COMBATING THE INCREASE IN SUBSIDIES FOR MAYORS, DEPUTY MAYORS, SECRETARIES AND COUNCILMEN: THE EFFECTIVENESS OF POPULAR ACTION REQUIRES AN INFRA-CONSTITUTIONAL BASIS

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I INTRODUCTION

At budget containment times, coming from an unprecedented crisis that insists on devastating the national economy, there is no how to conceive real rises on the political players allowance, specially to those ones from home: mayors, vices, secretaries and councillors. If by one side it falls progressively the collection, the other side it establishes the guarantee of minimum investments in health, education, security, transportation etc.

In 2016, a non organized movement, but of a national repercussion and with a support of the big media, sharpened the citizen civic-political spirit and that one has passed to monitor the extraordinary sessions of his own city Municipal Chamber. The settled ones were done at the end of the legislatures and it was about rises on the allowances of those political players.

As a result, a storm of Popular Actions has knocked at the Judicial door. That population effort was well received in general, and many actions had some success on its desideratum, others, however, suffered because of a lack in the applications and because of clashed with other constitutional procedures destined to combat laws. Those defects were touched on when the actions got into the courts.

At this work, using as a method the literature revision on a free way, without the guidelines use, of a qualitative and theoretical approach, it has as a goal to demonstrate how the Popular Action has revealed itself a very effective instrument in fighting those municipal legislative harmful actions to the public patrimony, since observed the proper grounds.

It will begin by a fast regression to the democratic basis of the Popular Action, in order to demonstrate that it is a result of a people fight, and not of government concessions; a real premise to the existence and democratic State consolidation. Nowadays, internet has revealed itself a potentiator of that instrument, reason why it is also done a short report about the control universalization by the big global network.

It will expose, in the sequence how complex is its nature, so, even being contained in the highest judicial rule of the State, even so, it does not allow an agreement in relation to what it represents indeed. On the same magnitude vein, it will approach to its actuation scope. When it is considered the constitutional prediction and its inalterability character, it will see that the legislative harmful acts to the public patrimony can also be attacked by the Popular Action.

At the end, with basis in the provisions of the Fiscal Responsibility Law (LC 101, from 2000), the Budget Guidelines Law (LDO) and the Annual Budget Law (LOA), they will be exposed the judicial arguments that can be a basis to combat the municipal laws that aim a subsidy raise of the political players. At that moment, since it is a legislative act, it will also be evident the judicial care that must exist so that the Popular Action does not fight against the control procedures of concentrated constitutionality.

It will be concluded, so, that the Popular Action is a genuine instrument, proper and effective to combat any injury to the public patrimony or of an entity that the State participates, to the administrative morality, to the environment and to the cultural and historical patrimony, regardless of which is the harmful act nature.

2 DEMOCRATIC BASIS OF THE POPULAR ACTION IN BRAZIL

The origin is romaine (GAJARDONI, 2012), as a good part of the Brazilian law institutes, but the Popular Action in Brazil has its history ingrained with the constitutionalism and it was a qualified witness of the Brazilian democratic regime opening and of the fights fought for its consolidation.

In Brazil, the Imperial Constitution, from 1824, already brought in its text the possibility to the

citizen exercising directly some control over the State representatives (MORAES, 1996, p. 194). In its article, 157, it predicted the possibility of any of the People to demand against bribery, bribe, embezzlement and concussion.[1] Although it was treated as a bestowed constitution by Dom Pedro I, therefore, imposed to the people, it is a notorious fact in history that it was not the imperial wish that made it rise, but the fruit of pressions of economy important sectors. That was the Constitution that has had the major validity until now (65 years).

The following Constitution, 1891, known as the first republic, neither brought the Popular Action in its text expressly; however, the doctrine at that time continued accepting the popular action in the Imperial Letter molds.

It was the Constitution from 1934 who inaugurated the Popular Action in the Brazilian constitutional text.[2] However, in practice, what was realized was a text rescue, from 1824, now broader and indexed in a topic of fundamental guarantees. It was about the first years of the called Vargas Era, and the country looked forward an economic and political stability, in order that the Constitution had as an obligation to demonstrate that commitment of the governing. At that time, there were not more doubts that the State chosen by the people was a democratic regime; however, they lived in the shadows of totalitarian and absolutist governments.

