
***NEOCONSTITUTIONALISM AND THE PERFORMANCE OF JUDICIAL
POWER IN THE MATTER OF PUBLIC POLICIES: CONSUMER
PROTECTION AS A FUNDAMENTAL RIGHT***

***NEOCONSTITUCIONALISMO E A ATUAÇÃO DO PODER
JUDICIÁRIO EM MATÉRIA DE POLÍTICAS PÚBLICAS: A PROTEÇÃO
DO CONSUMIDOR COMO UM DIREITO FUNDAMENTAL***

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ABSTRACT

Objective: The present research has the general objective of analyzing the performance of the Brazilian Judiciary and the consequences of judicial activism for Brazilian democracy, bringing to the debate the issues of the new constitutionalism and the role of the judge in contemporary times.

Methodology: This is the study of empirical-theoretical analysis, with the use of qualitative methodology.

Results: At the end of the present study, it appears that the jurisdictional action for the implementation of public policies - including those aimed at consumer protection, cannot be disproportionate, and should occur whenever there is a violation of the rule, allowing individual consumers to be helped by the Judiciary for effective consumer protection as a fundamental right.

Contributions: The scope of this article discusses, previously, the general aspects of the new constitutionalism. In the sequence, it verifies the new chapters of the legal hermeneutics, based on the state normativity and the position of the Judiciary Power in face of the new tasks derived from the inertia of the Legislative and Executive Powers, to discuss the legitimacy of the Judiciary Power to act creatively in the that concerns public policies and the protection of consumer protection as a fundamental right.

Keywords: Neoconstitutionalism; Public Policies; Fundamental Rights; Consumer Right.

RESUMO

Objetivo: A presente pesquisa tem por objetivo geral analisar a atuação do Poder Judiciário brasileiro e as consequências do ativismo judicial para a democracia brasileira, trazendo ao debate as questões do novo constitucionalismo e o papel do juiz na contemporaneidade.

Metodologia: Trata-se o presente estudo de análise empírico-teórica, com a utilização de metodologia qualitativa.

Resultados: Ao final do presente estudo, verifica-se que a atuação jurisdicional para a efetivação de políticas públicas – inclusive as destinadas à proteção do consumidor, não pode ser desmedida, devendo ocorrer sempre que houver uma violação à norma, possibilitando que os indivíduos consumidores sejam socorridos pelo Poder Judiciário para a efetivação da defesa do consumidor como um Direito Fundamental.

Contribuições: O escopo deste artigo discorre, previamente, sobre os aspectos gerais do novo constitucionalismo. Na sequência, verifica os novos capítulos da hermenêutica jurídica, fundando-se na normatividade estatal e o posicionamento do



Poder Judiciário frente às novas incumbências derivadas da inércia dos Poderes Legislativo e Executivo, para se discutir a legitimidade do Poder Judiciário para atuar de modo criativo no que concerne às políticas públicas e o resguardo da defesa do consumidor como um direito fundamental.

Palavras-chave: Neoconstitucionalismo; Políticas Públicas; Direitos Fundamentais; Direito do Consumidor.

1 INTRODUCTION

With the promulgation of the 1988 Constitution, the rise of fundamental rights was demarcated, mainly with regard to equality, the dignity of the human person and the inclusion of the consumer as a fundamental right, inaugurating the so-called Democratic State of Law. Therefore, there is a need to study how changes in interpretative methods and the application of law, re-discussing the role of the Judiciary today.

The neoconstitutionalist current will be exposed as a method that works with constitutional effectiveness. Demonstrate the functions of the principles and rules, based on the state normative force and the dedication of the Judiciary Power, when verifying the plurality of offices assumed when the inertia of the other State Entities is determined, since strict legality opens the way to the moral interpretation of the Law .

The yearning for justice increasingly assumes the rights of rights, requiring the exercise of its citizenship and its recognition in the social circle, exercising its active legitimacy to demand. Consequently, as demands raising the effectiveness of public policies, especially with regard to consumer protection, through judicial decisions presented increasingly more expressive, characterizing the phenomenon of the judicialization of politics.

