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THE ACTIVITY OF THE NOTARY PUBLIC AS A MEANS TO ENFORCE THE RIGHT TO FREEDOM OF EXPRESSION

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ABSTRACT

Freedom of expression does not exist in isolation, but rather in constant dialogue with other fundamental rights. Its interconnection with human dignity, privacy, equality and access to information demonstrates the complexity of this web of rights that underlies a democratic and fair society. The challenge is to balance these rights, promoting an environment in which freedom of expression effectively contributes to the common good. In this sense, this work proposes to analyze and verify alternative ways of implementing the right to freedom of expression, in particular, how the actions of the notary can contribute to the realization and access to this right.

Keywords: right; freedom of expression; fundamental rights; notary notes; notary.

INTRODUCTION

Freedom of expression is a fundamental pillar in the legal framework of the 1988 Federal Constitution, consolidating itself as an essential right to democracy. The concept of freedom of expression, in the constitutional context, encompasses the ability to express thoughts, opinions and ideas without prior censorship, guaranteeing the free circulation of information and public debate.

Its legal nature is complex, interconnected with other fundamental rights, such as human dignity and democracy. Freedom of expression is not only an individual right, but also a vital instrument for social control over power and promoting diversity of perspectives in the public sphere.

Historically, the evolution of this right is marked by challenges and achievements. The 1988 Constitution, after an authoritarian period, reinforced the protection of freedom of expression, highlighting it as one of the pillars of the Democratic Rule of Law. The Federal Supreme Court plays a crucial role in interpreting and consolidating jurisprudence on issues related to freedom of expression.

Among the main characteristics of this right is its breadth, covering not only verbal communication, but also artistic, cultural and media expression. However, it is important to highlight that freedom of expression is not absolute, suffering limitations when compared with other fundamental rights or collective interests.

DEVELOPMENT

Brief considerations on the right to freedom of expression

The relevance of freedom of expression in contemporary society is undeniable. It is essential for the development of informed public opinion, the monitoring of state power and the construction of a pluralistic society. Access to information and the free circulation of ideas strengthen

citizen participation and the formation of critical consciousness.

However, the protection of this right does not imply absolute immunity. Hate speech, defamation and incitement to violence may encounter legitimate limits in the protection of other fundamental rights. The contemporary challenge lies in finding a balance that preserves freedom of expression without compromising human dignity and peaceful coexistence in society.

Freedom of expression, anchored in the 1988 Federal Constitution, represents an essential value for Brazilian democracy. Its understanding and application require careful analysis, considering the interconnection with other fundamental rights and the challenges posed by the constantly changing social context. The preservation of this right is essential for the construction of a fairer and more plural society.

The interconnection between the right to freedom of expression and other fundamental rights is a crucial characteristic in the legal system, seeking to balance interests and guarantee harmonious coexistence in society. This relationship is established in different ways, considering the complexity and interdependence of fundamental rights.

The dignity of the human person is a fundamental principle that directly dialogues with freedom of expression. The exercise of this freedom must respect the moral and psychological integrity of individuals, avoiding hate speech and defamation that could violate the dignity of others. In this sense, the balance between freedom of expression and respect for dignity is crucial.

In view of this aforementioned interconnection between rights, it is necessary to clarify that freedom of expression must be exercised respecting the dignity of the human person. The protection of dignity imposes limits on expression that violates the moral and psychological integrity of individuals, avoiding hate speech and demonstrations that disrespect the human condition.

In the same sense, it cannot absolutely override the right to privacy. The disclosure of personal information without consent may conflict with the protection of individuals' intimate spheres, requiring consideration and restrictions when necessary. Privacy is another right that is intertwined with freedom of expression. The protection of citizens' private sphere must not be compromised by the exercise of this right. The irresponsible dissemination of personal information can result in serious violations and, therefore, the interconnection between these rights requires balance to preserve individual privacy.

The exercise of freedom of expression must not promote discrimination based on characteristics such as race, gender, religion or sexual orientation. Protection against discrimination is essential to guarantee a fair and equal society. Likewise, its exercise does not authorize defamation or slander. The right to honor and reputation is protected, and expressions that cause unjustified damage to a person's image may be subject to legal restrictions.