Between 1937 and 1945 (validity of the called New State), there was not a space for Popular Action in the constitutional text. But the theme was not forgotten by people. According to professor Nelson Carneiro (1951), the militant Ferreira de Sá, facing the congress silence plastered by the war state, took the text regulation proposal, from 1934, to appreciation of then Order of Lawyers of Brazil Institute in conference held in 1937. That way, the proposal had some voice, in order that, even with the coup institution of Getúlio Vargas, the subject continued echoing among the law operators until that it was built to the constitutional status with the Letter again, from 1946.[3] The regulation came in 1965, with the Letter number 4717 that prevails until now.

The Constitutions, from 1967 and 1969, although had been elaborated under the military governments influence, so, more worried about the internal security than the democratic system properly said, kept the constitutional status of the Popular Action. The one from 1967, in its article 150, § 31, and the one from 1969, in the article 153, § 31. Both the texts with the same essay: any citizen will be valid part to propose a popular action that aims to cancel harmful acts to tje public entity patrimony.

With the Brazilian redemocratization and the power return to the civil, the Popular Action ended having more emphasis in the constitutional text. Ratified in 1988, the known Citizen Constitution has expanded its scope to defend beyond the public and cultural patrimony, also the environment and the administrative morality (5th article, LXXIII, FROM THE Federal Constitution, from 1988).

By that synthetic historical passage, it can be noticed that the possibility bestowed to the citizen personally of exercising acts control of the Public Administration is more linked to the pressure and strength exercised by the people than the wish of any government, being imperial, dictatorial, military or civil. Expressed, tacit or implicitly, since the Imperial Constitution people could, anyway and with legal legitimacy, interfere to defend the public affairs of the harmful acts.

3 THE POPULAR CONTROL AND THE INTERNET

It will demonstrate after that as the internet gave conditions, although in potential, for any citizen acts actively in the State decisions and exercise the social control under the acts practiced by the Legislative Power.

In Brazil the policies of access to the internet are still below the ideal. However, according to Felizola (2011, pg. 272), they do not live "in a society of complete digital poverty". The author supports that

> "(...) requer ainda condutas positivas do Estado, que deve oferecer aos cidadãos a possibilidade de se inserirem no contexto de conexão, sob pena de serem privados de diversos outros direitos fundamentais cujas

[1] Art. 157 da CF de 1824 - Por suborno, peita peculato, e concussão haverá contra eles ação popular, que poderá ser intentada dentro de anno, e dia pelo proprio queixoso, ou por qualquer do Povo, guardada a ordem do Processo estabelecida na Lei.

[2] Art. 113, nº 38 da CF 1934 - Qualquer cidadão será parte legítima para pleitear a declaração de nulidade ou anulação dos atos lesivos do patrimônio da União, dos Estados ou dos Municípios.

[3] Art. 141, §38, da Constituição Federal, de 1946, em capítulo denominado "Dos Direitos e Das Garantias Individuais", e estabeleceu que "qualquer cidadão será parte legítima para pleitear a anulação ou a declaração de nulidade dos atos lesivos ao patrimônio da União, dos Estados, dos Municípios, das entidades autárquicas e das sociedades de economia mista".

> concretizações, no mundo atual, dependem – e dependeram cada vez mais – do acesso a tecnologias da informação" (FELIZOLA, 2011, p. 272).

It is far from the ideal, but what there is in Brazil today on a connectivity level has already caused a deep revolution in all the areas, not being out the potential that gave to the popular control actions. According Da Silva, Prata, Marques (2019, p. 34):

> [...] a inclusão digital é sentida de forma notória na contemporaneidade. Pessoas sem qualquer grau de instrução têm possibilidade de acesso às mais variadas formas de redes sociais, aplicativos de mensagens instantâneas, sites jornalísticos etc. Os aplicativos de leitura e transcrição de textos, bem como a possibilidade de enviar e receber mensagens em áudio mesmo, quebraram o paradigma de que saber ler e escrever era requisito para a inclusão digital. Hodiernamente, a participação nas discussões em grupos, seja ela referente à vida privada, política, religião futebol etc. está ao alcance de qualquer pessoa (DA SILVA, PRATA, MARQUES, 2019, pg. 34)

It is also important to emphasize that the internet serves the populations with information all the time in the active aspect, so even a simple sharing by the social media can serve as a trigger for the popular control exercise. In some cases, a citizen point to the supposed fact and still so, even unintentionally, that social player participates of the popular control process, because the sharing at a certain moment come to the "ears" of other citizen willing to act tangibly, being by Popular Action, or promoting a notice really able to use a civil investigation.

That way, being by official portals, private sites, NGOs, social networks, instant messages apps, sharing etc, today the internet enables that any connected citizen has conditions of knowing what is happening at the Public Administration direct and/or indirectly, being it Municipal, Statual or Federal, having conditions never seen before for the exercise of popular control.

