH CREATED NEW EXTRAJUDICIAL SERVICES

https://doi.org/10.56238/arev6n3-190

Submitted on: 10/15/2024 **Publication date:** 11/15/2024

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ABSTRACT

The aspects involving Resolution No. 976/2021, issued by the Court of Justice of the State of Minas Gerais (TJMG), will be analyzed in light of the Constitution of the Republic, of 1988, state legislation and the jurisprudence of the Federal Supreme Court. The aforementioned Resolution promoted the splitting of the extrajudicial services corresponding to the 2nd, 6th and 7th Real Estate Registry Offices of the district of Belo Horizonte/MG, creating the 8th, 9th and 10th Offices. It is the creation of new extrajudicial services and the modification of districts by means of a resolution of the state judiciary. In the case under analysis, it is important to assess whether the state law then existing (Law No. 12,920/1998) would be sufficient to authorize the act by the TJMG; that is, would it be necessary for the Legislative Assembly of the State of Minas Gerais to issue a formal law? In order to understand the legal aspects that involve the construction and legality of the Resolution, the Constitution of the Republic, of 1988, State Law No. 12,920/1998 and the decision of the Federal Supreme Court in the direct action of unconstitutionality No. 2,415/SP (which dealt with a similar situation) will be analyzed.

Keywords: Resolution No. 976/2021/TJMG, Creation of new extrajudicial services, Legality, Precedent: ADI No. 2,415/SP.

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INTRODUCTION

The theme analyzed in this study is not new. There is a precedent that can be extracted from the direct action of unconstitutionality No. 2,415/SP, judged by the Federal Supreme Court (STF) more than a decade ago. At the time, the STF considered that the resolutions issued by the São Paulo judiciary were an affront to the Constitution; however, it modulated the effects of the decision, as the declaration of unconstitutionality could disconstitute consolidated situations that affected third parties in good faith, as we will see.

However, in relation to the situation in Minas Gerais, there are nuances to be considered. In other words, in addition to the São Paulo precedent, which understood the unconstitutionality of the resolutions, as the creation of the services should have been made through a law in a formal sense, Resolution No. 976/2021, issued by the Court of Justice of the State of Minas Gerais (TJMG), was issued based on the assumption of State Law No. 12,920/1998, then in force. Thus, it will be important to analyze whether the State Law authorized the judiciary to create new services, as actually occurred.

All the work will have as a parameter the Constitution of the Republic, of 1988. The federal legislation and the aspects involving the judicial organization will also be studied, so that we have important guidelines to conclude the legality (and/or constitutionality) or illegality (and/or unconstitutionality) of the normative act issued by the Minas Gerais judiciary.

FEDERAL CONSTITUTION, STATE CONSTITUTION AND PERTINENT LEGISLATION

The Constitution of the Republic, of 1988, establishes in paragraph 1 of article 125 that the States shall organize their Justice and that the competence of the courts shall be defined in the Constitution of the State, with the law of judicial organization being the initiative of the Court of Justice[3].

The Constitution of the State of Minas Gerais, in turn, reveals, in article 98, that it is incumbent on the Court of Justice to initiate the Law of Judicial Organization and Division of the State and its amendments[4].

[3] BRAZIL. Available at: https://planalto.gov.br/ccivil_03/constituicao/constituicao.htm. Accessed on: 20 Jun. 2024.
[4] Minas Gerais. Available at: https://dspace.almg.gov.br/bitstream/11037/52714/1/CE%20Atualizada%202024-02-33%c2%aaed-Fevereiro.pdf. Accessed on: 20 Jun. 2024.

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Currently, the judicial organization and division of the State of Minas Gerais are dealt with through Complementary Law No. 59/2001[5].

The Constitution of the State of Minas Gerais itself highlights, in paragraphs 1 and 2 of article 65, that the complementary law is approved by a majority of the members of the Legislative Assembly and that the Law on Judicial Organization and Division is considered a complementary law, among others.[6]

In addition, Article 66, item IV, paragraph 'c', of the same Constitution of the State of Minas Gerais, which is a matter of private initiative of the Court of Justice, by its President, the organization and division of the judiciary and its amendments[7].

Well, having taken this initial path, we can conclude, in principle, that the law on judicial organisation and division and its amendments should be conveyed through the initiative of the President of the Court of Justice; also: that it must be approved by a qualified quorum, as it is a complementary law, which requires an absolute majority of the members of the Legislative Assembly.

It is important to emphasize, for now, that all the norms analyzed and that appear either in the Constitution of the Republic, of 1988, or in the State Constitution of Minas Gerais, of 1989, are original. In other words, amendments that modified the procedure related to the organization and division of the judiciary were not inserted in the Constitutions. Thus, since the promulgation of the Constitutions, the organization and division of the judiciary must be conveyed through a law of initiative of the Court of Justice, through its president, requiring a qualified quorum (complementary law) for approval.

Let us then move on to the analysis of state legislation. Currently, State Complementary Law No. 59/2001 deals with the organization and division of the judiciary. This legislation was recently amended through Complementary Law No. 166/2022 and also through Complementary Law No. 174/2024.

