ific Journal O Saber.
ISSN: 2675-9128. Sao Paulo-SP.

Year III, v.3, ed. 1, Jan./Jul. 2023. DOI: 10.51473/ed.al.v3i1.566 | submission: 07/18/2023 | accepted: 07/20/2023 | publication: 07/29/2023

The nuances of constitutionality control in municipal entities with an emphasis on jurisprudential provisions

Hana Ferber Corezzi Ferrer Pinheiro

SUMMARY: The present work aims to study the nuances of constitutionality control in municipal entities, defining its parameters and especially emphasizing jurisprudential constructions. To this end, the descriptive method was used, supported by article research, bibliographical research on doctrinal works in the jurisprudence of the Superior Courts, as well as materials available on the internet. These documents were then read and, through the results obtained, a broad, critical and reflective discussion took place, which culminated in the general conclusion that concentrated constitutionality control is applicable to municipal norms, but not fully, a since it has limited parameters. As a rule, the aforementioned control is carried out using as a parameter the norms present in the State Constitution, through the local Court of Justice, through the initiative of legitimate parties also provided for in the State Charter. In this way, only in the face of mandatory reproduction norms is the Federal Constitution used as a parameter, for the purposes of controlling municipal constitutionality, avoiding decisions that conflict with the supreme norm of the Brazilian legal system. In this sense, it is important to highlight that this possibility arises from jurisprudential constructions and is not expressly provided for in law. Furthermore, despite the existence of doctrinal divergence, the impossibility of concentrated control of constitutionality using Municipal Organic Laws as a parameter has been demonstrated. That said, given municipal regulations that violate it, it must be restricted to legality control.

KEYWORD: Constitutionality Control. Municipal Regulations. Parameters.

ABSTRACT: The present work aims to study the nuances of judicial review in municipal entities, defining its parameters and highlighting especially the jurisprudential constructions. For this purpose, the descriptive method was used, supported by research articles, bibliographical research of doctrinal works in jurisprudence of the Superior Courts, as well as materials available on the internet. These documents were then read and, through the results obtained, a broad, critical and reflective discussion was carried out, which culminated in the general conclusion that the concentrated judicial review is applicable to municipal norms, but not fully, a since it has limited parameters . As a rule, the said control is carried out using the norms present in the State Constitution as a parameter, through the local Court of Justice, through the initiative of legitimate parties also provided for in the State Charter. Thus, only in the face of norms of mandatory reproduction is the Federal Constitution used as a parameter, for the purpose of controlling municipal constitutionality, avoiding conflicting decisions with the supreme norm of the Brazilian legal system. In this sense, it is important to highlight that this possibility arises from jurisprudential constructions, not being expressly provided for by law. In addition, despite the existence of doctrinal divergence, the impossibility of concentrated control of constitutionality using Municipal Organic Laws as a parameter has been demonstrated. That said, given municipal regulations that violate it, it should be restricted to legality control.
KEY WORLD: Constitutionality.Control. Municipal Standards. Parameters.

1.INTRODUCTION

Constitutionality control is a mechanism used to verify the adequacy of laws and normative acts drawn up in light of the Constitution of the Republic. This mechanism becomes viable due to the constitutional rigidity observed in Brazil, which has a process of changing norms that is more arduous than other infra-constitutional precepts, added to the attribution of jurisdiction for judgment to a body, which will vary according to the system. adopted control. (LENZA, 2017, p. 239)

There is a division of constitutionality control into two matrices, the Austrian concentrated model, also known as model*Kelsian*, and the diffuse or North American model, known as*judicial review*. Furthermore, the existence of mixed systems is also envisaged, originating from the combination of these models. (VITALIS, 2017)

Diffuse or North American control has its origins in 1803 with the famous precedent *Marbury v. Madison*, a case in which the American Supreme Court decided, assessing a specific hypothesis, that in the face of a conflict between the application of a law and the constitution, the latter should prevail. This diffuse control is carried out by any judge or court incidentally, with the declaration of unconstitutionality being the cause of action for the process. (LENZA, 2017, p. 274)

In contrast, the Austrian system, called concentrated control, was created by Hans Kelsen in the Austrian Constitution of 1920. In this, control is carried out by a single body, an exclusive Constitutional Court, responsible for judging constitutional actions. with the aim of binding both legal bodies and the population itself to the decisions taken by the aforementioned Court. (MORAES, A., 2019, p. 770)

The big difference between the two systems lies in the effects of the declaration of unconstitutionality. The Austrian system argues that the decision has constitutive effectiveness, producing effects*ex nunc*, that is, it does not go back. On the other hand, the North American system understands the declaratory effectiveness of recognizing unconstitutionality, generating an effect*ex tunc*, that is, retroactive. (LENZA, 2017, p. 240-241)

Despite the existence of the two forms of control mentioned (diffuse control and concentrated control), Brazil has a unique control system, as it mixes both, thus adopting a mixed system as stated by José Afonso da Silva (2007, p. 554-555) :

> Brazil followed the North American system, evolving into a mixed and peculiar system that combines the diffuse criterion through defense with the concentrated criterion through direct action of unconstitutionality, also incorporating, now timidly, the action of unconstitutionality by omission (articles 102, I, a and III, and 103).