Equality is promoted by freedom of expression when it provides space for different voices and perspectives in the public sphere. However, the interconnection between these rights is also manifested in the need to combat discriminatory speech and ensure that freedom of expression is not used to perpetuate social injustices.

In situations where expression may represent a threat to public security or social order, the State can intervene to preserve other fundamental rights, seeking a balance between freedom of expression and the preservation of social peace.

Freedom of expression is intrinsically linked to freedom of the press. Both play a vital role in the dissemination of information and democratic control, being fundamental for the transparency of public authorities. Access to information is a vital component of this relationship. Freedom of expression functions as a means to ensure the free flow of information, empowering citizens to make informed decisions and actively participate in democratic life. Therefore, the interconnection

between these rights reinforces the importance of protecting the right to seek, receive and disseminate information.

This interconnection demands a considered analysis, considering the specific context of each situation. The Federal Supreme Court in Brazil is often called upon to arbitrate cases in which freedom of expression clashes with other fundamental rights, contributing to the development of jurisprudence on this complex and dynamic topic. The challenge is to ensure the protection of different fundamental rights, promoting democratic and respectful coexistence in society.

Thus, it is possible to see that freedom of expression is intrinsically interconnected with several other fundamental rights, forming a complex network that shapes the structure of a democratic society. This interconnection is evident in several dimensions, highlighting the relationship with human dignity, the right to privacy, equality and access to information.

The right to freedom of expression, when exercised responsibly, contributes to the pluralism of ideas and the strengthening of democracy. However, this interconnection does not mean that freedom of expression is an absolute right, disregarding other fundamental values and interests. On the contrary, there are legitimate limits to prevent abuse and protect other rights.

The right to freedom of expression is of fundamental importance for sustaining democratic and pluralistic societies. Its relevance is evidenced in several aspects that contribute to the healthy and progressive development of a community.

It must be seen as one of the pillars of societies, as it is essential for the effective functioning of a democratic system. It allows citizens to express their opinions, actively participate in the political process and exercise control over their representatives.

In this sense, by guaranteeing the right to express different perspectives, society benefits from the pluralism of ideas. This enriches

public debate, fosters creativity and contributes to innovative solutions to social challenges. Exercising this right empowers citizens to monitor and hold government institutions accountable. The free flow of information helps prevent abuses of power, corruption and ensures transparency in public administration.

facilitates the exchange of knowledge and promotes the intellectual development of society. Freedom of expression is a stimulus to innovation, research and cultural progress. Because, with this right, citizens have access to a variety of information, allowing them to form their own opinions in an informed way. This contributes to a more robust and critical public opinion.

In relation to Human Rights and Social Justice, it appears that this right plays a crucial role in defending human rights and promoting social justice. It allows social issues to be discussed openly, enabling the identification and correction of injustices. Likewise, it favors constructive dialogue, essential for the peaceful resolution of conflicts. Through free expression, it is possible to find common areas of understanding and promote peaceful coexistence between different groups.

However, it is important to highlight that freedom of expression is not absolute and may encounter legitimate limitations to protect other fundamental rights or collective interests. The challenge is to find a balance that preserves freedom of expression without compromising values such as dignity, equality and security.

In short, the relevance of the right to freedom of expression is undeniable, as it permeates the fundamental pillars of a fair, democratic and plural society, providing the foundations for the flourishing of ideas and the promotion of the common good.

The Notarial function in Brazil

Notaries and registrars perform essential functions in the Brazilian legal system, acting as public agents who guarantee authenticity, security and publicity to legal acts. Its responsibilities are mainly related to notarial and registration

activities, the objective of which is to confer validity, effectiveness and publicity to various legal acts and transactions. The role of these professionals is provided for in the Federal Constitution of 1988, as well as in infra-constitutional legislation, such as Law No. 8,935/1994, which regulates notarial and registration activities.

The actions of notaries and registrars are governed by the principles of legality, impersonality, publicity, authenticity and efficiency, aiming to guarantee legal security, facilitate access to justice and promote social peace. These professionals play a crucial role in consolidating the Brazilian legal system, contributing to the stability of legal relations and the protection of citizens' rights.

The actions of notaries and registrars are governed by the principles of legality, impersonality, publicity, authenticity and efficiency, aiming to guarantee legal security, facilitate access to justice and promote social peace. These professionals play a crucial role in consolidating the Brazilian legal system, contributing to the stability of legal relations and the protection of citizens' rights.

