

Charter Of Principles For The Defense Of The Democratic State Of Law

PREAMBLE

Whereas in the year 2023 the current CONSTITUIÇÃO DA REPÚBLICA FEDERATIVA DO BRASIL completes 35 years of existence, a symbolic date that at the same time indicates the dawn of a new era as well as the solidity and consolidation process of the Democratic State of Law;

Considering that a democracy is never perfect and finished, but goes through a constant and permanent process of improvement and construction;

Considering that even today we live with the deleterious effects, with the pain and trauma of a disastrous dictatorial regime and a colonialist past that rooted deep marks and inequalities in our society;

Considering the growing discredit in institutions, the increase of extremist groups that openly preach the annihilation of the other, in a true agenda of abolition to the democratic regime;

Considering the deleterious phenomenon of disinformation, with the aim of discrediting the legitimacy of established and constituted democratic institutions, using the practice of unacceptable hate speech, with high contempt for the fraternal, safe, sustainable and harmonious peaceful coexistence between divergent points of view;

Considering the pressing planetary civilizational need to raise awareness, confront and combat the destructive phenomenon of rabid political-party polarization, with the need to ban violent and serious practices aimed at abolishing the Democratic State of Law, preventing or restricting the exercise of constitutional powers;

Considering that plurality, divergence of ideas, respect and commitment to the truth are essential elements for peaceful and democratic social coexistence;

The Comissão de Defesa da Liberdade de Expressão da OAB/MG and the Comissão Especial de Direito do Servidor Público are hereby making public the Charter of Principles for the defense of the Democratic State of Law, in the following terms.

Concepção e autoria:



Comissão de
Defesa da Liberdade
de Expressão

Apoio e parceria institucional:



Comissão Especial de
Direito do Servidor Público



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PRINCIPLES

Art. 1st - The Democratic Rule of Law is a historic achievement of relevant legal, moral, social, political and economic value, and it is everyone's duty to ensure its preservation and improvement.

Art. 2nd - The Democratic rule of law imposes the effective and active participation of the people in public matters, so that power originates with the people, is exercised by the people and for the people. It is the people who confer legitimacy on state power.

Sole paragraph: The "people" is not limited to civil groups or political and affinity groups, however numerous they may be. The "people" refers to all Brazilian citizens, taken in their entirety, without predilections or discrimination.

Art. 3rd - Law enforcers, with emphasis on advocacy and the Ordem dos Advogados do Brasil, must act as guardians of democracy, always acting vigilantly for the faithful fulfillment of laws and for the proper functioning of republican institutions.

Art. 4 - The Democratic State of Law presupposes the balance between the Executive, Legislative and Judiciary powers through a system of brakes, balances and self-regulation based on goals provided by the legal norm, in order to avoid the usurpation of competences.

Art. 5 - The Democratic State of Law presupposes the respect and guarantee of the dignity of the human person, popular sovereignty, the separation of state functions, the principle of equality, the principle of legality, the system of fundamental rights qualified with the content of stiffness, the principle of inalienable jurisdictional control and legal certainty.

Art. 6 - The federative pact must implement the equitable distribution of powers, resources and attributions between the Union, States and Municipalities, being an indispensable condition for the proper functioning of the Democratic State of Law.

Art. 7 - The Democratic State of Law must give effect to the three dimensions of rights: the 1st generation (liberty, civil and political rights), the 2nd generation (equality, social, economic, cultural rights) and the 3rd generation (solidarity, diffuse and collective rights).

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Sole Paragraph – The application, interpretation, integration and enforcement of these rights must have as its guide the realization of the dignity of the human person, in its broadest sense.

Art. 8 - The Democratic State of Brazilian Law is sovereign in relation to other National States and is based on the principles of independence, cooperation, self-determination, non-intervention, defense of human rights and peace, external interference is not acceptable, whether in the political field, social or economic.

Art. 9 - Freedom of expression is one of the pillars for the proper functioning of the democratic system in that it puts citizens in a position to express their own demands and influence the political game and the course of public matters.

Art. 10 - The Fake News, the phenomenon of misinformation and the post-truth, in this 21st century, represent the greatest risks to the electoral system and to western democracies and, as such, must be fought by all.

Paragraph One - Fraudulent and manipulated news not only can interfere with the enlightened understanding of reality, but has the power to endanger democracy.

Paragraph Two - The demand for the truth is an essential requirement for the full exercise of democracy, so that the people are unable to govern or have effective access to power if they are induced to decide based on deception.

Art. 11 – The Democratic Rule of Law presupposes respect for the electoral system, universal suffrage and the result of the ballot boxes, which constitute the maximum expression of popular sovereignty.

Paragraph One - The Principle of Republican State requires that those holding political office represent the people and make decisions in their name, with responsibility, and through periodic mandates subject to alteration.

Paragraph Two - Manifestations that delegitimize the electoral system or the results of elections, whether at the federal, state or municipal level, are absolutely anti-democratic.

Art. 12 - The implementation of the Democratic State of Law requires real political representation with the effective participation of all citizens: more than voting and being voted for, minorities must also feel represented and occupy public spaces.

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Art. 13 - The public servant, as the personification of state action, implements values and improves the Democratic State of Law as he performs his functions in a virtuous, efficient manner, and in faithful observance of the principles and rules that govern the Public Administration.

Paragraph One: The stability of the public servant is the guarantee that he will have functional independence to act under the rule of law, and not by external interference or political or economic pressure.

Second Paragraph: The bad public servant, the one who fails to fulfill his functional duties, who practices administrative impropriety, corruption or crimes of any kind, must be punished according to the law, including dismissal from public service, if applicable.

Art. 14 - Legal certainty and the protection due to legitimate expectations are constitutive and inalienable elements of the Democratic State of Law.

Sole Paragraph - There is no Democratic State of Law without respecting the primacy of the acquired right, the perfect legal act and the thing judged.

Art. 15 - The Public Administration must comply with strict and dogmatic legality, but not only that: it must, above all, consecrate the principle of legality, that is, apply the law in a holistic and systemic way, so that the administrative conduct is guided not only by the law, but also by the explicit and implicit principles inserted in the Constitutional Text.

Art. 16 – Violence, in its most varied meanings, whether verbal (hate speech included), physical, psychological or symbolic, is incompatible with democracy.

Paragraph One - Tolerance is one of the foundations on which modern democracies and the Democratic State of Law are founded.

Paragraph Two - We are tolerant when we respect dissent, and not when we create or force consensus.

Belo Horizonte, July 14, 2023.

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