That said, in Brazil it is possible to envisage both the verification of constitutionality incidentally, through diffuse control, carried out by first degree judges; and through concentrated control of constitutionality, which takes place in an abstract manner, carried out by competent bodies, defined by law. (PADI-LHA, 2019, p. 151)

Well, the Magna Carta establishes, in articles 102, I, a and 125, §2º, the parameters that will be used in the concentrated control of constitutionality, namely, the Federal Constitution and the State Constitution, respectively, and the laws that may be subject to of control. In this sense, as a rule, the Federal unconstitutionality right action assesses the constitutionality of federal and state laws, and the State unconstitutionality right action assesses the adequacy of state and municipal laws. The Municipal Organic Law, in turn, is not foreseen as a parameter for any type of objective control. (BRAZIL, 1988)

That said, this article aims to bring to light the differences as well as some problems faced in constitutionality control at the municipal level, aiming, finally, after carrying out inquiries and reflections - always based on legal diplomas, the doctrine and jurisprudential understandings –, demonstrate the nuances of this control system and its controversies.

two.CONTROL OF CONSTITUTIONALITY OF MUNICIPAL LAW OR REGULATORY ACT

Many scholars maintain that since the 1988 constitution, municipalities have been an integral part of the federative system, based on the provisions of the inaugural article of the Magna Carta. In the meantime, art. 1st of this provides that Brazil is formed by the indissolubility of the Union, States and Municipalities, thus ruling out the existence of hierarchy between entities. (MENDES; COELHO, 2008, item 7)

Since then, Municipalities have been recognized as legal entities under internal public law, endowed with self-administration, self-government and self-organization, the latter being understood as the ability to write their Organic Law, through municipal legislative drafting. (MORAES, G., 2020, p. 467) No However, there are, in general, many differences in the treatment offered to federated entities, a practice that also occurs in constitutionality control.

two

Taking into account historical evolution, it is observed that only 80 years after the institution of the constitutionality control in Brazil, is that a mechanism for controlling municipal norms had been created. Therefore, the constitutionality control we have today is the result of a slow progression, which began with the 1891 constitution, and has been evolving to the present day, let's see:

TABLE 1: Evolution of constitutionality control in Brazil.

	Constitutions
1824	Lack of a model for judicial review of the constitutionality of laws.
1891	Institution of the diffuse control technique.
1934	Creation of the interventional ADI; plenary reservation clause; the Senate's power to suspend the law.
1937	The legislative power had the possibility, with 2/3 of the votes, to render the declaration of unconstitutionality null and void.
1946	The ADI under the original jurisdiction of the STF was established, with a single legitimized – PGR and concentrated state control was also attempted.
1967	Creation of constitutionality control of municipal law in the face of the state constitution.
1988	Expanded the list of those entitled to ADI, created ADI by default, ADPF AND ADC.

Source: LENZA, 2017.

Nowadays, under the terms of the Federal Constitution, there are the following possibilities for concentrated control of constitutionality to analyze the adequacy of norms with the Magna Carta: a) direct action of unconstitutionality of federal or state law or normative act and declaratory action constitutionality of federal law or normative act (article 102, I, a); b) institution of representation of unconstitutionality of state or municipal laws or normative acts in light of the State Constitution (article 125, §2). (BRAZIL, 1988)

Therefore, despite observing a great evolution in Brazilian constitutionality control, with an expansion of control actions and legitimized parties, the timid importance given to municipal laws, whether as a parameter of control or as an object, is obvious.

2.1 ABSTRACT CONTROL OF THE CONSTITUTIONALITY OF MUNICIPAL ORGANIC LAW AND LAWS OR REGULATORY ACTS IN FACE OF THE FEDERAL CONSTITUTION

The constitutionality control of the Municipal Organic Law, as well as laws or normative acts, cannot be carried out through direct constitutionality control action before the STF, with parameters in the Federal Constitution. In these cases, abstract control of constitutionality can only be carried out by the aforementioned Court in cases of Fundamental Precept Action (ADPF), the only abstract control action that can be used to control municipal norms. (PAULO; ALEXANDRINO, 2015, p. 939)

On the other hand, in terms of diffuse control, any decision-making body of the Judiciary rio can declare the unconstitutionality of laws (municipal, state or federal) for violating the Federal Constitution. Furthermore, it is eventually possible to make use of an extraordinary appeal so that the STF can judge the constitutional controversy fought in the lower courts, including when the rule discussed deals with municipal laws. (PAULO; ALEXANDRINO, 2015, p. 816 and 920)