Among the main principles and characteristics of notarial activity in Brazil, the basic principles that guide and direct the activity stand out. Initially, it is worth highlighting the Principle of Legality, which provides that the actions of notaries are strictly linked to the law. They must observe the legal and regulatory standards that govern their activity, ensuring that the acts carried out are in compliance with the legislation.

The Principle of Impersonality determines that the notary's actions must be impartial, without discrimination or preference for any of the parties involved in the notarial acts. The treatment given to users must be equitable, ensuring equal conditions for everyone.

Through the Principle of Publicity, notarial acts are public and are characterized by publicity. This means that the documents drawn up by notaries are accessible to any interested party, promoting transparency and enabling the verification of the legality and authenticity of the acts.

The Principle of Technical and Legal Autonomy establishes that notaries have technical and legal autonomy to carry out their functions. They have a duty to interpret the legislation applicable to the cases presented to them, ensuring the correct application of the law.

While the Principle of Public Faith provides that notarial acts confer public faith on documents produced by notaries. This means that such documents have a presumption of veracity and authenticity, giving them greater credibility and acceptance among third parties.

The notary's fundamental characteristic is the prevention of disputes through his actions, acting in a preventive manner, guiding the parties involved on the legal consequences of their actions. Currently, notaries can perform extrajudicial mediation and conciliation functions.

The activity also has instrumentality as a fundamental characteristic, that is, notarial activity is instrumental, focused on the formalization and authentication of legal acts. The notary acts as a technical-legal instrument in carrying out business and checking the authenticity of documents.

Another relevant characteristic is consensuality, consisting of the premise that notarial acts are generally consensual, that is, they depend on the agreement of the parties involved. The notary, in this context, plays an impartial and technical role in formalizing the consensus.

These principles and characteristics are fundamental to guaranteeing legal security and effectiveness of notarial acts in Brazil. They aim to ensure that notaries' actions are guided by legality, transparency and reliability, contributing to the stability of legal relationships and the protection of citizens' rights.

Notaries, also known as notaries, are professionals who play a fundamental role in notary activity in Brazil. Its duties are set out in Law No. 8,935/1994, which regulates notary and registration services. The aforementioned Law provides:

Art. 7 Notaries are exclusively responsible for:

- I - draw up public deeds and powers of attorney;
- II - draw up public wills and approve the cerrados;
- III - draw up notarial minutes;
- IV - recognize signatures;
- V - authenticate copies.

§ 1 Notary publics are entitled to carry out all necessary or convenient steps and steps to prepare notarial acts, requesting whatever is applicable, without any burden greater than the fees due for the act. (Included by Law No. 14,382, of 2022)

§ 2 The requirement for witnesses is prohibited only because the act involves a person with a disability, unless otherwise provided. (Included by Law No. 14,382, of 2022)

§ 3 (VETOED). (Included by Law No. 14,382, of 2022)

§ 4 (VETOED). (Included by Law No. 14,382, of 2022)

§ 5 Notary publics are authorized to provide other paid services, in the manner provided for in an agreement with interested public bodies, entities and companies, respecting the formal requirements set out in Law No. 10,406, of January 10, 2002 (Civil Code). (Included by Law No. 14,382, of 2022)

§ 6 (VETOED). (Included by Law No. 14,711, of 2023)

§ 7 (VETOED). (Included by Law No. 14,711, of 2023)

Art. 7º-A Notaries are also responsible, without exclusivity, for, among other activities: (Included by Law No. 14,711, of 2023)

I - certify the implementation or frustration of conditions and other negotiating elements, respecting the specific competence of protest notaries; (Included by Law No. 14,711, of 2023)

II - act as mediator or conciliator; (Included by Law No. 14,711, of 2023)

III - act as referee. (Included by Law No. 14,711, of 2023)

§ 1 The price of the transaction or related amounts may be received or consigned through the notary, who will transfer the amount to the party due upon ascertaining the occurrence or frustration of the applicable business conditions, and the deposit made in an account linked to the business, under the terms of an agreement signed between the national class entity and an accredited financial institution, which will constitute segregated assets, be restricted by judicial or fiscal authority due to the obligation of the depositor, any party or the notary, for a reason foreign to the business itself. (Included by Law No. 14,711, of 2023)