It is important to note that, when Resolution No. 976 was issued, in 2021, State Ordinary Law No. 12,920/1998 was in force, which was repealed on 06/30/2022 through the enactment of Complementary Law No. 166. And it was based on State Ordinary Law No.

[5] Minas Gerais. Available at: https://www.almg.gov.br/legislacao-mineira/LCP/59/2001/. Accessed on: 20 Jun. 2024.
[6] Minas Gerais. Available at: https://dspace.almg.gov.br/bitstream/11037/52714/1/CE%20Atualizada%202024-02-33%c2%aaed-Fevereiro.pdf. Accessed on: 20 Jun. 2024.
[7] Minas Gerais. Available at: https://dspace.almg.gov.br/bitstream/11037/52714/1/CE%20Atualizada%202024-02-33%c2%aaed-Fevereiro.pdf. Accessed on: 20 Jun. 2024.

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12,920/1998 that the Court of Justice of the State of Minas Gerais supported the creation of three new real estate registry services in the district of Belo Horizonte[8].

Item II of article 2 of Law No. 12,920/1998 provided that in the district of Belo Horizonte, including the existing services, there would be 12 (twelve) Real Estate Registry Offices, each with the jurisdiction delimited to it[9].

Consulting the website of the Legislative Assembly of the State of Minas Gerais reveals that the initiative for the proposal of Bill No. 34/1995 was authored by a state deputy[10].

In other words, a shallow and preliminary analysis already allows us to infer that there were two serious procedural errors in the enactment of Law No. 12,920/1998: initiative defect, because the bill was presented by a state deputy, when the correct thing would be to be presented by the Court of Justice; defect of form, considering that the bill was approved as an Ordinary Law (which requires a simple quorum for approval), when the correct thing would be to present and approve it as a Complementary Law, thus requiring a qualified quorum.

Despite the initiative and form defects that contaminated State Ordinary Law No. 12,920/1998, then in force in 2021, it was based on it that the Court of Justice of the State of Minas Gerais issued Resolution No. 976/2021, which we will now analyze.

RESOLUTION NO. 976/2021, OF THE TJMG

Published on 10/05/2021 (October 5th of the year two thousand and twenty-one), Resolution No. 976, of the Court of Justice of the State of Minas Gerais, provided for the installation of extrajudicial services in Belo Horizonte, created the services corresponding to the 8th, 9th and 10th Real Estate Registry Offices and specified the new dividing lines corresponding to the geographical districts of the 2nd, 6th and 7th Real Estate Registry Offices already existing:

> Article 1 The 8th, 9th and 10th Real Estate Registry Offices of the District of Belo Horizonte are hereby installed, resulting, respectively, from the splitting of the 2nd, 6th and 7th Real Estate Registry Offices of the District of Belo Horizonte, according to the map contained in Annex I of this Resolution.[11]

[8] TJMG. Available at: http://www8.tjmg.jus.br/institucional/at/pdf/re09762021.pdf. Accessed on: 20 Jun. 2024.
[9] Minas Gerais. Available at: https://www.almg.gov.br/legislacao-mineira/texto/LEI/12920/1998/?cons=1. Accessed on: 20 Jun. 2024.
[10] Minas Gerais. Available at: https://www.almg.gov.br/projetos-de-lei/PL/34/1995. Accessed on: 20 Jun. 2024.
[11] TJMG. Available at: http://www8.tjmg.jus.br/institucional/at/pdf/re09762021.pdf. Accessed date: 21 Jun. 2024.

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The normative acts used to justify the issuance of the Resolution by the Special Body of the Court of Justice of the State of Minas Gerais were the sole paragraph of article 300-F of State Complementary Law No. 59, of January 18, 2001 and item V of article 34 of the Internal Regulations of the Court of Justice of the State of Minas Gerais. The following 'recitals' also justified the issuance of the act:

> CONSIDERING the provisions of article 96 of the Constitution **of the State of Minas Gerais** on the competence and private initiative of the Court of Justice to, by means of its own act, alter the organization and division of the judiciary;
> CONSIDERING the provisions **of paragraph 1 of article 236 of the Constitution of the** Federative Republic of Brazil, which confers on the Judiciary the prerogative to supervise acts performed within the scope of notarial and registry services;
> CONSIDERING the provisions of **Federal Law No. 8,935**, of November 14, 1994, which "Regulates article 236 of the Federal Constitution, providing for notarial and registration services";
> WHEREAS, the geographical circumscription of the registrars, when necessary, shall be defined by resolution of the Special Body, as provided for in the sole paragraph of **article 300-F of State Complementary Law No. 59**, of January 18, 2001, which "contains the judicial organization and division of the State of Minas Gerais";
> CONSIDERING the provisions of **article 2 of State Law No. 12,920**, of June 29, 1998, which "establishes population, socioeconomic and statistical criteria for the creation, merger and dismemberment of notarial and registration services";
> CONSIDERING the provisions of article 1 of **State Decree No. 8,338**, of May 31, 1965, which "establishes the zoning of the district of Belo Horizonte, for the purpose of the registration of real estate";
> CONSIDERING the need to update the perimetric lines of action of Zones "C", "F" and "G", corresponding to the geographical districts of the 2nd, 6th and 7th Offices of the Real Estate Registry of the District of Belo Horizonte, defined in article 3 of State Decree No. 8,338, of 1965;
> CONSIDERING the real estate registry limit of the municipality of Belo Horizonte, according to the map prepared by the Superintendence of Corporate Geoprocessing of the Municipality of Belo Horizonte, under the terms of State Decree No. 8,338, of 1965, and georeferenced measurements provided by the Undersecretary of Urban Planning of the Municipal Secretariat of Urban Policy of Belo Horizonte – SUPLAN/SMPU;
> WHEREAS, Joint Presidential Ordinance No. 1,128, of January 2021, constituted a Special Working Committee to present a proposal for the deployment of Real Estate Registry Services located in the districts covered by State Law No. 12,920, of December 2, 2003;
> CONSIDERING the need to specify the demarcation lines of the geographical districts of the 8th, 9th and 10th Real Estate Registry Offices of the District of Belo Horizonte, broken down according to a socioeconomic study carried out by the Municipality of Belo Horizonte in conjunction with the Special Working Committee established by Joint Ordinance No. 1,128, of 2021;
> WHEREAS, the definition of the geographical districts of operation of the Real Estate Registry Offices of the District of Belo Horizonte, according to the current urban geography, seeks to ensure a more efficient and adequate provision of service;
> CONSIDERING, finally, what was contained in the Process of the Judicial Organization and Division Commission No. 1.0000.21.207572-5/000 (Electronic Information System - SEI No. 0051393-92.2021.8.13.0000), as well as what was

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> decided by the Special Body itself in an extraordinary session held on September 29, 2021[12] (**emphasis added**)

We will analyze in detail the main justifications, starting with the sole paragraph of article 300-F of Complementary Law No. 59/2001, which determines that the "definition of the geographical circumscription of action of registrars, when necessary, will be carried out by means of a resolution of the competent body of the Court of Justice".[13]

It is possible to infer that the definition of the geographical circumscription of the registrars' operations, provided for in article 300-F of Complementary Law No. 59/2001, is not to be confused with the effective creation of new services. It is explained: while the creation of new extrajudicial services must occur through a Complementary Law, the definition or modification of existing geographical districts may occur through a normative act of the Court of Justice, when necessary.

Article 300-F of Complementary Law No. 59/2001 grants the TJMG the attribution to, for example, change the geographical circumscription of the existing real estate registries.

In 2021, there were seven real estate registry offices in Belo Horizonte, each with its own duly delimited geographical circumscription. What the TJMG could do, in theory, would be to modify the geographical circumscription of each of these seven real estate registry offices, if necessary, as indicated in the article under discussion. This could occur, for example, if the movement of remunerated acts of some real estate registry office was disproportionate in relation to the others, which could require the initiative of the TJMG to rebalance this circumstance.

Item V of article 34 of the TJMG's Internal Regulations informs that it is the responsibility of the Special Body, delegated to the Full Court, to issue a normative decision in administrative matters of the internal economy of the Judiciary.[14] This provision informs that the decision on the creation of new real estate services in the district of Belo Horizonte was conveyed through a 'normative decision in administrative matters of internal economy'. As already explained, the creation of new services should have occurred through a Complementary Law, at the initiative of the President of the Court of Justice, and not through a normative decision of the special body of the court.

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[12] TJMG. Available at: http://www8.tjmg.jus.br/institucional/at/pdf/re09762021.pdf. Accessed date: 21 Jun. 2024.
[13] Minas Gerais. Available at: https://www.almg.gov.br/legislacao-mineira/texto/LCP/59/2001/?cons=1. Accessed date: 21 Jun. 2024.
[14] TJMG. Available at: file:///C:/Users/User/Downloads/Regimento%20Interno%20atualizado%20-%20Set-2022.pdf. Accessed date: 21 Jun. 2024.

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Article 98 of the Constitution of the State of Minas Gerais reveals that it is incumbent on the Court of Justice to initiate the Law of Judicial Organization and Division of the State and its amendments.[15] This article makes it clear that the competence to initiate the legislative process on judicial organization and division, which includes the creation of new extrajudicial services, lies with the Court of Justice.

In other words, the competence to initiate the legislative process, which means presenting to the Legislative Assembly the bill that intends to create new extrajudicial services, belongs to the Court of Justice. Such competence of the TJMG, that is, to propose a project for the appreciation of the legislature, is not to be confused with the act of effective approval of the project and its consequent transformation into law. The effective creation of the new extrajudicial services, through a complementary state law, is the responsibility of the Legislative Assembly of the State of Minas Gerais, and not of the Court of Justice, which did so through a resolution.