This permissiveness is due to the nature of diffuse control, which is an action carried out in light of the specific case to be compared in court, involving the subjective rights of the parties, with unconstitutionality being analyzed incidentally and not as the main issue. Furthermore, as there is a specific analysis of the specific case, as a rule, it is effective *ultra parts,* that is, between the integral parts of the process. (PADILHA, 2019, p. 151)

In this sense, according to the understanding formulated in ADPF 127, the Claim of non-compliance with a fundamental precept was designed as a way of integrating the diffuse and concentrated model of constitutionality, allowing acts and norms that were previously unfeasible to be assessed by the STF to be included in the

jurisdiction of the Court. Thus, with the establishment of the ADPF, it is possible to judge pre-established standards - constitutional and judicial decisions contrary to the fundamental clauses, as long as there is a constitutional injury qualified by relevance and/or difficult reversibility, under the terms of Law 9,882/99. (BRAZIL, 2014)

This control method was inspired by the German constitutional appeal and the Spanish amparo appeal, with the aim of preserving or restoring the effectiveness of legal certainty, preventing potential problems to the detriment of conflicts of interpretation, resulting from the diversity of models for exercising constitutional jurisdiction. (MOTTA, 2019, p. 918)

It is imperative to define the concept of fundamental precept for the purposes of concentrated control. It is understood, in the words of Sylvio Motta (2019, p.918), that they are:

> principles relating to Fundamental Rights and Guarantees (whether or not they are topographically located in Title II); the explicit and sensitive constitutional principles relating to the federative pact and the distribution of powers between the federated entities; the constitutional principles guiding Public Administration; the immutable clauses (art. 60, § 4o); the principles relevant to the National Tax System and the basic rules on Public Finance (Title VI); and the principles of the Economic and Financial Order, especially those that are directly related to the State's limits on intervention in property and economic activity (Title VII).

Therefore, it is concluded that diffuse control and the ADPF are two suitable means of exercising control over the constitutionality of the Organic Law and municipal norms or normative acts, in light of the Federal Constitution.

2.2 ABSTRACT CONTROL OF THE CONSTITUTIONALITY OF MUNICIPAL ORGANIC LAW AND MUNICIPAL LAWS OR REGULATORY ACTS IN FACILITY OF THE STATE CONSTITUTION

Control of state or municipal law or normative act is carried out by the judiciary through incidental control, or through direct action, using the State Constitution as a parameter. In this way, the constitutionality of the norms will be assessed through this fundamental inducing instrument, the State Constitution. (MORAES, G., 2020, p. 808)

For organizational purposes, the original constituent endorsed the abstract control of state constitutionality and established precise rules. In this sense, the object of control is municipal and state regulations and the parameter is the State Constitution. Furthermore, legitimization for challenging the rules is prohibited from only a single body and the judgment of the action through the main route is the responsibility of the local Court of Justice.
(LENZA, 2017, p. 431)

The aforementioned understanding, that it is prohibited to establish competence exclusively for a body to file an ADI, is endorsed by the STF and can be observed as a basis in ADI 119/RO. In this judgment it was recognized that norms of the state constitution that determine the legitimacy of defending the constitutionality of the state norm to the Legislative Assembly or to the Attorney General are not unconstitutional.
of State. (BRAZIL, 2014)

In the same sense, the rule of the State Constitution that understands the Court of Justice as competent to judge a direct action regarding the unconstitutionality of laws or municipal normative acts is invalid, in view of the Constitution of the Republic, since the states do not have the capacity to establish , within the scope of its local positive order, a system of concentrated control of the constitutionality of municipal laws or normative acts, contested under the Constitution of the Republic. (MORAES, G., 2020, p. 813)

However, the prohibition on the use of a Constitutional norm with a state ADI parameter is mitigated when faced with mandatory reproduction norms. This understanding was established under the general repercussion system, in 2017, generating the following thesis:

> **RE 650898 -**I - Courts of Justice may exercise abstract control over the constitutionality of municipal laws using rules of the Federal Constitution as a parameter, as long as they are rules of mandatory reproduction by the States; II - Art. 39, § 4, of the Federal Constitution is not incompatible with the payment of a third of vacation and thirteenth salary.(BRAZIL, 2017).

