

INDEPENDENT ELECTORAL ELECTIONS AS A POSSIBILITY TO EXPAND CITIZENS 'POLITICAL RIGHTS

CANDIDATURES INDIVIDUELLES COMME POSSIBILITÉ D'ÉLARGIR LES DROITS POLITIQUES DES
CITOYENS

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ABSTRACT: The deep crisis of Brazilian political representation implies a lack of interest on the part of citizens in the country's political life. Separate candidacies can help to reverse or at least alleviate this situation, engaging citizens to participate more actively in democracy. The objective is to carry out an analysis of the possibilities of returning independent

candidates to Brazil, which, after political reforms, were rendered unfeasible. We explored the institute in Comparative Law, as a source of research and exemplification of the functioning of candidacies without party affiliation. The most recurring arguments are addressed, against and in favor of these candidacies. It is concluded that it is not possible to know to what extent the establishment of individual candidacies would bring good results, but it is a fact that Brazilian politics is worn out and apparently there is no absolute obstacle to the inadmissibility of independent candidacies, mainly because in them, Brazilian voters could, in perspective, have higher hopes and participation in the electoral system.

Keywords: Crisis of political representation. Individual applications. Comparative Law.

RÉSUMÉ: La profonde crise de la représentation politique brésilienne implique un désintérêt de la part des citoyens dans la vie politique du pays. Les demandes individuelles peuvent aider à renverser ou du moins atténuer cette situation, en engageant les citoyens à participer plus activement à la démocratie. L'objectif est de procéder à une analyse des possibilités de retour des demandes indépendantes au Brésil, qui, après des réformes politiques, ont été rendues irréductibles. Nous explorons l'institut en droit comparé, comme source de recherche et exemple du fonctionnement des applications sans affiliation à un parti. Les arguments les plus récurrents sont abordés, contre et en faveur de ces demandes. On conclut qu'il n'est pas possible de savoir exactement dans quelle mesure l'établissement de candidatures individuelles donnerait de bons résultats, mais il est un fait que la politique brésilienne est usée et qu'apparemment il n'y a pas d'obstacle absolu à l'inadmission de candidatures indépendantes, principalement parce qu'en elles, les électeurs brésiliens pourraient, en perspective, avoir plus d'espoirs et de participation au système électoral.

Mots-clés: Crisis of political representation; Demandes individuelles; Droit comparé.

INTRODUCTION

The presente paper aims to study the controversial issue of the implementation of individual

candidacy in Brazil. For this purpose, an analysis of the Brazilian normative context is offered, based on the Constitution of 1824 until the Constitution of 1988, because, for many years, the country admitted to its citizens the enjoyment of this right, granted by the legislation, without damage or prejudice to the policy. Therefore, an attempt is made to carry out an analysis of the possibilities for readmission of independent candidacies to Brazil, which, after political reforms, were rendered unfeasible.

The institute of independent candidacy in comparative law is explored as a source of research and exemplification of the functioning of candidacies without partisan affiliation. It is possible to verify the effectiveness and well functioning of these independent candidacies, accepted by the vast majority of democracies in the world, which guarantees the possibility of equality in the distribution of power among citizens, cooperating for a more complete and far democracy. The most recurring arguments are considered, both against and in favor of these candidates, the main articulated arguments are considered, ascertaining whether they actually have a positive democratic foundation or if they are harmful to the electoral system.

The V paragraph of § 3° of article 14 of the Federal Constitution, expressly determines that citizens can only exercise their right to democracy through party affiliation. Party affiliation is an eligibility requirement and it's found in the infra-constitutional legislation in articles 9°, 11, § 1°, III and § 14, of Law 9.504, of September 30, 1997.