Thus, it will be explained the field of action of the Judiciary, regarding its legitimacy to proceed, through jurisdictional exercise, as gaps left by the Legislative and Executive Power, adjusting the resources available and reserved for the handling of public policies, in order to protect consumer rights.



2 NEOCONSTITUTIONALISM: GENERAL ASPECTS

The expression “neoconstitutionalism” was created with the objective of representing an “antipositivist” current, as it introduced a valuative legal model, breaking with the traditional paradigms of the descriptive / organizational system of power. In this sense, the law only becomes fair, if valid, and will only be valid, if it is morally correct (DUARTE; POZZOLO, 2010:78). This neoconstitutional model arose from the need to admit a prescriptive model of the Constitution as a norm.

Based on a system also composed of principles, neoconstitutionalism sought to consolidate constitutional jurisdiction through moral interpretation, with the aim of ensuring the realization of fundamental rights (DUARTE; POZZOLO, 2010:78). It was adopted by extensive Constitutions, which now include the structuring of powers and present an extensive protective role regarding fundamental rights. The preference for adopting this model resulted from the enshrining of the fundamental postulates as a representation of a fair and legal system (BARROSO, 2015:23-50).

In order to have a better understanding of the legal system, it is imperative to differentiate between rules and principles. The rules are understood by descriptive provisions that regulate the individual's way of acting, separating what should and should not be done and establishing a concrete and precise judgment of the case. The principles, on the other hand, are composed of evaluation criteria, which establish the effects of a certain conduct in the world of facts, in accordance with the protected legal good (CAMBI, 2011:91).

The principles are also considered as “commandments of optimization”, since it is not possible to promote their integrality, given that they are enshrined in different ways and vary according to the reality adopted in each case. In this same sense, unlike the rules, the principles also do not expressly cover behavioral prescriptions, as they have the function of establishing purposes relevant to the specific case, which will be analyzed in terms of their content through weighting and balancing (DIDIER; OLIVEIRA, 2019:143-160). After verifying the need to protect other legal assets, each principle will be given a certain weight in order to reach a balanced and reasonable decision (CAMBI, 2011:92).



The main difference between rules and principles is that the former are applied by subsumption, whereas the latter are applied by weight. The most modern Constitutions, such as Brazil, contain principles and values in their text, and it is possible to conclude that the will of the constituent legislator is to attribute to reality a value of its own. However, for this to be possible, even if the rules are applied, it is necessary that there is a direct impact of the principles on the daily events of individuals (DANTAS, 2005:66).

In this sense, neoconstitutionalism made it possible to achieve the rupture between the discretion of the magistrate at the time when the legitimacy judgment was fulfilled in a value rule, positively and constitutionally recognized, imposing the jurist's interpretative activity on the axiological dictates of knowledge designs (DUARTE; POZZOLO, 2010:83).

Likewise, it is possible to verify that the determining factors for the rupture of legal formalism are the way of conceiving the Constitution and its respective function within the legal system, given that the Constitutional State does not identify with the method of adapting the fact to the norm, however, it provides that the right may be provided with any content, outside the mere legal conjunction. The current constitutional text implies adapting the legal system to the principles of justice expressed in it, which is why the law is not limited to the law.

The neoconstitutionalist perspective aims to assist in the development of the common good, without the use of force, as it is a normative system. Thus, the Constitution was given the mission of modulating social relations through the implementation of the principles expressed therein. The Charter ceases to be seen as a limit of political action to be seen as a guide for the legislator's actions, incompatible with the preservation of strict legality and in accordance with virtuous social modulation, linked to moral, ethical and similar values (DUARTE; POZZOLO, 2010:91).