In addition to the possibility of using the Federal Constitution as a control parameter, in an exceptional way, the ADI in the local Court of Justice has an important development, it was established that in cases of direct control action at the state level, in which the debated norm is of mandatory reproduction, the judgment
can reach the STF through an Extraordinary Appeal. (LENZA, 2017, p. 439)

According to the teachings of Minister Luis Roberto Barroso, in regulatory appeal 17954, the norms of mandatory reproduction are provisions set out in the Magna Carta that concern the organization of States. - members, from the Federal District or the Municipality. These norms are compulsory to be observed by such entities, and can be introduced by textual repetition, in the State Constitution or in the Organic Law, or even in the face of the silence of such laws, since there is no need to talk about discretion in relation to the incorporation of these norms in the legal system. (Brazil, 2016)

In this sense, the position of Brazilian jurisprudence stands out:

> Regimental appeal in the instrument appeal. Representation of unconstitutionality of municipal law in light of the state Constitution. Lack of mandatory reproduction standards. Incidence of Precedent No. 280/STF. Precedents.**1. In order for an extraordinary appeal of a direct action of unconstitutionality processed in the local Court to be admissible, it is essential that the local normative control parameter corresponds to the mandatory repetition standard of the Federal Constitution.**
> 2. In an extraordinary appeal, the analysis of local legislation is inadmissible. Incidence of Precedent No. 280 of the Federal Supreme Court. 3. Regulatory appeal that is dismissed." (BRAZIL, 2014)

In this sense, the STF's decision will be effective *erga omnes* (against all), since it was issued in an objective process of constitutionality control. (CAVALCANTI, 2017)

The aforementioned development, at first, resulted in a disorder in the instruments of concrete and abstract control, as Guilheme Penã de Moraes (2020, p. 811) highlights: "the picturesque question arising from this is that the judgment of the extraordinary appeal will be highly effective. *omnis* within the scope of the State in which the procedure originated".

However, the STF came to understand that it is appropriate to abstract diffuse rights, which consists of using an institute specific to abstract control in concrete control, so that the effect can be granted *erga omnes* to diffuse legal causes. In such a way, reaching people who were not aware of the process, nor participated in it, due to the importance of the matter covered in it, making the subjective process objective. (PADILHA, 2019, p. 151) That said, this constitutional mutation removed the aforementioned ambiguity, let us note:

> If a law or normative act is declared unconstitutional by the STF, incidentally, this decision, as happens in abstract control, also produces erga omnes effectiveness and binding effects. Thus, if the STF Plenary decides the constitutionality or unconstitutionality of a law or normative act, even if incidental control, this decision will have the same effects as concentrated control, that is, erga omnes and binding effectiveness. There was a constitutional change in art. 52, X, of CF/88. The new interpretation must be the following: when the STF declares a law unconstitutional, even in the context of diffuse control, the decision already has a binding and erga omnes effect and the STF only communicates it to the Senate with the aim of having the aforementioned Legislative House publicize it. of what was decided. STF. Plenary. ADI 3406/RJ and ADI 3470/ RJ, Rel. Min. Rosa Weber, judged on 11/29/2017 (Info 886). (BRAZIL, 2017).

In this way, the doctrinal current understood the occurrence of the constitutional mutation of article 52, Therefore, even in the context of diffuse control, the STF's judgment has fundamental effects *erga omnes* and the Senate only publicizes it. (CAVALCANTE, 2017).

Still in relation to the state Constitution, it is necessary to bring to light an absence worth noting, the lack of a declaratory action of constitutionality to clarify state, municipal, or Federal District laws, as established by the Federal Supreme Court. (RUVER, 2018).

In this same sense, Marcelo Novelino understands, who teaches that the spatial aspect of the Declaratory Action of Constitutionality is more restricted than that of the Direct Action of Unconstitutionality, limiting its object only to federal laws or normative acts. (2014, item 14.4)

This understanding was reaffirmed in the form of a precautionary measure in the constitutionality declaratory action 52, with the following statement being drawn up:

> SUMMARY: Organic Law of the Federal District. Legal nature: primary normative instrument "which is equivalent, in legal force, authority and effectiveness, to a true constitutional statute, essentially comparable to the Constitutions promulgated by the Member States" (ADI 980-MC/DF, Rel. Min. CELSO DE MELLO, judged on 02/03/94 – ADI 1.020/DF, Red. for the ruling Min. CELSO DE MELLO, judged on 10/19/95). Challenge, through a declaratory action of constitutionality, of a rule included in this normative statute. Unfeasibility. Instrument of concentrated control of constitutionality whose object is restricted, solely, within the scope of the positive order, to "federal law or normative act" (CF, art. 102, I, "a", final part). Doctrine. Precedents, in this sense, from the Federal Supreme Court. Inadequacy of the procedural means used. Declaratory action of constitutionality that is not known. (BRASIL, 2018).

Thus, it is clear that the difference in state constitutionality control goes beyond the objective jet used as a parameter, with limitations also being placed on the concentrated control actions that can be used.