It contains the express normative provision that the eventual candidate must be affiliated with a political party, at least six months before the date of the election (article 9°). It also provides that the registration request must be accompanied by proof of this affiliation (article 11, § 1°, III). Article 11, §14 states that "Registration of detached candidacy is prohibited, even if the applicant has party affiliation" (BRASIL, 1997). Article 20 of Law 9,096 / 1995 provides the power to the political partisan to establish, in its statute, the terms of party affiliation longer than those provided by law (BRASIL, 1995). Finally, Article 77, in the second paragraph of the Brazilian Federal Constitution, reaffirms that for Presidential elections, it's

mandatory to be a registered candidate on a political party.

The issue is that such obligation implies that the individual who wishes to exercise his passive electoral right, has to be necessarily linked to a political party, which violates the item XX, of Article 5 of the Federal Constitution, which provides that “no one can be compelled to become associate or remain associated” (BRASIL, 1988). The American Convention on Human Rights, in particular it’s article 23, 1, “a” (OAS, 1969), contributes to the worsening the crisis of political representativeness, since voters do not trust or feel represented by these institutions. Post-presenting the problem the several attempts to change this monopolistic situation will be exposed, including Proposals for Amendment to the Constitution and a Special Electoral Appeal by the jurist Rodrigo Mezzomo that deal with the need to implement the candidacy detached in Brazilian democracy.

It begins with an analysis of the individual candidates, then, the current crisis of party representation is addressed; therefore, it deals with the independent candidature from the perspective of comparative law, finally, the arguments in favor and against the candidacy detached with political parties.

1 ANALYSIS OF SPECIAL APPLICATIONS IN BRAZIL AND THE CRISIS OF PARTY REPRESENTATION

Brazil seeks to modernize and update multiple aspects of its electoral system, however, some changes are controversial and generate divided opinions, such as the prohibition on individual candidacies, A brief analysis between the first Brazilian constitution and those that subsequently replaced it, allows us to verify several of these transformations.

The 1824 Constitution established indirect elections and census suffrage in which the requirements for voting were found in art. 92 of the Charter and excluded from voting in parish assemblies “minors under twenty-five years old, who do not comprehend married and military officers, who are over twenty-one years old, graduated and clerics of sacred orders”.

Neither were accepted “servants, whose class does not include bookkeepers and first clerks from commercial houses, servants from the Imperial House who are not white gallons and managers of rural farms and factories, nor religious cloistered, as well as those who did not had a hundred thousand “réis” as income to guarantee them active and passive citizenship (BRASIL, 1824). This rule differentiated the types of voters between voters and electors (votantes e eleitores). The first were “free and freed men with a minimum income of “100 mil réis” (hundred thousand “réis”), these acted in the political process through voting in the primary elections” as electors, the participation of “free men with an income greater than 200 mil- réis (two hundred thousand “réis”) who could, therefore, “vote in the secondary election and be elected to representative positions” (MOTTA, 2012, p. 6). Regarding party affiliation, the 1824 Constitution was silent on whether to allow or not independent candidacy, therefore, it was permitted, if the candidate covered all census requirements. José Murilo de Carvalho, calculated that in 1872, only 1,097,698 individuals were able to vote in the primary elections that year, corresponding to 10.8% of the Brazilian population (CARVALHO, 2003, p.395).

The Saraiva Law of 1881 implemented direct elections, the title of voter, the prohibition of illiterate voting, the census suffrage and unattached candidacy from political parties remained (BRASIL, 1881).

With the beginning of the “Brasil República” period, a new constitution was drafted, and came into force in 1891, in which the census suffrage was finally extinguished, however, beggars, illiterates and women were not yet included as active voters or liabilities. Paradoxically “direct elections, apparently a democratic achievement, resulted in a radical decrease in the number of voters” since the majority of the population did not know how to read or write (LEITE, 2016, p.17). As long as the citizen was in full enjoyment of his political rights, candidacies without party affiliation were still perfectly enforceable. In 1932, the first Brazilian Electoral Code was created. Undoubtedly, one of the greatest extensions of the effectiveness of democracy in the country. The Code originated the Electoral Justice and