Meaning the control of the Municipal Legislative acts, the net can also be very effective on the taken action, attracting supporters to the movement and pressing the agents to the revision of the harmful acts, as well as influencing the Judiciary on the Popular Actions trial.

4 JUDICIAL NATURE OF THE POPULAR ACTION

There is no agreement in the doctrine in respect of the judicial action of the Popular Action. It is about a very complex theme. It is not intended to innovate that thematic, nor the affiliation to an opinion. It is purposeful to expose the common points and the differences, in order to understand the judicial power that this instrument has revealed to settle so relevant subjects for democracy, as the Laws validity.

The common point doctrinally defended, or unless not attached, is that the jurisdiction is civil, and in the Civil Procedural Law it is treated like a constitutional nature institute (Constitutional Popular Action), by which any citizen will be able to plead the harmful acts nullity: a) to the public patrimony or entity that the State participates; b) to the administrative morality; c) to the environment and; d) to the cultural and historic patrimony. The common understanding stops right here.

Mostly it is defended that the Popular Action treats about a sparse political right, in other words, it is not originally in the list of that law category (IV Chapter of the Federal Constitution, from 1988), but in essence it is a way that the citizen, that way understood that one in the enjoyment of its political rights, to participate politically in the State life as a public, cultural and historic patrimony fiscal, defense of the administrative morality and of the environment.

Linking with that understanding, Fernando de Azevedo Alves Brito ends his reasoning affirming that "all the right which active legitimacy finds a rest in the citizen personal orbit, while an elector, it is a political right" (BRITO, 2010, p. 93), no matter its constitutional geography.

By its side, there are important doctrinators in the orbit of the constitutional right, like Alexandre de Moraes and José Afonso da Silva. Those ones defend that the citizen, in its own name and in defense of its own right, participate in the State political life and in the inspection of the public patrimony management, entering in Judgement to reach its goal.

To Alexandre de Moraes, it is about a

> Combate ao ato ilegal ou imoral e lesivo ao patrimônio público, sem, contudo,

> configurar-se a ultimaratio, ou seja, não se exige esgotamento de todos os meios administrativos e jurídicos de prevenção ou repressão aos atos ilegais ou imorais e lesivos ao patrimônio público para seu ajuizamento (MORAES, 2006, p. 167).

Professor José Afonso da Silva, also discoursing about the Popular Action, defends that

> Constitui ela um direito público subjetivo, abstrato e autônomo, como qualquer ação judicial. Mas inclui-se entre os direitos políticos do cidadão brasileiro. Difere ainda das ações judiciais comuns, porque seu titular não defende interesse exclusivamente seu, mas interesse da coletividade em ter uma administração fundada nos princípios da legalidade e da probidade. Revela-se, assim, como uma garantia constitucional e remédio destinado a provocar o controle da legalidade e da moralidade dos atos do poder público e de entidades em que o interesse coletivo se faça presente (SILVA, 2007)

At the other end, the divergence can also be understood as a theme deepening that naturally ends by transpassing the central idea about a political right properly said.

Those ones that defend not being in front of a political right, here it is included names of equal doctrinaire scale, like Hely Lopes Meirelles, punctuate that objectively the Popular Action is in the list of Rights and Fundamental Guarantees by the wish of the original legislator, and that is why we cannot simplify its nature as being an exercise of a political right.

It is added to treat about a subjective fundamental right, in other words, of an optional exercise of the jurisdictional function provocation, once there is not an action duty order to the citizen. It is still of a collective and diffuse character, because the legal good to be protected pervades the author figure. That thesis reinforces that the action author loses the authorship exclusivity when the facts are revealed to society and to Service Prosecution, being any member able to qualify itself in the achievement and, in case of the original author waiver, to assume the active function of the procedural relation. [4]

And in terms of the active legitimacy being exclusive of a popular with active political rights (can vote and can be voted) that would induce the notion of treating about political rights? Those authors remember that there is a contemporary divergence about the theme. They allege that such restriction besides consisting of a infraconstitutional Law before the Constitution (Law number 4.717, from 1965), so, with a questioning about its reception extension, its preparation was by historical conditioned facts influence, specially by being passing through a militar government with a fascist bias.

Sérgio Monte Alegre, that thesis supporter, adds that it is not possible to read an only line in the constitutional article relative to the political rights that derives from the judicial function exercise (litigation nature). He still supports that it is subjective rights that it is deliberated, in other words, “rights of a certain person, by opposition to an objective right, designed expression to a legislated right” (MONTE ALEGRE, 1992, p. 125).