2.3 COEXISTENCE OF ADI IN THE COURT OF JUSTICE AND ADI IN THE SUPREME COURT FEDERAL – SIMULTANEUS PROCESSUS

Concentrated control through the abstract state route, exceptionally, allows double supervision, both by ADI in the Court of Justice (State Constitution parameter), and by the STF, before the rule of mandatory reproduction of the Federal Constitution (parameter the Federal Constitution). (LENZA, 2017, p 441) As a consequence, the same norm can be judged simultaneously, by different courts and with different parameters, a phenomenon called simultaneity of direct actions of unconstitutionality.

The aforementioned phenomenon provides some hypotheses of simultaneity of direct actions of unconstitutionality, with different effects. In this scenario, if the STF carries out the trial before the local Court of Justice, two distinct situations can be seen. The first would be a declaration of unconstitutionality of state law by the STF, resulting in the loss of the object of the state action. While the second, the declaration of constitutionality of state law, before the Federal Constitution, in which case the local Court of Justice can proceed with the judgment, as the norm may be compatible with the Magna Carta and not be with the local Constitution. (LENZA, 2017, p. 442)

Analyzing the opposite situation, in which the Local Court of Justice manifests itself first, the implications are different, if by chance the local Court of Justice previously declares the state law Constitutional, the STF may, later on, recognize it as unconstitutional, and this decision will prevail over the state res judicata. On the other hand, if the Court of Justice declares the state law unconstitutional, there is no longer anything to talk about control in the STF, since the law has been suppressed from the legal system. (LENZA, 2017, p. 442).

Well, the aforementioned effects are ruled out when it comes to mandatory reproduction standards, as the jurisprudential thesis has been established that the state process must be suspended, awaiting the STF's statement. (PAULO; ALEXANDRINO, 2015, p. 942). This is the position consolidated by the Supreme Court:

> Direct action of unconstitutionality. Request for injunction. Law No. 9,332, of December 27, 1995, of the State of São Paulo. – Rejection of the preliminaries of lis pendens and continence, because, when two direct actions of unconstitutionality are processed in parallel, one in the local Court of Justice and the other in the Federal Supreme Court, against the same state law challenged in the face of state constitutional principles that are a reproduction of principles of the Federal Constitution, the course of the direct action proposed before the State Court is suspended until the final judgment of the direct action proposed before the Federal Supreme Court, as maintained by the rapporteur of the present direct action of unconstitutionality in a vote he gave, in a request for seen, in Complaint 425. (...)."**(**STF, ADI 1423 MC, Rapporteur: Min. MOREIRA ALVES, Full Court, judged on 20/06/1996, DJ 22-11-1996**). (**BRAZIL, 1996).

Despite the decision to suspend the *simultaneus processus*, in December 2018 the STF was notified of the lack of suspension of proceedings at state headquarters, and defined the following thesis:

> If two direct actions of unconstitutionality coexist, one filed before the local court of justice and the other before the STF, the judgment of the first – state – only prejudices that of the second – of the STF – if two cumulative conditions are met: 1) if the Court's decision of Justice is due to the origin of the action and 2) if the unconstitutionality is due to incompatibility with a precept of the State Constitution without correspondence in the Federal Constitution. If the constitutionality control parameter corresponds to the Federal Constitution, the STF's jurisdiction for abstract constitutionality control remains.STF. Plenary. ADI 3659/AM, Rel. Min. Alexandre de Moraes, judged on 12/13/2018. (BRASIL, 2018).

Knowing that there is a duty to suspend, if the decision of the local Court of Justice were to harm the knowledge of the ADI in the STF, the STF would be linked to the interpretation given by a state body, distorting the entire system of Constitutionality Control. As he is the interpreter of the Constitution, he has the last word on the interpretation of CF/88.

Knowing that the suspension had not been carried out, the STF decided that the state action will only harm the one carried out in the STF if the decision of the court of justice is for the origin of the action (unconstitutionality of the law) and if the aforementioned unconstitutionality is supported by a precept of the constitution state without correspondence with

to CF/88. If the local Court of Justice understands that a rule is unconstitutional, there is no longer any need to talk about control by the STF, since the state law has been removed from the legal system. (CAVALCANTE, 2017)

2.4 ABSTRACT CONTROL OF CONSTITUTIONALITY LAWS OR REGULATORY ACTS MUNICIPAL IN FACILITY OF THE MUNICIPAL ORGANIC LAW.

The absence of a regulatory standard regarding the control of the constitutionality of a law or municipal normative act generated an abstention from discussing the topic under discussion in a doctrinal context, which practically does not exist. (ALMEIDA, Manuel, 2008, p. 99.) In this way, it provided a division of the doctrine between those who understand the existence of the Constitutionality Control of the Municipal Organic Law and those who defend the implementation of the legality control.