established the secret vote, the female vote and the proportional representation system. It was also the first time that the electoral legislation made reference to political parties and the candidacy, this, finally admitted formally, as it could be verified in art. 58, 1st and sole paragraph of Decree no. 21,076, of February 24, 1932. The provision authorized political parties to enter into alliances, and gather in groups of at least 100 voters, to “register, in the Regional Court, up to five days before the election, the list of their candidates” and in its sole paragraph was predicted that the candidate who was not on a registered list was considered to be independent (BRASIL, 1932). In 1935, the Code was reformed through Law no. 48, in its 84 article, where it was determined that only candidates registered by political parties or partisans alliances could run for election. However, the independent candidacies had not yet been extinguished, as it was previously mentioned, and candidates who obtained a number of requirements – fifty for municipal elections and two hundred for state or federal elections – could be elected.

The extinction of individual candidacies in Brazil came after the 1945 Electoral Code, with the Agamemnon Law. Later, this extinction gained a constitutional proportion with the 1988 Constitution, which qualifies party affiliation as an eligibility criterion. The Constitution states in its article 14 that: “Popular sovereignty will be exercised by universal suffrage and by a direct and secret vote, with equal value for all, and, under the terms of the law, through: [...] V – **party affiliation**; [...] (BRASIL, 1988). (emphasis added). Brazil became part of the group of countries in which the parties enjoy a monopoly on political representation. The term monopoly of political parties, means the designation of total control of power and political representation.

When addressing the issue of party representation, the first big question is: do Brazilian citizens feel represented by political parties? Is it possible to say that voters trust political institutions? Or is the discredit and distrust demotivating citizens when it comes to exercising their rights / duties? Débora Galvão, in her article “The crisis of representation of political parties”, concludes that: “The diagnosis of part of the literature is prevalent on the line that

voters have been distancing themselves from parties in most democracies”, which is demonstrated by low indices “of affiliation, militancy and partisan identification, due to the lower weight of the partisan vote and the greater distrust in the institutions” (GALVÃO, 2016).

It is well known that the parties are configured as the center of representative democracy in several States, but this is due to the fact that they have monopolized political representation, and because of this their structure has been less and less criticized every day. Robert Michels (1982), is one of its critics, the political scientist argues that these institutions tend to have a bureaucratic structure dominated by a small group and their leadership is oligarchized.

In the same sense Freidenberg (2013), claims that the decisions made in these party oligarchies “are made exclusively, with cesarean liturgies, regardless the opinions of militants, where they are only consulted to legitimize policies and resolutions already taken in small circles” by controlling elites of power who do not admit “the participation of all groups in the programmatic definitions or the choice of candidates”.

Galvão (2016) in their analysis of the subject verifies that in the past political parties were characterized by having well-defined ideologies and their proposals to the electorate were fulfilled when the party’s representative came to power. However, nowadays, campaigns are based on personalism; characterized by the ability to advertise using the mass media. Bernard Manin (1995), argues voters now tend to vote for individuals and not for a party, which demonstrates that these institutions no longer attract voter loyalty.

The growing crisis in the party representation stems from factors such as “corruption, violence, disloyalty, lack of ethics, rupture of agreements or pacts” (GALVÃO, 2016, p. 10), and to this, is added the feeling of impotence on the part of the electorate, increasing the population’s apathy towards party machines, contributing to the electoral abstention and low party loyalty over the years.

The Inter-American Court of Human Rights, in the Jorge Castañeda Gutman case against the

United Mexican States, attested the existence of this crisis.

A la Corte no se le escapa que en la región existe una profunda crisis en relación con los partidos políticos, los poderes legislativos y con quienes dirigen los asuntos públicos, por lo que resulta imperioso un profundo y reflexivo debate sobre la participación y la representación política, la transparencia y el acercamiento de las instituciones a las personas, en definitiva, sobre el fortalecimiento y la profundización de la democracia. La sociedad civil y el Estado tienen la responsabilidad, fundamental e inexcusable de llevar a cabo esta reflexión y realizar propuestas para revertir esta situación. En este sentido los Estados deben valorar de acuerdo con su desarrollo histórico y político las medidas que permitan fortalecer los derechos políticos y la democracia, y las candidaturas independientes pueden ser uno de esos mecanismos, entre muchos otros. (Jorge Castañeda Gutman case against the United Mexican States, 2008).