The principles, in a normative system, are elements intrinsic to the legal system and are determined by the constitutionalized values themselves. Previously they had no binding force, but now they represent guidelines to be followed by all Powers (DUARTE; POZZOLO, 2010:93). Contemporary Constitutions are based on



the principle of majority, as they dictate fundamental political values and parameters that must be respected in the face of minorities. In this way, the linkage between the Powers is established, reducing their discretionary power to act, with the objective of ensuring the rights of all individuals (CAMBI, 2011:37).

In this same sense, it is possible to verify that the dignity of the human person represents the “axiological nucleus of jurisdictional protection” of contemporary Constitutions, as they protect individuals in a unique way towards other subjects inserted in society. In order to extract the maximum effectiveness of the constitutional text, it comes loaded with new requirements, representing that individuals are no longer mere subordinates of power, since constitutional values have come to encompass any and all legal, public or private relationships, when found that one of the parties has been violated or is under threat of injury (CAMBI, 2011:38).

The Brazilian Constitution of 1988 recognized the figure of the consumer as a new subject of rights and assured him of constitutional protection by establishing, in Article 48 (BRASIL, 1988), of the Transitional Constitutional Provisions Act, the mandate for the creation of the Consumer Protection and Protection Code. In such a way, the Consumer Protection Code (CDC) was instituted through Law n. 8.078 of 1990 (BRASIL, 1990), thus representing the set of special rules and principles, whose objective is to promote consumer protection (BENJAMIN; MARQUES; BESSA, 2013:33).

In this way, neoconstitutionalism represents a system that encompasses the plurality of cultures and actions of human beings and gives rise to a right conceived in an open, variable and mobile way.

3 POLICY JUDICIALIZATION AND CONSTITUTIONAL CONSOLIDATION

The institute for the judicialization of politics is of North American origin and has expanded to other countries through The Global Expansion Juridicial Power policy (CAVALCANTE; ROCHA JR, 2017:4-32). In Brazil, issues related to judicial protagonism have gained prominence since the Federal Constitution of 1988, which



provides in its Article 5, XXXV (BRASIL, 1988) that any injury or threat of injury to rights can be directed to the Judiciary (NASCIMENTO; PEREIRA, 2016:565-585). Therefore, the objective of this topic is to clarify the scope of the aforementioned constitutional provision, since it refers to the protection of fundamental rights, among which consumer protection fits.

The Constitution protects rights, and for the most part, these precepts are the result of political conjunctions. Thus, constitutional law was judicialized based on the idea that politics, a means of representing social conflicts and fundamental rights, throughout history were denied, were transferred to the sphere of public law.

The promotion of consumer protection represents a positive and protective provision by the State, through the Executive, Legislative and Judiciary branches (BENJAMIN; MARQUES; BESSA, 2013:33). Therefore, it is possible to say that there is a complementary relationship between law and politics. It should be noted that constitutional law places political power and vice versa. The organization of political power is a requirement of the constitutional rule of law, which requires the legitimation of its power (CAMBI, 2011:211).

Legal control over the legitimacy of political power occurs through constitutional jurisdiction, since none of the Powers is located above the constitutional text. Any deviations or abusive practices by one of the bodies may be limited by the competent court. There is, therefore, no obstacle regarding access to justice, since it is possible to support the legal interest, based on fundamental dictates (CAMBI, 2011:212).

Thus, the Judiciary cannot rely on the argument that when it comes to political issues, whether issued by the Legislative or the Executive, there is no intervention, taking into account the theory of self-limitation of powers, or even referring to the judgment of convenience and opportunity. The role of the constitutional magistrate is that of inspection, whether of the ordinary legislator or the public administrator, when there is a constitutional offense, regardless of whether it is a legislative, executive or administrative act (CAMBI, 2011:212).

The ordinary legislator can be warned by the constitutional judge "to the extent that he is bound by the Constitution", regardless of whether the cause is legislative or



administrative. If it is found that the legislator or the administrator violated a constitutional precept, there is no doubt about the unconstitutionality to be declared by the magistrate, and there is no relationship because these are “political decisions involved” (CAMBI, 2011:213).