Marcelo Novelino explains that "The only parameter for concentrated-abstract control at the state level are the provisions of the Constitution of the respective State, and it is not possible to extend the parameter to the Constitution of the Republic, nor to municipal organic law." (2014, item 17.1.3)

This conclusion is given because there is no constitutional provision in this sense, with the Magna Carta opting only to provide for the use of the Federal and State Constitution as a control parameter, making it impossible for provisions of Municipal Organic Laws to be subject to a declaration of unconstitutionality in control. abstract. (FRANCO, 2009)

In the same sense, the STF has an old position:

> Extraordinary Appeal. **2. Concentrated control of the constitutionality of municipal law in light of the Municipal Organic Law. Lack of constitutional provision. 3. Resource not known acid.** (STF – Extraordinary Appeal – RE n. 175.087/SP – Rapporteur: Min. Néri da Silveira – Judgment on 03/19/2002 – Judging Body: Second Panel – DJ 17-05-2002 PP-00073). (BRAZIL, 2002).

When a municipal law violates the Municipal Organic Law, a control of legality and not constitutionality is recognized, and it is not possible to carry out an abstract control of municipal norms, using the organic law itself as a parameter. In the meantime, there is no need to say that the municipal law that contradicts the organic law is unconstitutional, but rather that the vice of illegality hangs over it. (JUNIOR; CARVALHO, 2019)

This conclusion is the result of the lack of manifestation of the derived power arising from municipal entities, understanding that this is a power of the second degree, while the Municipality discovers a derived power arising of the third degree. Therefore, even though it has the capacity for self-organization, it lacks the power to control constitutionality, restricting itself to controlling legality. (LENZA, 2017, p. 206)

The topic is not pacified in doctrine, and some thinkers, such as Manoel Carlos, believe in the Constitutional nature of the municipal Organic Law and therefore defend the possibility of controlling constitutionality through the abstract. Such an understanding is justified based on the recognition of the municipality with a federative entity, endowed with self-organization, which occurred through the 1988 Constitution.

In this sense, considering that the Organic Law is the true Municipal Constitution, it occupies the top of the legal system of this entity, endowed with superiority at the municipal level, making it fully viable to control the constitutionality of Municipal Organic Laws. (ALMEIDA, Manuel, 2008, p. 99.)

Against this argument, scholars such as Luiz Alberto, David Araújo and Vidal Serrano Nunes Junior do not consider that the power of municipalities to self-organize, through organic laws, constitutes a demonstration of Derived Constituent Power, understanding organic Laws as a simple elaboration legislative of the Chamber of Councilors. (FRANCO, 2017)

3. FINAL CONSIDERATIONS

The Constitutionality Control currently in force in Brazil is the result of a miscellany of the Austrian and American systems, which have been built by the legislature since 1934 and, with several changes, reached the current model. It is true that diffuse control has a single application, without any difference between federal, state and municipal laws, however concentrated control, in turn, has a series of differences between federal, state and municipal concentrated controls.

In the control of constitutionality, through the declaratory action of unconstitutionality of the scope Federal control of federal and state laws is carried out, before the Federal Constitution, judged by the Federal Supreme Court. For the same purpose, the declaratory action of state unconstitutionality controls state and municipal laws, before the state constitution and has the judgment carried out by the local Court of Justice.

From this scenario, it can be observed that there is no direct action of unconstitutionality that judges the municipal law in contrast to the Federal Constitution, with the exception of the Declaratory Action to Argue a Fundamental Precept and the actions that have as their object mandatory reproduction rules.

While the first is an action of a subsidiary nature, being applicable when there is no other means capable of remedying harm, and which makes it viable to judge pre-constitutional, municipal norms and judicial decisions contrary to the fundamental clauses - as long as there is qualified constitutional harm. ; the second makes it possible to judge municipal and state laws in the local court of justice, using the Federal Constitution as a parameter of constitutionality, making it possible, eventually, to file an Extraordinary Appeal to the Federal Supreme Court.

Given the existence of different parameters of constitutionality control (Federal and State Constitution), it is possible for two actions with the same object, with different parameters, to exist simultaneously, being judged by the STF and the Court of Justice, a situation capable of causing legal uncertainty. In this sense, the solution to this problem was brought by jurisprudential construction that provides for the suspension of actions within the scope of the local Court of Justice, also providing that if there is no suspension – the state norm is not extirpated from the legal system –, the possibility prevails of judgment by the STF, so that the existence of uniform decisions prevails throughout the legal system.

The most intriguing point in relation to the differences found in the control of constitutionality of municipal regulations is related to the lack of control of constitutionality, according to the position of the majority doctrine, based on violation of the municipal Organic Law. Conclusion adopted based on the majority doctrine and jurisprudential understanding, which was constructed to the detriment of the absence of a provision in the Brazilian Magna Carta providing for such a possibility, which demonstrates a lesser importance given to the greater norm of the municipality, giving rise, in the face of affronts to the Organic Law, to carrying out legality control.