§ 2º The notary will draw up, at the request of the parties, a notarial act to verify the occurrence or frustration of the applicable business conditions and will certify the transfer of the amounts due and the effectiveness or termination of the concluded transaction, which, when applicable, will constitute a title for the purposes of art. 221 of Law No. 6,015, of December 31, 1973 (Public Records Law), respecting the specific competence of protest

notaries. (Included by Law No. 14,711, of 2023)

§ 3 Mediation and extrajudicial conciliation will be remunerated in the manner established in the agreement, in accordance with §§ 5 and 7 of art. 7th of this Law, or, in the absence or inapplicability of the agreement, by the applicable state fee table for public deeds with economic value. (Included by Law No. 14,711, of 2023)

§ 4 (VETOED). (Included by Law No. 14,711, of 2023)

§ 5 (VETOED). (Included by Law No. 14,711, of 2023) (BRAZIL, 1994)

Thus, it is possible to list the following acts as the main acts carried out and within the competence of notaries in Brazil: drawing up public deeds and powers of attorney; drawing up public wills and approving cerrados; draw up notarial minutes; recognize signatures; and, authenticate copies.

Regarding Public Deeds, for example, notaries draw up public deeds that formalize the purchase and sale of properties, providing authenticity and legal security to the business. They are also responsible for formalizing donations and exchanges of real estate, ensuring the validity and effectiveness of these acts.

powers of attorney can be drawn up in order to formalize legal representation, granting powers to third parties for legal representation in various matters, such as business, real estate transactions, among others.

Public wills are dispositions of assets, rights and mortis causa stipulations that allow a person to express their wishes regarding the disposition of their assets and wishes after death, providing legality and authenticity to the will.

In cases of consensual divorces and friendly inventories, notaries can draw up public deeds, providing speed and efficiency to the process.

Notary minutes are public instruments available to notaries that enable the documentation of facts and situations, as their drafting aims to document facts, situations or events that are not intended to produce immediate legal effects, but require authentication and certification.

The recognition of signatures and authentication of copies provide authenticity

to the signatures and validity to the documents presented, also carrying out the authentication of copies of documents, certifying that they are faithful to the originals.

Through mediation and extrajudicial conciliation, the amicable resolution of conflicts is made possible, seeking peaceful solutions to disputes.

It is important to highlight that notaries always act based on principles such as legality, impartiality, publicity, efficiency and legal security. Its functions contribute to reducing bureaucracy and streamlining procedures, providing greater access to justice and contributing to the prevention of conflicts. Furthermore, these professionals play a crucial role in guaranteeing the authenticity and validity of various legal acts.

In this sense, notaries in Brazil perform various functions and duties, highlighting the notarial act among the main acts performed by notaries.

As already discussed, the notarial act is a notarial instrument used to document facts, situations or events that are not intended to produce immediate legal effects, but that need to be certified by a professional with public faith. It can be requested by any interested party and is drawn up at the request of the interested party or by court order.

The main characteristics and purposes of Notarial Minutes are the recording of facts and situations, as it aims to record, in an objective and impartial manner, facts, situations or events that deserve authentic documentation. This may include the description of objects, properties, environmental conditions, among others.

It also serves as a certificate of veracity, by giving public faith to its content, attesting to the veracity of the facts narrated by the notary. Its preparation is guided by impartiality and reliability of the information recorded.

It enables the certification of documents and online content, as, in modern times, they are also used to certify the contents of electronic

documents, internet pages, emails, social networks, among others, giving them authenticity and preserving their integrity.

It allows prevention and proof, as it can be used as a means of preventing disputes, providing pre-established proof of a certain fact or situation. Its usefulness is broad and can range from checking property boundaries to the authenticity of digital information.

Still as a technical verification instrument, due to its use as a technical verification instrument. For example, in cases of damage to property, the notary can play the role of an expert in documenting the condition of an object or property.

It is important to emphasize that, although the Notarial Act is a public document that enjoys public faith, it does not replace judicial evidence, if there is a need to judicialize the case. However, its existence can facilitate the obtaining of evidence and, in many cases, avoid litigation by providing authentic and impartial documentation on certain facts or situations, even being used as evidence in court, as the notarial record plays a role relevant role in notarial activity by providing authenticity and veracity to various facts and situations, contributing to legal security and preventing disputes.