With regard to fundamental rights, it should be noted that in the Brazilian system there is a very complex operational combination, involving several ways of action, often overlapping competences, in order to provide effectiveness to the constitutional text in relation to the protection of the dignity of the human person (VALLE, 2009: 36). It can be said that the inclusion of consumer protection as a fundamental right in the Brazilian Charter also means “a constitutional guarantee of this branch of private law, an objective right (in the law, in the post-right system) of consumer protection” (BENJAMIN; MARQUES; BESSA, 2013:35), also called constitutional “normative force”.

From a neoconstitutionalist point of view, there is no longer any need to talk about the need for programmatic norms, inherent to installment rights. On the contrary, they are established in the legal system as principles, requiring compliance by the legislator and the administrator, characterizing the prescriptive model of the Constitution. Therefore, each and every fundamental right is legally positioned assuming a positive and defensive extension. Therefore, the idea that there would be no legitimacy on the part of the Judiciary to overcome the demands that imply determination and compulsory execution, which, as a rule, would belong to the Public Authorities, has been overcome (ROSSI, 2008:18).

Therefore, the neoconstitutional view leads to the perception of the centrality assumed by fundamental rights in the constitutional text, thus requiring a different interpretation to them, therefore, “notions such as the private or horizontal effectiveness of these rights, the prohibition of social retrogression, the maximization or effectiveness, exceptional restraint and positive projection”, are definitions that must be complied with regarding the interpretation and application of the aforementioned rights (ROSSI, 2008:18).

The indeterminacy of the fundamental postulates would be linked and limited to the political scope, besides, the taking of the Judiciary for the realization of such



rights would enter the state budgetary area. Said displacement of competences and projects would cause the collision of constitutional rules, which could occur in a grandiose way, opposing on the one hand the protection of rights, and on the other, being at the mercy of the offense to the principles of separation of powers, as well as the principle democratic (SILVA; BAHIA, 2018:163-190).

Faced with the problem, in order to make it possible for the realization of fundamental rights through the judicial system, the Judiciary Branch departed from the principle of separation of powers, since it was understood that the Legislative and Executive branches disregarded it as entities. in the implementation of public policies (GUEDES, 2009:786).

To clarify the discussions about judicialization, we worked with the proceduralist and substantialist views. The proceduralist view states that a State full of new tasks would sensitize the mandatory meaning of the laws and weaken participatory democracy, since the subject of rights would become a mere client of the Judiciary, and his participation in the democratic process is unnecessary, as the judge starts to assure you what you need (ANDRADE, 2009:149).

On the other hand, the substantialist view states that participatory democracy would not be sensitized, on the contrary, it would be effective, as it opens up space for citizens to discuss governmental actions that protect their own rights. Therefore, the performance of the Judiciary in relation to public policies would be legitimate, ensuring the exercise of citizenship and the recognition of the individual as a subject of rights inserted in the social sphere (ANDRADE, 2009:149).

The doctrine's critique of proceduralism is based on the fact that this theory is based on an idealized democracy, which is unable to provide material elements so that individual rights are exercised by all individuals. The substantialist current, on the other hand, interprets the will of the whole, in addition to saying the values implicit in the legislation. Therefore, even if against the will of random majorities, the jurisdiction must support policies that are not complied with, based on "normative force to constitutional principles and rules" (CAMBI, 2011:288-289).

At first, as a result of their location, the State's protective and protective duties are linked and enshrined by the principle of supremacy of the Constitution, not only by



the legislator who introduces them into the system, but also by the Executive and Judiciary when, exercising their respective functions, they produce administrative and jurisdictional acts (GUEDES, 2009:788).