Article 2 of Law 12.920/1998 states that in the district of Belo Horizonte, including the existing services, there will be 12 (twelve) Real Estate Registry Offices, each with the jurisdiction delimited to it.[16] Law No. 12,920/1998, as exposed, should not even be in force in the legal system, as it is riddled with defects of initiative and form, as exposed. However, since its enactment in 1998, there has been no initiative to declare the unconstitutionality of this law.

State Decree No. 8,338, of May 31, 1965, in turn, establishes the zoning of the district of Belo Horizonte, for the purpose of real estate registration. Such zoning could have been changed by a normative act (resolution) of the TJMG, as long as it concerned only the 7 (seven) real estate registry offices then existing. The creation of new districts corresponding to the 8th, 9th and 10th real estate registry offices should only have occurred through a complementary law, as demonstrated in this work.

The other normative acts that justified the issuance of the Resolution do not make direct reference to the theme of this study. Paragraph 1 of article 236 of the Constitution of the Republic and the Federal Regulatory Law No. 8,935/1994 deal with the basic principles

[15] Minas Gerais. Available at: https://dspace.almg.gov.br/bitstream/11037/52714/1/CE%20Atualizada%202024-02-33%c2%aaed-Fevereiro.pdf. Accessed date: 21 Jun. 2024.
[16] Minas Gerais. Available at: https://www.almg.gov.br/legislacao-mineira/texto/LEI/12920/1998/?cons=1. Accessed date: 21 Jun. 2024.

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of the activity and do not concern the initiative, competence and form for the creation of new notarial and registry services.

The Joint Ordinance of the Presidency No. 1,128/2021, which constituted a Special Working Committee to present a proposal for the deployment of Real Estate Registration Services, as well as the Process of the Judicial Organization and Division Commission No. 1.0000.21.207572-5/000 (Electronic Information System - SEI No. 0051393-92.2021.8.13.0000), deal with technical studies and internal files of the Court of Justice that supported and culminated in the elaboration of the new geographical districts assigned to real estate registries.

The studies and internal files could technically justify the creation of new real estate districts in the district of Belo Horizonte, as long as the legislative process had been respected. In other words: a technical study, even if well done, is not capable of suppressing the legislative process provided for in the constitutional text, whether federal or state.

In other words, for the creation of a new real estate registration district, it is necessary to have a bill initiated by the Court of Justice and the consequent transformation of the project into a complementary law by the Legislative Assembly. The technical studies and internal expedients of the Court of Justice will only serve to subsidize the appreciation of the deputies as to the legal, technical, constitutional, administrative and budgetary feasibility of the project.

THE DIRECT ACTION OF UNCONSTITUTIONALITY NO. 2,415/SP

An important precedent on the subject is the judgment by the Federal Supreme Court on the reorganization of extrajudicial services by means of a normative act of the Court of Justice of the State of São Paulo. The case concerns Provisions numbers 747/2000 and 750/2001, edited by the TJSP and transcribed below:

> PROVISION NO. 747/2000
> THE SUPERIOR COUNCIL OF THE JUDICIARY, in the exercise of its legal powers,
> CONSIDERING the provisions of articles 26 and 38 of Federal Law 8.935/94, and the decision in Case GAJ 120/99,
> SOLVES:
> Article 1 - The registration and note delegations in the interior of the State of São Paulo are reorganized, through the accumulation and de-accumulation of services, extinction and creation of units, in the form of the annex that integrates this provision.
> Article 2 - The following transition rules shall be observed for the implementation of the new organization:

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I - If the accumulation of a certain specialty to another is foreseen, it will automatically occur only when the corresponding delegations are vacant, and therefore the delegation already granted will remain until the advent of the vacancy.
II - If one or more delegations of a certain specialty are extinguished, the extinction will always take place in relation to the delegation whose vacancy is older, thus considered the one that has occurred for the longest time.
III - If the deaccumulation and sequential accumulation of a given specialty is determined, without the creation of new delegations, the unit that receives the respective service shall immediately begin its provision, and the unit that lost it shall also continue to do so until its vacancy.
IV - When a delegation loses one of its attributions, related to a given specialty, provided that there is no creation of new delegations, the extinction of such attributions will only be consummated when the vacancy occurs.
V - If the deaccumulation or loss of attributions is accompanied by the creation of a new unit, the right of option will be granted to the affected delegate, but such legal operations will be carried out immediately.
VI - In cases of dismemberment of territorial districts, the operation shall also be carried out immediately, with the right of option granted.
VII - If the conflicting exercise of two option rights persists, the one manifested by the most senior delegate, i.e., the one who has been a registrar or notary for a longer time, will always prevail.
VIII – The real estate registry delegations, which start to accumulate attributions related to the civil registry of natural persons, respecting, for the accumulation, the division of real estate districts, shall, within their limits, be installed. In this case, the 1st Real Estate District of a district will be identified with the 1st Subdistrict of the seat of the same district and the 2nd Circuit with the 2nd Subdistrict, and the registrar must maintain the provision of the delegated public service, mandatorily, within such territorial limits.
Article 3 - When, as a result of this provision, it is necessary to remove collections and assume new functions, such changes shall be made within 45 (forty-five) days.
Article 4 - This provision shall enter into force on the date of its publication.