In turn, Hely Lopes Meirelles, the father of that position by his weight in the modern constitutional doctrine, classifies the Popular Action as being

> [...] instrumento de defesa da coletividade, por meio do qual não se amparam direitos individuais próprios, mas sim interesses da coletividade, sendo o beneficiário da ação não o autor, mas a coletividade, o povo [...] (MEIRELLES, 1992)

As it was anticipated, there is not by a pretense the defense of a thesis, even why it is understood that there is not a divergence properly said, but only a scope of a different scientific study. That way, what is denoted from those brilliant understandings about the popular action nature is that, being a political right or a subjective, diffuse and collective fundamental right, it is about a constitutional instrument that gives to the citizen the possibility of acting actively in defense of *res*

[4] Artigo 9º da Lei nº 4.717, de 1965.

publica.

Being of a Constitutional scale, it disputes the same attention of other guarantees, as the secure, injunction mandate, habeas corpus or habeas data. By that same reason, it also has to dialogue with the control tools of concentrated constitutionality, as the Unconstitutionality Declaratory Action (ADIN), Constitutionality Declaratory Action (ADC), Declaratory Action by Omission (ADO) and Action of Noncompliance Fundamental Precept (ADPF).

5 POPULAR ACTION AUTHORITY

The protected rights by the Popular Action are of a literal finding; however, a sweetened reading of the device can induce to a wrong scope restriction, especially because the constitutional rule does not specifies what types of acts are subject to the control by that instrument. That way, for the current research, it is necessary a fast explanation about the judicial acts species with effects potential to the administrative morality, to the environment and public, historic and cultural patrimony.

As already mentioned before, the constitutional text, from 1988, has increased the judicial good list susceptible of protection by Popular Action, also embracing the environment and the administrative morality (5th article, LXXIII).[5] The Constitutional prediction is schematized this way:

Scheme 1 – 5th Article Layout, LXXIII, Federal Constitution, from 1988
Who
any citizen is a legal part to propose popular action that aims to cancel harmful act
Goal
Act Condition
Harmful to
a) to the public patrimony or from an entity that the State participates
b) to the administrative morality
c) to the environment and
d) to the cultural and historical patrimony
Loss
being the author, except proven dishonesty, free of judicial costs and the loss cost
Source: Author

The 1st article of the Law number 4.717, from 1965, that governs the Popular Action has a more detailed writing[6] without, however, change the constitutional text essence. It is noticed that who intends to state a Popular Action must have as a goal to cancel an act (or obtain its nullity recognition).[7] The act needs to be harmful or unless, has a harmful potential to the protected goods.

Likewise, Meirelles (1992, p. 85) teaches us that the popular action is a constitutional nature institute, readily to the citizen that has an interest in the judicial recognition of the acts invalidity or administrative contracts, those one illegal and harmful to the public patrimony, of any of the government spheres. The referred doctrinator ends that the first Popular Action requirement is the elector condition, that must be in the joy of its political and civic rights, after the illegality or act illegitimacy, last of all that one harmful (MEIRELLES, 1992, pp. 88-89).

It is clear the active legitimacy concept (citizen in the public rights joy), as well as the act condition (must be harmful and illegal), but about the act per se, what are the control susceptible by the Popular Action? In the judicial order adopted by Brazil we have unless 3 genres of state act: administrative, legislative and judicial. The Federal Constitution, from 1988, does not specify the kind of act, so would it be possible by Popular Action to control all the acts?

Negligible arguments about the control possibility of the administrative acts by the Popular Action, after all, they are who essentially suffer that fiscalization. Moreover, the 6th article from the Law number 4.717, from 1965, when treating the passive subjects of the Popular Action, notes that it will be the proposal against public or private people and the entities referred in the 1st article of the

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[5] Art. 5º, LXXIII da CF/88 – qualquer cidadão é parte legítima para propor ação popular que vise a anular ato lesiva ao patrimônio público ou de entidade de que o Estado participe, à moralidade administrativa, ao meio ambiente e ao patrimônio histórico e cultural, ficando o autor, salvo comprovada má-fé, isento de custas judiciais e do ônus da sucumbência.