In this sense, the main differences between the concentrated control of municipal constitutionality in the face of the concentrated control of federal and state norms are portrayed, as well as the appropriate jurisprudential constructions created to guarantee the maintenance of legal security and the improvement of the concentrated system of constitutionality control in the Brazil.

REFERENCES:

ALEXANDRINO, Marcelo; PAULO, Vicente.**Uncomplicated Constitutional Law**. 14th ed. Ed. Rio de Janeiro: Forense; São Paulo: METHOD: 2015.

BRAZIL. Constitution (1988). Constitution of the Federative Republic of Brazil, Brazil, DF. Available at: http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm. Accessed on: Aug 14 2020.

Brazil. Federal Court of Justice.**ADI 3406/RJ and ADI 3470/RJ**. Rapporteur: Minister Rosa Weber. DJ: 11/29/2017. Buscador diz o Direito, 2017. Available at: <https://www.buscadordizerodireito.com.br/jurisprudencia/detas/8dd291cbea8f231982db0fb1716dfc55?categoria=1&subcategoria=3&assunto=26&palavra=-chave-Se+uma+lei+ou+ato+ normative+%C3%A9+declared+unconstitutional+by+STF%2C+incidentally%-2C+this+decis%C3%A3o%2C+as+happens+in+control+abstract%2C+also%C3%A9m +produce-z+efficiency%C3%A1cia+erga+omnes+e+binding+effects.+Assim%2C+se+o+Plen%C3%A1rio+do+STF+-decide+the+constitutionality+or+unconstitutionality+&criterio-research=e>. Accessed on: 08/14/2020.

Brazil. Federal Court of Justice.**ADI 119/RO**. Rapporteur: Minister Dias Toffoli. DJ: 02/19/2014. Jusbrasil, 2014. Available at: <https://stf.jusbrasil.com.br/jurisprudencia/25013318/acao-direta-de-inconstitucionalidade-adi-119-ro-stf/inteiro-teor-114683483?ref=juris- tabs>. Accessed on: 08/24/2020.

Brazil. Federal Court of Justice.**Regimental Appeal In Complaint 17.954/PR**. Rapporteur: Minister

Roberto Barroso. DJ: 10/21/2016. Jusbrasil, 2016. Available at: <https://stf.jusbrasil.com.br/jurisprudencia/772433433/agreg-na-reclamacao-agr-rcl-17954-pr-parana-9960070-2220141000000/inteiro- - content-772433443>. Accessed on: 08/15/2020.

Brazil. Federal Court of Justice.**ADPF I27**. Rapporteur: Minister TEORI ZAVASCKI. DJ: 02/25/2014. STF, Available at: <http://www.stf.jus.br/portal/jurisprudencia/listarJurisprudencia.asp?s1=%28%28127%2ENUME%2E+OU+127%2EDMS%2E%29%28%28TEORI+ZAVASCKI%29%2ENORL%2E+OU+%28TEORI+ZAVASCKI%29%2ENPRO%2E+OU+%28TEORI +ZAVASCKI%29%2EDMS%2E%29%29+NAO+S%2EPRES%2E&base=baseMonocraticas&url=http://tinyurl.com/p8dmwf9>. Accessed on: 08/15/2020.

Brazil. Federal Court of Justice.**Extraordinary Appeal 650898**.Rapporteur: Minister Roberto Barroso. DJ: 02/01/2017. STF, 2017. Available at: <http://www.stf.jus.br/portal/jurisprudencia/menuSumarioTese.asp?-tipo=TRG&tese=4641>. Accessed on: 08/15/2020.

BRAZIL. FEDERAL COURT OF JUSTICE.**PRECAUTIONARY MEASURE IN THE DECLARATORY ACTION OF CONSTITUTIONALITY 0016059-81.2017.1.00.0000/DF**. RAPPORTEUR: MINISTER CELSO DE MELLO. DJ: 05/04/2018.JUSBRASIL,2018. AVAILABLE AT: <HTTPS:// STF.JUSBRASIL.COM.BR/ JURISPRUDENCIA/868538419/MEDIDA-CAUTELAR-NA-ACAO-DECLARATORIA-DE-CONSTI-TUCIONALIDADE-MC-ADC-52-DF-DISTRITO-FEDERAL-0016059-8120171000000>. ACCESSED ON: 08/15/2020.

BRAZIL. FEDERAL COURT OF JUSTICE.**PRECAUTIONARY MEASURE IN THE DIRECT ACTION FOR UNCONSTITUTIONALITY 1423/SP**. RAPPORTEUR: MINISTER MOREIRAALVES.DJ:20/06/1996.JUSBRASIL,1996. AVAILABLE AT:<HTTPS://STF.JUSBRASIL.COM.BR/JURISPRUDENCIA/743840/MEDIDA-CAUTELAR-NA-ACAO-DIRETA-DE-INCONSTITUCIONALIDADE-ADI-MC-1423-SP>. ACCESSED ON: 08/19/2020.