As argued by Galvão (2016, p. 58), in 2001 the percentage of trust in political parties was 6%, while 39% were those who had no trust in them. In 2015, this correction was 1% versus 51% of those who declared they had no trust at all. The same author found that from 2002 to 2014, there was a difference in the abstention of 7,250,242 voters, a rate that was progressively increasing at that time interval.

2 THE INSTITUTION OF THE INDEPENDENT CANDIDACY

The independent candidacy is defined by the presentation made by an individual not affiliated to any political party or that, even if it is affiliated, the party does not elect him as being official candidate of the association, that wants to run in an electoral election.

In the face of the crisis, some jurists, politicians, political scientists and members of civil society have argued that a promising way to reverse this representativeness issue, or at least reduce it proportions, would be to admit the return of independent party affiliation applications. This possibility made the theme gain repercussion and supporters, since it found

shelter in the international law.

Members of the Judiciary Power were in favor of unconnected candidacies, such as, for example, the former Minister of the Supreme Federal Court (STF) and former President of the Superior Electoral Court (TSE), Célio Borja, who, in an interview, denounced what he named as a “party dictatorship” and claimed that it is time to create “detached candidacies” in Brazil, stating that he considered:

[...] party dictatorship is extremely inconvenient. [...] If you are not a member of a party and it does not support your candidacy, you are nothing, you cannot be anything. How can this dictatorship be broken? I think the simplest way is the English one: you can be a separate candidate. [...] I think that this is a safeguard against the tyrannization that the parties exercise over political life (MORAES NETO, 2016).

Menezes Direito, when judging the process that dealt with party affiliation, stated in his vote:

[...] is certain is that there is a necessary link, I would say, even if imperative, between the voter and the candidate, necessarily passing through the political party through which he presents himself to the political body in search of a mandate. This mandatory link translates into conditioning the mandate obtained to the political party, since the individual option for “this or that” candidate is linked to the party insofar, as there is no candidate without a party to support it, and the proportional votes are represented attached to the political party to obtain the electoral victory. [...] If the parties were transformed into mere instruments of access to the popular power of political representation, thereby corrupting themselves, they began to become less and less a consistent interpretation with the nature of the popular representation system, which, in the Brazilian political case, imposes mandatory affiliation party. This undoubtedly tarnishes the system of popular representation and points to the possibility that independent candidacies, unconnected with the parties, may be authorized, which is prohibited by the Federal Constitution. [...]. (SUPREMO TRIBUNAL FEDERAL, 2008).

The relevance of the subject is also confirmed by the number of Proposals for Amendment to the Constitution formulated in favor of individual candidacies in a relatively short period of time. The first proposal to amend the Constitution dealing with the topic, was presented to the Senate on October 19, 2005, called PEC 56/2005 (SENADO FEDERAL, 2005), authored by Senator Cristovam Buarque (PDT-DF). If approved, the item V of § 3 of art.14 of the Constitution would have the following wording: “V - party affiliation or, according to the law, the subscription of the application for registration of candidacy by a certain number of voters;”. After a long process, the proposal was filed on January 7, 2011.

According to Cristovam Buarque:

The Republican Reform must allow separate candidacy, as long as that, in order to be registered, the candidate presents up to four months before the election the support of a minimum number equivalent to 1% of the total number of voters, in the form of signatures, giving them support to run the election. In the case of a presidential election, in addition to 1% of the total 106 million voters, the candidate must obtain signatures of at least 1% of voters in each of 10 states (SENADO FEDERAL, 2005).