[6] Art. 1º Qualquer cidadão será parte legítima para pleitear a anulação ou a declaração de nulidade de atos lesivos ao patrimônio da União, do Distrito Federal, dos Estados, dos Municípios, de entidades autárquicas, de sociedades de economia mista (Constituição, art. 141, § 38), de sociedades mútuas de seguro nas quais a União represente os segurados ausentes, de empresas públicas, de serviços sociais autônomos, de instituições ou fundações para cuja criação ou custeio o tesouro público haja concorrido ou concorra com mais de cinquenta por cento do patrimônio ou da receita ânua, de empresas incorporadas ao patrimônio da União, do Distrito Federal, dos Estados e dos Municípios, e de quaisquer pessoas jurídicas ou entidades subvencionadas pelos cofres públicos

[7] Artigo 2º da Lei nº 4.717, de 1965.

referred Law, against authorities, employees or administrators that had authorized, approved, ratified or practiced the challenged act. So, authorities belonging to direct and indirect public administration.

By a judicial act it is understood that it is every act practiced in court by a judicial authority or in front of it or by its warrant (sentences, decisions, summons etc). With not so much effort it is possible to infer that the Popular Action does not have custody over a judicial act. It would not be possible judicially, for example, considering a Popular Action to cancel a judicial sentence, even if it is illegal or unlawful and harmful to the public patrimony. The reason is simple: there is not hierarchy between judicial actions from the same instance. That way, except in the expected cases in law, a judicial provision from the same instance does not competence to cancel the other. The judicial act control, by its own nature, it is already ordinarily exercised by the own Judicial Power by the expected resources.

It remains, so, know if the legislative acts can be reached by Popular Action. By legislative act it is known all that the Legislative Power elaborates and the boss of the Executive Power sanctions and enacts, in other words, essentially the Law. There are also the Legislative Decrees, also insert in the Legislative act category.

The doctrinator Hely Lopes Meirelles points that “it is a pacific point in doctrine and in jurisprudence that it does not fit a Popular Action to invalidate law in thesis, in other words, the general rule, abstracted, that only establishes conduct rules for its application” (MEIRELLES, 1986, P. 369). However, the same luck does not keep the Law that gives an opportunity to some execution concrete act, because in that case, affirms the doctrinator, it can “be attacked by popular way and declared unlawful and harmful to the public patrimony” (MEIRELLES, 1986, p. 369).

It was noticed, then, since it is a citizen political-civic exercise, the Popular Action scope must not restrict to the public acts emanated by direct and indirect public administration. The Constitution does not bring any restriction in that case. Therefore, proven that the practiced act by any State authority is harmful and unlawful, as a rule, the citizen must have the possibility to combat it by the Popular Action.

That is the sore point of the current study. It will be analyzed in the following topic in what circumstances the Popular Action can be released to combat the illegal and harmful legislative acts, unlawful or immoral perpetrated by the Municipal Chamber to increase unreasonably the salary of its own members, of the Mayor, vice and secretaries.

6 POPULAR ACTIONS AGAINST THE MUNICIPAL LAWS THAT INCREASE THE SALARY OF MAYORS, COUNCILLORS, VICES AND SECRETARIES

The cities make part of an organizational structure of the Brazilian State by Federal Constitution determination, from 1988. The maximum regency normative of the cities are done through Organic Law, nevertheless the Magna Carta establishes guiding principles (29th article from Federal Constitution, 1988), of those, it matters for our work to emphasize the following ones (incised from article 29th, retro mentioned):

> V – Subsídios do Prefeito, do Vice-Prefeito e dos Secretários Municipais fixados por lei de iniciativa da Câmara Municipal, observado o que dispõem os arts. 37, XI, 39, § 4º, 150, II, 153, III, e 153, § 2º, I; (Redação dada pela Emenda constitucional nº 19, de 1998); VI – O subsídio dos Vereadores será fixado pelas respectivas Câmaras Municipais em cada legislatura para a subsequente, observado o que dispõe esta Constituição, observados os critérios estabelecidos na respectiva Lei Orgânica e os seguintes limites máximos: (Redação dada pela Emenda Constitucional nº 25, de 2000).

It is noticed that inside the list of administrative, patrimonial, political and financial autonomy of the cities, it consists of deliberating about the subsidies to be noticed by their political agents, notably the mayor, vice, secretaries and councilors. It is known there are the external control, specially the one exercised by the Audit Court, Service Prosecution etc., that can interfere in the cases where it is verified some illegality or immorality. However, without a prejudice there is a vast field to citizen acting in the exercise of its supreme right to supervise the res public, which instrument put at the disposal is the Popular Action.

They are legislative acts embodied in Laws (for the subsidy of mayors, vices and secretaries) and legislative decrees or resolutions (councilor’s subsidies) that, in thesis, as cited by Meirelles (1986), it would not be ATTACKED BY Popular Action. However, in those cases, they are not abstract laws that only regulate conducts, but real auto executable acts with potential to impact directly in the municipal budget, compromising essential public policies for the city, like health, education, basic sanitation,

secure etc. Therefore, with patent harmful effects to the public patrimony.