BRAZIL. FEDERAL COURT OF JUSTICE.**ADI 3659/AM**. RAPPORTEUR: MINISTER ALEXANDRE DE MORAES. DJ: 12/13/2018. BUSCADOR DIZER O DIREITO, 2018. AVAILABLE AT:<HTTPS:// WWW.BUSCADORDIZERODIREITO.COM.BR/JURISPRUDENCIA/DETALHES/FC1F073FE-91403F00D2219185FDEA79B?CATEGORIA=1&SUBCATEGORIA=3&ASSUNTO=18>. ACCESSED ON: 08/10/2020.

BRAZIL. FEDERAL COURT OF JUSTICE. EXTRAORDINARY APPEAL 175087/SP. RAPPORTEUR: MINISTER NERI DA SILVEIRA. DJ:03/13/2002. JUSBRASIL, 2002. AVAILABLE AT:<HTTPS://STF.JUSBRASIL.COM.BR/JURISPRUDENCIA/775095/RECURSO-EXTRAORDINARIO-RE-175087-SP>. ACCESSED ON: 08/21/2020.

CAVALCANTE, Márcio André Lopes**. Coexistence of ADI in the TJ and ADI in the STF, with the state ADI judged first**. Searcher Say the Law, Manaus. Available at: <https://www.buscadordizerodireito. com.br/jurisprudencia/detalhes/fc1f073fe91403f00d2219185fdea79b>. Accessed on: 08/10/202

CAVALCANTE, Márcio André Lopes.**Binding effect of incidental declaration of unconstitutionality**. Searcher Say the Law, Manaus. Available at: <https://www.buscadordizerodireito.com.br/jurisprudencia/detalhes/8dd291cbea8f231982db0fb1716dfc55>. Accessed on: 08/15/2020

CAVALCANTE, MÁRCIO ANDRÉ LOPES.**STF CHANGES ITS JURISPRUDENCE AND ADOPTS BINDING EFFECT OF INCIDENTAL DECLARATION OF UNCONSTITUTIONALITY.** DIZER O DIREITO, 2017. AVAILABLE AT: <HTTPS://WWW.DIZERODIREITO.COM.BR/2017/12/

STF-CHANGES-YOUR-JURISPRUDENCE-AND-ADOPT.HTML>. ACCESSED ON: 08/15/2020

FRANCO, Alberto. Control of constitutionality of municipal regulations. Legal scope, September 11th. 2009. Available at: <https://ambitojuridico.com.br/cadernos/direito-constitucional/o-controle-de-constitucionalidade-de-normas-municipais/>. Accessed on: 08/30/2020.

JUNIO, LUÍS; CARVALHO, PEDRO. CONSTITUTIONALITY CONTROL AT STATE AND MUNICIPAL LEVEL.**JUS**, 2019. AVAILABLE AT:<HTTPS://JUS.COM.BR/ARTIGOS/73371/ CONTROLE-DE-CONSTITUCIONALIDADE-EM-NIVEL-ESTADUAL-E-MUNICIPAL>. ACCESSED ON: 08/24/2020.

LENZA, Pedro.**Schematic constitutional law**. São Paulo, Saraiva, 2017.

MORAES, Alexandre de**. Constitutional right**. São Paulo, Atlas, 2019.

MORAES, Guilherme Penã de.**Constitutional law course**. São Paulo, Atlas, 2020.

MENDES, Gilmar Ferreira; BRANCO, Paulo Gustavo Gonet.**Constitutional Law Course**. 13th ed., São Paulo: Saraiva, 2018.

MOTTA, Sylvio.**Constitutional right**. 28th ed. São Paulo, Method, 2019.

NOVELINO, Marcelo.**Constitutional Law Manual**. 9th Ed. Rio de Janeiro, Gen, 2014.
PADILHA, Rodrigo**. Constitutional right**. São Paulo, Method, 2019.

RUVER, Tadeu. It is not up to the ADC to discuss state or Federal District laws, says Celso.**Conjur**, May 7, 2018. Available at:<https://www.conjur.com.br/2018-mai-07/nao-cabe-adc-discutir-leis-estaduais-- states-celso-mello>. Accessed on: 30 Aug. 2020.

SILVA, José Afonso.**Course of positive constitutional law.**30th edition. Method. 2007

VITALIS, Aline.**The temporal effects in the concentrated control of constitutionality: an analysis of recent decisions of Portuguese and Brazilian constitutional justice.**Journal of Constitutional and International Law, 2016. <http://www.mpsp.mp.br/portal/page/portal/documentacao_e_divulgacao /doc_biblioteca/ bibli_servicos_produtos/bibli_boletim/bibli_bol_2006/RDConsInter_n.96.04.PDF>. Accessed on: 24 Aug. 2020.