PROVISION NO. 750/2001
The Superior Council of the Judiciary of the State of São Paulo, considering the provisions of articles 26 and 38 of Federal Law 8.935/94 and the decision in Case GAJ 120/99, in the use of its powers established by article 221, item XXXII of the Internal Regulations of the Court of Justice of the State of São Paulo,
Solves:
Article 1 – The decree of the extinction of civil registry delegations of natural persons, provided for in Provision CSM 747/00, is hereby revoked, and all the normative provisions for the reorganization of registration and note delegations in the interior of the State of São Paulo remain.
Article 2 – The General Internal Affairs Office of Justice shall publish a list for updating the list attached to Provision CSM 747/00.
Article 3 – This provision shall enter into force on the date of its publication.[17]

It should be noted that the notarial and registry services of the State of São Paulo were reorganized, accumulated, deaccumulated, extinguished and created through Provision No. 747/2000. Provision No. 750/2001, in turn, only revoked the decree of extinction of civil registry delegations of natural persons, provided for in Provision No.

[17] STF. Available at: https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=1718027. Accessed date: 21 Jun. 2024.

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747/2001. Transition rules were also established in Provision No. 747/2000, as a right of option.

Resolution No. 976/2021, published by the TJMG and Provisions No. 747/2000 and No. 750/2001, published by the TJSP, do not differ, in essence. Both deal with the reorganization of extrajudicial services. The normative act of the Minas Gerais court dealt only with the creation of new real estate registry services in the district of Belo Horizonte. The normative act of the São Paulo court was more comprehensive, reorganizing the entire structure at the state level.

The provisions of the São Paulo court took place in the years 2000 and 2001. The resolution of the Minas Gerais court was in 2021. Exactly between the publication of the act of the São Paulo court and the publication of the act of the Minas Gerais court, the STF faced the judgment of ADI No. 2,415/SP, in 2011. According to the vote of Justice Ayres Britto,

> Extrajudicial services are composed of a bundle of public competences, although exercised in a regime of delegation to a private person. Competencies that make such services an instance of formalization of acts of creation, preservation, modification, transformation and extinction of rights and obligations. If this bundle of public competences invests extrajudicial services in a portion of the state power suitable for placing third parties in a condition of servile compliance, the modification of these state competences (creation, extinction, accumulation and deaccumulation of units) can only be carried out by means of law in the formal sense, according to the rule that no one will be forced to do or not do something except by virtue of law.[18]

Justice Ayres Britto's vote was that the reorganization of extrajudicial services, whether through the creation, extinction, accumulation or deaccumulation of units, should only be carried out through law in a formal sense. However, the Minister himself considers that, in the case under trial,

> Considering that the Federal Supreme Court rejected the request for an injunction more than ten years ago and that, during this period, more than seven hundred people were approved in a public tender and received, in good faith, the delegations of the extrajudicial service, the deconstitution of the concrete effects emanating from Provisions No. 747/2000 and 750/2001 would cause disproportionate damage to the social interest. Adoption of the thesis of the legal norm "still constitutional". Preservation: a) of the validity of notarial acts performed in the State of São Paulo, in the light of the contested provisions; b) the grants regularly granted to delegates who have passed the public examination (any defects in the investiture of the delegate, especially the absence of approval in a public examination, are not safe

[18] STF. Available at: https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=1718027. Accessed date: 21 Jun. 2024.

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> from a subsequent declaration of nullity); c) the normal course of the selection process for the recruitment of new delegates.[19]

In other words, considering that the STF had rejected the request for an injunction more than ten years ago and that, during these ten years, more than seven hundred people were approved in a public tender entered the services in good faith, the Minister dismissed the ADI and did not disconstitute the concrete effects emanating from Provisions numbers 747/2000 and 750/2001, under the justification that they would cause great damage to the social interest. The understanding of Justice Ayres Britto was followed by the other Justices, with the exception of Justice Marco Aurélio, as will be seen below.

Therefore, the STF, despite recognizing that the reorganization of extrajudicial services should have occurred through the enactment of a law in a formal sense, and not through a normative act of the Court of Justice, adopted the thesis of the legal rule "still constitutional", because at the time of the rejection of the injunction there was no firm position on the subject. Thus, the validity of the notarial acts practiced in the State of São Paulo, the grants granted to public delegates and the selection process for the recruitment of new delegates was preserved.