The legislator is bound by the duty of protection, however restricted to the space and freedom granted in the legislative sphere, especially with regard to protection and insurance practices involving individual assets and freedoms before third parties. Executive members, on the other hand, are limited to the practice of acts in what concerns the executive provision of the rules that protect the guarantees of fundamental rights, or that give rise to protection in the face of specific cases. Now, the Judiciary Branch keeps the task of overseeing the other powers, in addition to the connection with fundamental rights, since they must obey the rules of protection for individuals, not letting them decide arbitrarily and thus consider themselves sufficient to protect the rights fundamental (GUEDES, 2009:789).

As explained above, it is possible to observe that there were many changes that happened to the 1998 Constitution, and one of the ones that deserves more prominence refers to jurisdictional action. At first, there was a sudden increase in the number of lawsuits filed in order to protect social rights - here the consumer right (BENJAMIN; MARQUES; BESSA, 2013:31), in which it is possible to observe that the public policies pleaded in such demands correspond to legislative and executive competences, therefore, made impossible at first regarding state intervention. However, magistrates took the lead in carrying out government actions, being accepted by society without many embargoes, and often even prestigious.

Regarding the changes in the scope of constitutional jurisdiction combined with state action and the powers inherent to it, it is possible to point out that the judge, previously seen as a conflict solver, is no longer restricted to mere legal compliance, given that his role is associated with safeguarding the fundamentals of justice listed in the Constitution, becoming a guarantor of fundamental rights (PESSOA, 2014:73-95).

The concept of a neutral judge, who intervened in legal relations when raised by the parties, is replaced by a vision of constitutional concretization. This means that neutrality has given rise to categorical decisions, erasing the breakdown of judicial and political decisions and making room for both to walk together (NETO, 2012:522).



It should be noted that the transfer of the defense of fundamental rights to constitutional jurisdiction is a method that causes controversy, as there will be situations in which judicial intervention will become unenforceable, whether for technical or substantial reasons, due to the affront to the principle of separation of powers or even by discrepancies in the application of installment rights.

Nevertheless, it is possible to see that the phenomenon of the judicialization of politics has as its goal constitutional supremacy, since it is a fundamental right that legitimizes the performance of the Judiciary in the implementation of public policies, even though it conflicts with the other Powers (TASSINARI, 2018:95-112).

Through the judicialization of politics, the Judiciary grants the subject of rights the state seal that corresponds to the effectiveness of fundamental dictates, not allowing government procedures to confront the priorities of social justice. In this way, the difficulties faced to protect, inspect and manifest state action in specific cases become clear.

4 NEOCONSTITUTIONALISM AND THE PERFORMANCE OF THE JUDICIAL POWER IN THE MATTER OF PUBLIC POLICIES: CONSUMER PROTECTION AS A FUNDAMENTAL RIGHT

The constitutional text provides the normative features that permeate the realization of fundamental rights and establishes the need to implement public policies regarding such rights. The primary function of the judge is to confer constitutional normative force, without absorbing the political character reserved for the dominant clashes over public policies (CAMBI, 2011:270).

In this sense, there is no way to deny jurisdictional action in the face of public policies, under penalty of violation of the Magna Carta's commandments, since the jurisdiction has the power to preserve / safeguard fundamental postulates, in addition to being the basic parameter of a democracy (CAMBI, 2011:270).



The performance of Organs judicial bodies regarding the realization of public policies, whether in their implementation, control or execution, must not be unbalanced, and must occur when a “violated legal or constitutional duty” is present. This means that the judge does not have absolute freedom to deal with the issue, being restricted to the systemic interpretation of the Constitution or the legal texts that fit the solution of the specific case (CAMBI, 2011:272).

It should be noted that the magistrate and the legislator have different functions and activities. The magistrate does not operate by issuing general rules, as he is called to the dispute through the parts of the process. It is up to him to decide and substantiate the decisions made, even though there is no general rule that regulates the factual situation. The exercise of judicial activity is not linked to strict legal compliance, and the case must be resolved in the most appropriate way possible (CAMBI, 2011:277).