The role of the Notary Public as a means of realizing the right to freedom of expression

The relationship between the right to freedom of expression and the performance of notaries is intrinsically linked to the role of these professionals in authenticating and formalizing legal acts. Although notaries do not have the main objective of ensuring freedom of expression per se, their actions play an important role in guaranteeing the authenticity and validity of documents related to this fundamental right.

Notary Publics are responsible for documenting various acts and manifestations, such as public deeds, powers of attorney, wills and notarial minutes. These documents may contain

declarations and expressions of will, contributing to the preservation of individual freedom of expression.

By authenticating documents, recognizing signatures and giving public faith to deeds and powers of attorney, Notary Publics ensure that the expressions of will expressed in documents are authentic, helping to prevent forgery and protect the right to freedom of expression.

With the advancement of technology, Notaries also play a role in authenticating digital content through notarial minutes. This service can help protect the authenticity of online information, indirectly contributing to freedom of expression on the internet.

In the Brazilian State, notaries have the authority to carry out extrajudicial mediation and conciliation. By facilitating the amicable resolution of conflicts, these professionals can contribute to promoting an environment conducive to dialogue and the free expression of ideas.

The recognition of signatures carried out by Notary Publics guarantees the authenticity of signatures on documents, reinforcing the reliability of individual statements and, consequently, strengthening the right to freedom of expression.

Although the activities of Notary Publics are not directly linked to defending the right to freedom of expression, their functions play a crucial role in protecting the authenticity and legitimacy of individual acts and manifestations. This contributes to the creation of a safe and trustworthy legal environment, where citizens feel protected when expressing their opinions, signing documents and carrying out other acts that involve their will and freedom of expression.

In this sense and aiming to guarantee the Right to freedom of expression, the Notary can use the notarial minutes to formalize and materialize this right.

The preparation of notarial minutes by the

Notary Public plays a crucial role in the context of the right to freedom of expression. This translates into its contribution to the preservation, authentication and documentation of relevant events, situations or facts associated with this fundamental right.

Notarial Minutes can be fundamental instruments to guarantee the right to freedom of expression, as they have the capacity to certify the occurrence of public events, demonstrations, speeches or any situations that involve the free expression of ideas. By recording these events, the notary provides authenticity and veracity to the facts, preserving the memory of events related to freedom of expression.

In situations where freedom of expression is under threat or misrepresentation, notarial acts can function as a protective instrument. By impartially and authentically documenting facts and statements, it provides a secure basis for defending freedom of expression in litigation or challenges to the veracity of information.

In the digital context, it can be applied to the certification of content related to freedom of expression, such as texts, videos, images, emails and publications on social networks. This application provides an additional layer of authenticity and integrity, protecting against forgery and manipulation.

The preservation of press freedom also benefits from notarial acts. By documenting interviews, reports or journalistic coverage, the notary ensures the authenticity and veracity of the information, protecting press professionals against possible attacks on their credibility.

It can also be used as a preventive measure against illicit acts that aim to restrict freedom of expression. By officially documenting situations involving threats, harassment or any form of intimidation, the notary contributes to preventing violations of the right to freedom of expression.

In the context of intellectual production, notarial acts can be used to register the creation and authenticate works, texts or publications, protecting copyright and preserving the authors' freedom of expression.

It is therefore possible to see that the notarial act acts as a crucial tool to document, certify and preserve freedom of expression in various circumstances. By providing authenticity, impartiality and veracity to recorded events and statements, it contributes to the protection and strengthening of this fundamental right, ensuring trust in demonstrations and the circulation of information in society.

CONCLUSION

The relationship between the right to freedom of expression and the activities of the Notary Public is established through the documentation, certification and authentication of events, statements and manifestations that involve the free expression of ideas. The Notary plays a crucial role in providing authenticity, veracity and impartiality to documents, notarial minutes and digital content related to freedom of expression. This action contributes to the preservation of fundamental rights, protecting against censorship, misrepresentation, threats and promoting trust in demonstrations and information in society. The certification carried out by the Notary Public acts as an instrument to protect and strengthen freedom of expression in different contexts, including public events, demonstrations, intellectual productions and journalistic reports.

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