However, it was established in the judgment of ADI 2.415/SP that the enactment of a formal law is an indispensable condition for the reorganization of extrajudicial services:

> (...) The enactment of a formal law, indispensable for the creation, modification and extinction of extrajudicial services, is the responsibility of each state federative unit to which the notarial and registry services are linked. This is what this Federal Supreme Court has already decided in ADI 865-MC, written by Justice Celso de Mello. Without prejudice, here, to the exclusive competence of the Union to legislate on "public records" (item XXV of article 22 of the FC). It is like saying: creating or extinguishing units of the notarial and registry service does not mean creating and extinguishing requirements for the validity of legal acts of creation, preservation, modification, transfer and extinction of rights and obligations. Acts that are included in the theme of "public records". There is more: the competence for the creation of notarial and registry service units, in addition to belonging to the Member States, must be formalized by a law of initiative of the respective Court of Justice, with exclusivity, as this bill deals with "the alteration of the judicial organization and division", under the terms of subparagraph "d" of item II of article 96 and paragraph 1 of article 125, both of the Federal Constitution (majority understanding of this STF, but about which I have reservations). In this sense, the following provisions are as follows: ADI 865-MC, Judge Celso de Mello; ADI 1.935, Rel. Min. Carlos Velloso; ADI 3.373, Rel. Min. Menezes Direito; ADI 4.140, Rel. Min. Ellen Gracie; ADI 4.453-MC, Rel. Min. Cármen Lúcia.[20]

[19] STF. Available at: https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=1718027. Accessed date: 21 Jun. 2024.
[20] STF. Available at: https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=1718027. Accessed date: 21 Jun. 2024.

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In addition, the Minister points out that there would be no way to escape the declaration of unconstitutionality pleaded in the lawsuit. However, he justifies it by arguing that the case has peculiarities that lead to the recognition of what, in José Joaquim Gomes Canotilho, assumes the composure of a gradual process of unconstitutionalization:

> 21. After all, I note that Provision No. 747/2000 (later amended by Provision No. 750/2001) was issued with the purpose of reorganizing the registration and note delegations in the interior of the State of São Paulo. Reorganization that, however, operated "through the accumulation and deaccumulation of services, extinction and creation of units", in the exact terms of article 1 of the contested normative act. And at fls. 78/90 of the records, it is possible to see the broader restructuring that the Superior Council of the Judiciary of the State of São Paulo has carried out in the notarial and registry services, all without legal provision.
> 22. In theory, there would be no way to escape the declaration of unconstitutionality pleaded here. The case in the present case, however, has peculiarities that lead to the recognition of what, in José Joaquim Gomes Canotilho, assumes the composure of a gradual process of **unconstitutionalization. Let me explain: this Federal Supreme Court rejected the request for an injunction more than ten years ago, when the jurisprudence of our Court still hesitated as to the need for a law for the reorganization of extrajudicial services. During this period, more than seven hundred people were approved in a public tender and received, in good faith, the delegations of the extrajudicial service. The deconstitution of the concrete effects emanating from Provisions No. 747/2000 and 750/2001 would, as can be seen, cause disproportionate damage to the social interest and legal certainty. Interest of current and future holders of extrajudicial services (there is a public tender already completed to fill, among others, some of these vacancies) and interest of society in the uninterrupted provision of notarial and registration services. Moreover, it is impossible not to recognize that the very summary of the judgment of the precautionary measure of this direct action categorized the extrajudicial services as "auxiliary services of the courts", enabling the Court of Justice of the State of São Paulo to take care of the matter administratively. Not to mention the evidence of the good inspiration of the provisions in question, serving the constitutional principles of efficiency (detachment of the services of notes and registration) and administrative morality (respect for the public tender). Therefore, I have to say that the rules challenged here are, as Justices Gilmar Mendes and Celso de Mello would say, "still constitutional". They are "still constitutional" because they dealt with a topic that, from now on, will only be dealt with by law in a formal sense**. Therefore, the following are preserved: a) the validity of notarial acts performed in the State of São Paulo, in light of the contested provisions; b) the grants regularly granted to delegates who have passed public examinations (at this point, I clarify that any defects in the investiture of the delegate, especially the absence of approval in a public examination, are not safe from a subsequent declaration of nullity); c) the normal course of the selection process for the recruitment of new delegates, with the filling of all vacancies, including those created and/or dismembered by the normative acts in question.[21] (**emphasis added**)

Thus, despite recognizing that the reorganization of extrajudicial services should have occurred through law in a formal sense, Justice Ayres Britto considered that the deconstitution of the concrete effects emanating from the normative acts of the São Paulo

[21] STF. Available at: https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=1718027. Accessed date: 21 Jun. 2024.

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Court would cause enormous damage to the social interest and legal certainty, an understanding that was not followed only by one of the Ministers of the STF.

The reading of Justice Ayres Britto's vote leaves no doubt that the subject, "from now on, will only be dealt with by law in a formal sense."[22] In other words, although unconstitutional, the provisions were preserved; however, after the judgment of ADI No. 2,415/SP, which took place in 2011, only a law in a formal sense should reorganize extrajudicial services.