Those legislative acts are usually practiced in the last year of the mandate of a legislature that matches with an electoral year, which financial effects are projected for the following year and mandatory. However, there are some rules that must be followed for the act edition, just as observed its legality and morality. In the infringement of any of the cases, it is defended that the addictions can be whipped by Popular Action.

With effect, the Fiscal Responsibility Law (LRF) – Complementary Law number 101, from 2000 – establishes that be sealed increases of staff in the final 180 days of the mandate (21st article, single paragraph, of the Fiscal Responsibility Law).[8] The same Law inserts in the expenses with staff list the subsidy of the political agents (18th article of the Fiscal Responsibility Law).[9] It is important to point out that the legislative act must be improved with observance of the legal anteriority scheduled in the Fiscal Responsibility Law; that way, if the act is approved in plenary before 180 days, but its publication occurs in the prohibited period, it concerns, so, the form and legality addiction. With effect, a judicial act publication is condition of its validity.

In electoral years, it is not rare to occur that the interested political agents move themselves for approval of the referred acts after the October suffrage, usually when everybody is preparing themselves to the yearend festivity, because they are conducts that reflect negatively in front of society/elector. That way, being the legislative act practiced without compliance to the legal anteriority observed in the Fiscal Responsibility Law, it suffers of an object form and illegality, so, considered invalid of full right, in terms of the 2nd article, "b" and "c" of the number 4.717 Law, from 1965.

The Fiscal Responsibility Law still establishes some restrictions for a raise with staff expenses. In those cases, it is necessary to investigate a little more deeply to determine the act illegality or immorality. It will not matter the period that the Law will be approved, but its materiality and financial effects. It is required from the citizen, then, a continuous monitoring posture. It is about the observance of the staff expenses limits provided in the articles 19 c/c 20 of the Fiscal Responsibility Law, as well as the imposed sealing by the 22nd article, single paragraph, line I, of the referred Law.[10] To determine if there was observance of those rules, the citizen must diligence together with the agency to become aware of the limits already practiced. To that, it will be able to resort of the legal instruments offered by the Law of Information Access (Law number 12.527, from 2011), likewise, by offered by the Popular Action Law (Law number 4.717, from 1965). Unobserved any of those rules, the act will be addicted by the object illegality (line "c" of the 2nd article of the Law number 4.717, from 1965) and it can be attacked by Popular Action.

There is also a third way, because, even there is an observance of the act edition term and the staff expenses limits, the citizen will be able to confront if the expense is in subjective conformity with the municipal budget, those one expressed on the Budget Guidelines Law and Annual Guideline Law, respectively. In effect, the reasonableness and the act morality have a direct relation with the accounts balance; that way, while there is a margin for a raise of staff expenses, if the Budget Guidelines Law predicts a smaller collection for the next exercise, or if the Annual Guideline Law did not contemplate that expense, the act will be addicted again; this time lines capitulation "c", "d" and "e" of the 2nd article of the Law number 4.717, from 1965. It occurs because the resource must come from a source, not being acceptable that a budget of important public policies, as health, education, public security etc is cut for destination to the raise of political players' subsidies.

In an economical crisis time, like the one that devastates Brazil for some years, it becomes practically impossible justifying a legislative act from that nature. It occurs that the crisis effects put the Public Administration in front of an inversely proportional, in order to from one side there is a marked fall of collection, and from the other side the necessity of increasing (unless to keep) the investments/expenses in health, education, public security etc areas.

Last of all, after the capitulated facts and when everything is ready for the Popular Action

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[8] Art. 21. É nulo de pleno direito o ato que provoque aumento da despesa com pessoal e não atenda: (...) Parágrafo único. Também é nulo de pleno direito o ato de que resulte aumento da despesa com pessoal expedido nos cento e oitenta dias anteriores ao final do mandato do titular do respectivo Poder ou órgão referido no art. 20.

[9] A rt. 18. Para os efeitos desta Lei Complementar, entende-se como despesa total com pessoal: o somatório dos gastos do ente da Federação com os ativos, os inativos e os pensionistas, relativos a mandatos eletivos, cargos, funções ou empregos, civis, militares e de membros de Poder, com quaisquer espécies remuneratórias, tais como vencimentos e vantagens, fixas e variáveis, subsídios, proventos da aposentadoria, reformas e pensões, inclusive adicionais, gratificações, horas extras e vantagens pessoais de qualquer natureza, bem como encargos sociais e contribuições recolhidas pelo ente às entidades de previdência.