Magistrates do not enjoy a popular mandate and also cannot act on their own, since the constitutional text requires the motivation of their decisions, a prescription that is not subject to legislators. The judge and the Court are not labeled as representatives of the people, but the function they exercise makes them act representing them, as justice is applied in favor of society, the population (CAMBI, 2011:277).

The Federal Constitution of 1988, recognizing the consumer, individual and collective, as a subject of rights, ensured their constitutional protection as a fundamental right and as a principle of the national economic order (BENJAMIN; MARQUES; BESSA, 2013:33). Therefore, the constitutional jurisdiction is aimed at correcting unconstitutional acts issued by the legislature, which is why there is no need to talk about acting against the people, as it aims to protect society from actions and omissions that contradict the constitutional text on the part of the rulers (CAMBI, 2011:279).

There are also those who affirm that a judge, when disposing about a rule that regulates a public policy, would create a new duty, and for this reason, after the succession of the facts, the losing party would be punished and surprised by a retroactive provision. However, such an allegation does not thrive in the face of



fundamental rights, since the judicial body aims to protect it and not make it positive (CAMBI, 2011:280).

Still, the Judiciary when protecting fundamental rights and requesting the execution of policies is legitimized by two currents: the formal one, which arises from the binding of the judge to the principle of legality, and the substantial one, which consists in allowing the validity of the dispute to be discussed. law in the light of the constitutional text and may be declared unconstitutional if it contradicts it (CAMBI, 2011:280).

The distribution of assets properly used for the protection of policies cannot occur directly by the Judiciary Branch, which is only responsible for protecting the means used to carry out government actions, when their protection is raised, in order to guarantee the fundamental rights that are not being implemented. Therefore, its intervention is limited to certain specific cases, due to the non-observance of a right or the lack of implementation of public policies (CAMBI, 2011:281).

The promotion of fundamental rights occurs through actions or omissions by state agencies. The Legislative and Judiciary are responsible for maintaining the constitutional provisions and their due compliance. Therefore, the legislator handles constitutional matters and the court takes on the task of safeguarding its text, directly and indirectly. The difference is that the judicial decisions have an effect on the parties, since the legislation depends on enforcement acts to generate effects in the social sphere (BARCELLOS, 2009:804).

Thus, Public Administration is linked to the implementation of actions and programs aimed at the provision of certain services, identifying such set of activities as public policies. Therefore, it is easy to see that the State uses such measures to achieve the purposes detailed in the Constitution and by the legislator, and that the promotion of fundamental rights depends essentially on these actions (BARCELLOS, 2009:805).

At first, the constitutional text gathers a list of objective specifications interconnected with the amount of resources available for the implementation of public policies, determining the satisfaction of the constitutional provisions. Theoretically, the percentages listed in the constitutional text are verified for the realization of certain



rights, then inquire about the collection of resources, checking whether public policies are being applied in order to effect the purposes set out in the Constitution (BARCELLOS, 2009:805).

If the Judiciary Branch finds any breach of the constitutional text, it must check the applicable penalties, punishing the person responsible for the practice of the offense, preventing the effects of its conduct in the social sphere and enforcing the provisions of the constitutional text. It is also verified whether the result sought by the state assessment is occurring, that is, if in fact fundamental rights are being safeguarded (BARCELLOS, 2009:811).

Soon after, the means chosen by the State are analyzed and if they are reaching the provisions of the constitutional text. The function of public policies is to provide the minimum efficiency for the achievement of constitutional objectives, not letting the available resources dilapidate, since these are scarce in view of all the existing needs in the social sphere. The legal interpreter, except in particular situations, will not be able to determine alone whether a public policy instituted by an authority is “minimally efficient”. Consequently, the legal control of public policies is achieved with access to information on available public resources, forecasts and budgetary executions (BARCELLOS, 2009:812).