As previously pointed out, only Justice Marco Aurélio voted in a dissenting manner:

> President, the applicants acted on time. Ten years ago, they sought, in the Supreme Court, an injunction, aiming to suspend the effectiveness of the Provisions of the Court of Justice of the State of São Paulo. At the time, Justices Maurício Corrêa, Néri da Silveira and myself, who was in the Presidency, diverged from the rapporteur, to grant the injunction.
> The Court, then, according to the written ruling, consigned "a precautionary measure denied, by majority, for lack of convenience". At that time, he asserted that there was no convenience in suspending the contested provisions in spite of the plausibility of the grounds of the initial. By the way, in the substantive judgment, the Supreme Court, even leaving aside repeated recent pronouncements regarding unconstitutionality, points out that it is not convenient to proclaim the sin, the unconstitutionality of the Judicial Provisions.
> A picture emerges that generates a certain incongruity, taking into account the principle of impersonality. It does not matter the composition of the Court ten years ago and the current one, as far as the two assessments are concerned, the two conclusions will be based on the convenience of not suspending, when the measure is opportune, and on the inconvenience, now, of declaring the Provisions unconstitutional, since ten years have passed, with acts performed alluding to extrajudicial services.[23]

The vote of Justice Marco Aurélio is important in highlighting that, at the time of the judgment of the injunction, the STF understood that there was no convenience in suspending the contested provisions, despite the plausibility of the grounds of the initial one. However, when the merits were judged, that is, ten (10) years later, the same STF pointed out that it would not be convenient to declare the unconstitutionality of the normative acts of the São Paulo Court. The dissenting vote is didactic:

> I evoke Celso Antônio Bandeira de Mello, as I did on that occasion, in which His Excellency, in an opinion, emphasized that, in the final analysis, the Judiciary of São Paulo ended up entering a field reserved for another Power, that is, the Legislative Power. This is the prevailing view in the Supreme Court today. Why did it come in? Because it disciplined, in a fundamental, substantial way, units of technical and administrative organizations that have legal competences.

[22] STF. Available at: https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=1718027. Accessed date: 21 Jun. 2024.
[23] STF. Available at: https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=1718027. Accessed date: 21 Jun. 2024.

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> The defect, in my view, stands out. There is a concrete situation that requires a normative act in the formal and material sense, emanating, therefore, from the assembly, and not from the management or even from the special body of the Court. We cannot, at this point, considering the fact that the State of São Paulo – the largest unit of the Federation – is involved, simply say that the Provisions – these yes, others are not – are harmonious with the Federal Constitution.
> As for the effects – the so-called modulation – I stick with the traditional doctrine. Law or normative act – gender – that is in conflict with the Constitution is an act – and Rui Barbosa – irrito – has already emphasized; it is an act that, under penalty of not recognizing rigidity to the Federal Constitution, does not deserve to be approved precisely by the one whose primary duty is to guard it – the Federal Supreme Court.[24]

The Justice points out that the defect in the normative act of the São Paulo Court stands out, as the concrete situation required a normative act in the formal and material sense, emanating, therefore, from the assembly, and not from the direction or even from the special body of the Court. He goes on to observe that the modulation of the effects would not be appropriate either, since a law or normative act that conflicts with the Constitution is an act that does not deserve to be sanctioned precisely by the one whose primary duty is to guard it – the STF. The Minister warns:

> We need to conceive, President, culture, in terms of true legislative fury. We need to conceive that we have, in the legal, normative scenario, five thousand five hundred and seventy City Councils. We need to bear in mind that there is normative competence, attached to principles contained in the 1988 Charter, of twenty-seven States, and that there are in the Central entity, which is the Union, two Houses that issue legal diplomas: the Chamber of Deputies and the Federal Senate.
> What happens when the Supreme Court relativizes the defect of a norm and ends up placiting acts that have been practiced during the period in which it was in force? It simply removes, during this period, the validity of the Federal Constitution; it admits that the Major Law could – as it was – be supplanted, even by an act arising – a kind that we are considering – from the Judiciary, or by ordinary law.
> When the Court's decision is relativized – under the pretext of having situations constituted, but which have not been perfected, according to the constitutional framework – those who bet on the passage of time are encouraged, something is stimulated that, in Brazil, I recognize, sometimes has greater force than the Federal Constitution itself, which is the fait accompli. Let's leave things as they are, because it is not convenient – and we return to the subjectivism of convenience – to change the situations that arose in the face of the conflicting act – and, in good conscience, I believe that today it is the unanimous view of the Supreme Court – to be unable to do so, with the Federal Constitution.
> President, it is also up to us to carry out a pedagogical performance, based on the premise that, in Law, the means justifies the end, but not the end already achieved, as in the species, the means itself, especially when this perspective implies placing the Major Law of the Republic in a secondary plane.
> We cannot adopt a posture that, as I said, ends up encouraging those who bet on the slowness of Justice and edit, yes, in the face of prevailing conveniences, discrepant acts of the Federal Constitution, because until the Supreme Court comes to exercise scrutiny and, therefore, to impose the disallowance, these acts will have effects, regardless of whether those interested in removing them from the legal

[24] STF. Available at: https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=1718027. Accessed date: 21 Jun. 2024.