[10] Art. 22. A verificação do cumprimento dos limites estabelecidos nos arts. 19 e 20 será realizada ao final de cada quadrimestre. Parágrafo único. Se a despesa total com pessoal exceder a 95% (noventa e cinco por cento) do limite, são vedados ao Poder ou órgão referido no art. 20 que houver incorrido no excesso: I - concessão de vantagem, aumento, reajuste ou adequação de remuneração a qualquer título, salvo os derivados de sentença judicial ou de determinação legal ou contratual, ressalvada a revisão prevista no inciso X do art. 37 da Constituição (...).

filing, it must still stick to an important procession judicial character detail. In effect, with the objective of combating the rises in the councilors, mayors, vices and secretaries subsidies, there was in Brazil a wave of Popular Actions in 2016, many of them with a repercussion in the national media in front of the case gravity. Some actions were proceeding and could prevent that the act damaged the public patrimony; but, others had a different destiny and were extinct without merit trial by inadequacy of the elected way, or interest absence of the part. In that case, the existence of a grey area among the scope of the constitutionality control (exercised by the Unconstitutionality Declaratory Action (ADIN), Constitutionality Declaratory Action (ADC), Declaratory Action by Omission (ADO) and Fundamental Precept Noncompliance(ADPF), and the Popular Action scope were observed.

In the judgment of the Interlocutory Appeal 70072723646 TJ-RS l,[11] winner divergence headed by judge Ricardo Torres Hermann, nominated judgment redactor, it was verified that the simple rule immorality and illegality allegation, based only on the Federal Constitution devices, it could attract for the case the constitutionality control procedures cited backward, detrimentally of the Popular Action. E. Relator vote settled exactly that detail:

> Ocorre que o questionamento da moralidade do aumento concedido não se consubstanciou na única causa de pedir deduzida pelo autor da ação popular. Conforme se verifica da cópia da petição inicial da referida demanda, houve fundado questionamento acerca do "desrespeito à lei de responsabilidade fiscal – Lei Complementar nº 101/2000".Com efeito, argumenta o agravante com o "desrespeito ao prazo determinado no art. 21, parágrafo único, da Lei Complementar nº 101/2000". Pontuando: "neste ponto, é incontroverso o vício de ilegalidade do ato impugnado, uma vez que o art. 21, parágrafo único, da Lei Complementar 101/2000, é taxativo ao determinar o seguinte […][12]

[11] Agravo Nº 70072723646, Segunda Câmara Cível, Tribunal de Justiça do RS, Relator: João Barcelos de Souza Junior, Redator: Ricardo Torres Hermann, Julgado em 25/10/2017.

[12] AGRAVO EM AGRAVO DE INSTRUMENTO. AÇÃO POPULAR. AUMENTO DOS SUBSÍDIOS DO PREFEITO, VICE-PREFEITO, SECRETÁRIOS E VEREADORES DO MUNICÍPIO DE ALVORADA. INADEQUAÇÃO DA VIA ELEITA. AÇÃO POPULAR JULGADA EXTINTA, NA ORIGEM, SEM JULGAMENTO DE MÉRITO. AFASTAMENTO. REQUISITOS DE ADMISSIBILIDADE DA AÇÃO POPULAR. PREENCHIMENTO. 1. Não prevalecem as questões preliminares contrarrecursais suscitadas. Ocorre que a cópia do agravo foi tempestivamente juntada aos autos, conforme se vê da cópia da petição protocolada em 25/1/2017 e os procuradores da parte autora foram identificados, na medida em que reproduzido integralmente o processo no agravo de instrumento. 2. Ocorre que o questionamento da moralidade do aumento concedido não se consubstanciou na única causa de pedir deduzida pelo autor da ação popular. Conforme se verifica da cópia da petição inicial da referida demanda, houve fundado questionamento acerca do "desrespeito à lei de responsabilidade fiscal - Lei Complementar nº 101/2000". Há discussão sobre a impossibilidade de vigência da lei por inobservância da anterioridade legal, instituída na Lei de Responsabilidade Fiscal, de 180 dias do término do mandato, para a concessão de aumento de vencimentos. Também questiona "o desrespeito ao limite de gastos... com pessoal - art. 22, parágrafo único, inciso I, da Lei Complementar nº 101/2000". Como se vê, em ambas as alegações, cujos fundamentos são plausíveis, se não que prováveis, a violação invocada não invade a esfera do ordenamento constitucional. Pelo contrário, os fundamentos envolvem confronto com legislação infraconstitucional. Portanto, ao menos, para a apreciação de ditos fundamentos não se poderia considerar inadequado o meio processual eleito, uma vez que sequer cabível seria a ação direta de constitucionalidade para a apreciação de confronto das leis municipais com a Lei de Responsabilidade Fiscal. Presentes, portanto, os requisitos subjetivos do autor da ação popular, já que é eleitor, como também os requisitos objetivos, na medida em que apontada a provável ilegalidade das leis municipais 3.023/16 e 3.024/16 que majoraram os subsídios dos agentes políticos da Cidade de Alvorada, do Prefeito, Vice-Prefeito, Secretários e Vereadores. Quanto à lesividade, também resta aparentemente evidenciada. De um lado, porque as leis foram editadas com inobservância do lapso temporal previsto no art. 21, parágrafo