The constitutional provision of plans, guidelines and goals to be developed through government actions is what often causes the judicialization of the law and its interlaces (BARROSO, 2018:2171-2228). The Judiciary ended up prioritizing the control of acts and their legality on the part of the State, verifying the procedures and the effectiveness of governmental actions throughout the country, excessively restricting the discretionary power of the public administrator (FIGUEIREDO, 2009:720).

It is not just a matter of giving legitimacy to the Judiciary, but of bringing the recipients of constitutional norms to the active pole, so that, as citizens, they have alternatives to enjoy certain essential goods and services (FIGUEIREDO, 2009:720). Obviously, the main barrier faced when implementing public policies is linked to economic aspects. In addition, there are predetermined limits that restrict its



applicability in the constitutional text, classifying budgetary and political priorities and allocating resources according to legal dictates.

When it comes to public efficiency, it refers to the optimization of available means that meet the demands of the public interest, since economics is included in the parameters of effectiveness. Therefore, the intervention of the Judiciary proves to be plausible for the resolution of the principle of wide jurisdictional protection, in favor of the effectiveness of fundamental rights, with the objective of verifying whether public policies have been inefficient or if there has been an omission for their satisfaction, safeguarding eventual rights that may be harmed or threatened (FIGUEIREDO, 2009:733).

The doctrine points out that the biggest problem with the implementation of public policies is the scarcity of resources, since rights demand positive benefits from the State. Often, due to the extensive list of rights and guarantees taxed in the Constitution and the disproportionate budget to enforce them, the Public Authority ends up providing a deficient service to the citizen, or many times, it is omitted in its executions (HEUKO, 2012: 368).

Furthermore, it is known that in Brazil the claims involving fundamental rights are not fully met by the State, leaving the constitutional jurisdiction to implement the provision of rights, as in the case of decisions aimed at consumer protection in the scope of regulation, after-sales of products and services. Such examples are clear models of how the court acts in the promotion of fundamental rights in favor of consumer protection.

Thus, it is concluded that the Judiciary Branch seeks protection in the constitutional text and uses the weighting of values and principles that eventually collide to grant effectiveness to fundamental consumer rights.

5 FINAL CONSIDERATIONS

In view of the considerations regarding the rise of fundamental rights, among which consumer protection stands out, it was found that neoconstitutionalism is an



antipositivist current, which aims to effect the fundamental rights listed in the constitutional text through moral and valuative precepts. With the insertion of the principles, it had been necessary to explain their difference with the rules, since these correspond to commandments that are exhausted in themselves, that is, they are not capable of uttering any meaning other than what is expressly written.

When we talk about principles, we are faced with precepts that acquire autonomy in face of specific cases, that is, they can be made flexible in different ways, depending on the context that will be applied, never reaching its completeness, as it is not a regulation of conduct, but of weighing protected legal assets, giving weight to each circumstance, settling conflicts that may exist. For this reason, citizens are no longer subject to state power, as constitutional values cover any and all relationships, including consumerism.

The controversy that guides the new methods of interpretation focuses on the judge's creative power in the face of judicial demands. Thus, it was found that when it comes to fundamental rights and their effectiveness, activist practices do not break with the democratic regime or the usurpation of functions, since what is defended is the supremacy of the Constitution. The constitutional court is concerned with making the State omnipresent, in order to implement the guarantees provided for in the constitutional text, considering that the moral and political characteristics require an ideological construction and corresponding to the historical moment in which they will be applied.

Finally, it was found that the demands in the Judiciary, related to public policies aimed at consumers, grew too much. Thus, the judiciary cannot exclude political issues from its appreciation, based on the self-limitation of the Powers, nor even claiming that it is a discretionary power of the Public Administration. The aforementioned body is responsible for supervising the legislator and the public administrator, regardless of whether they are legislative, administrative or executive acts.

Nevertheless, the objective is not to monopolize the defense of fundamental consumer rights in the judicial sphere, on the contrary, it aims to provide greater compliance in the dictates that involve them, not leaving the consumer citizen at the



mercy of legislative and executive inertia, the requirements raised so that decisions can be satisfied.

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