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> order, of national life, have appealed to the Supreme Court in a timely manner, immediately after, as occurred in the species, the issuance of the acts!
> I am very afraid, President, that modernism, enclosed in modulation, will end up stimulating the numerous legislative houses of Brazil – even the culture of enhancing, as I said, reigning interests – to issue diplomas that conflict with the Charter of the Republic. And then it will remain, with the seal of the Court, what is said for what is not said, what is wrong, in terms of consequences, transformed into something correct. With this, the importance of the Major Law is mitigated, emptied, to which everyone, without distinction, submits, regardless of whether natural or legal persons, or Powers, including the Supreme Court, in charge, as it is in the Federal Constitution itself, of implementing the cogent observance of the various precepts contained therein.
> I beg your pardon, President, to the majority and to the consensus – and I repeat that the beauty of the Collegiate lies in having free seats as to what is intended to be conveyed, in having the sum of visions, collaboration, mutual cooperation among the members – to remain firm, already now endorsing recent pronouncements of the Court regarding the unconstitutionality of this matter, and no new constitutional precept has come to the fore to govern it, To conclude, therefore, that the national courts cannot legislate on services, grouping or dismembering them to create new services, or extinguishing them, or even creating new services. Seat – I heard that it would be a simple call for approved candidates to assume the services – that the collective interest here prevails – and I do not enhance the individual interest of the candidates, I also do not believe that, at the mercy of this vote, the locomotive of Brazil, which is the State of São Paulo, will have its services impaired – and that it is simply up to recognition, with retroactive effects, that the Provisions were born flawed, conflicting with the Federal Constitution.[25]

The transcription of the entire content of Justice Marco Aurélio's vote is important, because it occurred precisely what the magistrate feared. In other words, the unconstitutional act was relativized (TJSP Provisions numbers 747/2000 and 750/2021) and the issuance of a new unconstitutional act (Resolution No. 976/2021/TJMG) was encouraged, betting on the passage of time for the consolidation of the situation.

The Minister also warned that the modulation of the effects of the STF's decisions ends up stimulating the numerous legislative houses in Brazil to issue diplomas that conflict with the Constitution of the Republic. And in this way, with the seal of the STF itself, the unconstitutional is corrected by tortuous means, mitigating the importance of the Constitution of the Republic, to which everyone submits, whether a natural person or the Court of Justice of the largest State in the Federation.

Justice Marco Aurélio concludes the vote by reiterating that the courts cannot legislate on services, grouping or dismembering them to create new services, or extinguishing them, or even creating new services.

It can be seen, therefore, that no Justice considered the Provisions of the Court of Justice of the State of São Paulo constitutional. All magistrates were unanimous in

[25] STF. Available at: https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=1718027. Accessed date: 21 Jun. 2024.

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emphasizing that the reorganization of extrajudicial services must occur through the enactment of a law in a formal sense, being the project an initiative of the state Court of Justice.

There was divergence only in relation to the modulation of the effects of the decision. While the majority understood that, for reasons of legal certainty, the normative acts of the São Paulo Court should prevail, despite being unconstitutional, only one of the STF magistrates understood that the modulation of the effects of the decision would not be appropriate, as it encourages the issuance of acts manifestly contrary to the Constitution of the Republic.

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FINAL CONSIDERATIONS

In view of the above, it is possible to state that the Court of Justice of the State of Minas Gerais, when creating extrajudicial services in the district of Belo Horizonte through Resolution No. 976/2021, did so without the proper legal authorization.

In other words: Resolution No. 976/2021, issued by the TJMG and which provides for the installation of extrajudicial services corresponding to the 8th, 9th and 10th Real Estate Registry Offices of the district of Belo Horizonte and which also specified new dividing lines corresponding to the geographical districts of the 2nd, 6th and 7th Real Estate Registry Offices of the district of Belo Horizonte, is unconstitutional.

Resolution No. 976/2021 is in total disagreement with the constitutional discipline on the matter and with the consolidated jurisprudence of the STF, as seen. In addition, the normative act of the TJMG was enacted based on State Ordinary Law No. 12,920/1998, unconstitutional for two reasons: a) defect of initiative, since the project was presented by a state deputy and not by the TJMG; b) defect of form, considering that it was approved as an ordinary law, when the correct thing would be for it to be promulgated as a complementary law, which requires a qualified quorum.

The Constitution of the Republic, of 1988 and the Constitution of the State of Minas Gerais, of 1989, by conferring on the local Court of Justice the prerogative of self-organization of its services, inform that this organization must be submitted to the appreciation of the Legislative Assembly of the State of Minas Gerais, through a bill of initiative of the President of the Court of Justice of the State of Minas Gerais.

The organization of extrajudicial services has no other way. In other words, the local Court of Justice, on the initiative of its President, must submit the bill to the respective Legislative Assembly. Only then will the act be considered in accordance with the Constitution of the Republic, of 1988.

Knowing that such a path was not taken by Resolution No. 976/2021, it is clear that the normative act issued by the Court of Justice of the State of Minas Gerais is unconstitutional, and it is therefore up to the Court itself to annul it, under the terms of article 53 of Federal Law No. 9,784/1999: "The Administration must annul its own acts, when tainted with legality, and may revoke them for reasons of convenience or opportunity, respecting the acquired rights."[26]

[26] BRAZIL. Available at: https://www.planalto.gov.br/ccivil_03/leis/l9784.htm. Accessed date: 21 Jun. 2024.

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