It happens that when fighting an act coming from the direct or indirect Public Administration, it is common to base the grounds directly on the Federal Constitution, largely because of the very nature of the Popular Action. However, when facing a legislative act, as in the cases presented, the citizen should be careful when presenting the cause of action, basing it especially on the Law of Fiscal Responsibility, as exhaustively demonstrated. In this way, any attempt to succumb to the action due to an eventual clash with the procedures of concentrated control of constitutionality would be annulled. Observing this last detail, we have that the Popular Action is a legitimate, appropriate and effective instrument available to the citizen to combat the possible damage to the public patrimony, perpetrated by acts of the legislature aimed at increasing the salaries of municipal political agents, through the declaration of nullity or annulment of these, since they are found to be illegal and illegitimate.

7 CONCLUSION

Democratic basis of the Popular Action handle that instrument strength. It was seen that it is not about a concession or a present given to the citizen by the component or governments, but a real answer to the people desires of participating effectively of the State life. Since beginnings and tests for the current republic, it was noticed that you cannot speak about democracy without ensuring the direct intervention possibility of the power original holder: people.

That way, it was perceived that, if there is a consensus in the doctrine about the complex nature of this instrument, it is what makes the altruistic spirit in defense of the republic emerge from the citizen. Whether fighting for a personal political right, which by nature belongs to everyone, or defending diffuse and collective interests, the result is the same.

It was also seen that today the internet has enabled any connected citizen to have conditions to know what is happening in the direct and / or indirect Public Administration, be it municipal, state or federal, making it a potential defense agent of collective and diffuse interests, in legitimate exercise of democratic control, with “Popular Action” being the proper legal instrument for that posture.

It was also important to note that the interest in the defense of public property belongs to everyone, even the State itself, because, once the facts have been brought to court, he himself must endeavor to ensure that the injury is stopped and repaired.

For its part, it was observed that, due to the democratic origin and the legal position in the Brazilian normative system, it would be reckless to reduce the scope of Popular Action tomerely administrative acts. The Constitution does not contain any reservations or limitations that way, so that the smallest rules must stick to regulatory competence, without, however, innovating materially. If not even a Constitutional amendment is allowed, let alone limit the scope by an Ordinary Law.

Finally, bearing in mind that the State closest to the citizen is represented by the municipality, it is our homework to ensure that the acts emanating from these authorities keep the due legality, legitimacy and morality. In times of budgetary restraint, arising from a crisis that insists on staying, there is no way to conceive real increases in subsidies for political agents, especially those at home. For this, the Fiscal Responsibility Law (LC) number 101, from 2000, provides subsidies to combat these legislative acts. Failure to observe any of these rules, however, irreparably tainted the act, placing in the sights of Popular Action.

Ultimately, the Laws that regulate the Municipal Budget, known as the Budget Guidelines Law and the Annual Budget Law, aim to express the financial health of this Entity. Thus, given the lack of budgetary space due to demands in constitutionally priority public policies, the legislative act cannot prosper and, again, will be the target of popular intervention.

That way, it was demonstrated that the Popular Action, once it is supported by the aforementioned reasoning, is a legitimate, adequate and effective instrument to combat the damage to public assets, perpetrated by abusive increases in the subsidies of municipal political agents. This is possible, despite being legislative acts and, a priori, subject to constitutionality control instruments.

único, da Lei Complementar nº 101/2000. De outro lado, porque os documentos juntados evidenciam que foram extrapolados os limites prudenciais previstos na... Lei de Responsabilidade Fiscal para gastos com pessoal. AGRAVO INTERNO PROVIDO, POR MAIORIA. (Agravo Nº 70072723646, Segunda Câmara Cível, Tribunal de Justiça do RS, Relator: João Barcelos de Souza Junior, Redator: Ricardo Torres Hermann, Julgado em 25/10/2017).