The second proposed amendment to the Constitution was PEC N. 21 of 2006 (SENADO FEDERAL, 2006), authored by Senator Paulo Paim (PT-RS), presented in May 2006, aimed to change the item V of § 3 of art. 14 of the CF. If approved, item V would have the following wording: “party affiliation or, under the terms of the law, support of the necessary number of voters for the candidacy”. One of the main arguments defended by the Senator was that the amendment would solve the problem of the lack of political representation by social movements. According to him, if movements wanted to launch their candidates, They wouldn't be able to, “feminists, black movement, the movement of landless workers, the movement of retirees; of indigenous people, of homosexuals, unless they join one of the registered political parties and submit to the rules of this party, it's internal correlation of forces, it's difficulties and limitations “. The referring proposal was resubmitted in 2015 (PEC

16/2015), (SENADO FEDERAL, 2015).

Another proposal for amendment to the Constitution on the theme was presented to the Chamber of Deputies on March 11, 2008. PEC 229 of 2008 (CAMARA DOS DEPUTADOS, 2008), authored by Deputy Leo Alcântara (PR-CE), postulating identical modification to the amendment proposed by PEC 21/2006. The parliamentarian questions the mandatory party affiliation for the candidacy, if in Brazil the constitutional principle of “freedom of conscience” is in force.

A new proposed amendment to the Constitution in the Chamber of Deputies was presented on September 23, 2009. PEC 407/2009 (CÂMARA DOS DEPUTADOS, 2009) authored by Deputy Lincoln Portela (PR-MG). This amendment would add a new fourth paragraph to the article 14 of the Federal Constitution, renumbering the old fourth and subsequent paragraphs.

June 10, 2011, PEC 41/2011 (SENADO FEDERAL, 2011), authored by the Senator and former President of the Republic José Sarney (PMDB-AP) was presented. The proposal was rejected less than a month after its submission. This quick repudiation may be explained by the incongruity of allowing independent candidacy only at the municipal level, without satisfactorily justifying this restriction.

On February 28, 2012, the theme was again presented by Senator Cristovam Buarque. Named PEC 7/2012 (SENADO FEDERAL, 2012), it proposed the alteration of the art. 14 of the Constitution, identical to the proposal in PEC 56/2005 (SENADO FEDERAL, 2005). Due to the filing of the first PEC, the parliamentarian presented a new proposal, this time with a less broad objective, restricting itself to the issue of individual candidacies.

The penultimate Proposed Amendment – PEC 6/2015 (FEDERAL SENATE, 2015) was presented in February 2015 by then-Senator Reguffe which stated: “Suppress and adds provisions to the Federal Constitution, allowing the release of detached candidacies,

regardless of party affiliation” . The PEC No. 06/2015 was filed, being proposed on July 13, 2017 the PEC No. 350/2017 (FEDERAL SENATE, 2017) by the Federal Deputy João Derly (NETWORK / RS), which is appended to the PEC 229 / 2008 (CAMARA DOS DEPUTADOS, 2008).

The 2017 amendment proposal is an improved version of the previous PEC, offering more precise answers about which positions would be elected through the proportional system, in addition to inserting two paragraphs to article 17-A and proposing amendments to article 77 of CF / 88, modifications that were not contemplated by it's predecessor.

It is exempt from doubts that the legislative area is the most appropriate to deal with the issue of independent candidacies, both because it's a constitutional matter, and to confer legitimacy and adjust the execution of the command to the legal dictates inserted in the legal system, as observed by Prado Filho:

There is no doubt that the competent discussion forum to promote changes in the constitutional text is the National Congress, which is why, having an interest in adopting a model of separate candidacies, independent of political parties, such modification would have to be made through amendment to the Constitution. From a strictly legal point of view, however, it should be noted that such a change would have a major impact on the electoral system provided by the Brazilian legal system, which is why it wouldn't be useful to simply remove the requirement of party affiliation as a condition of eligibility provided in the 14, §3º, V paragraph of the Constitution of the Republic. As already explained, the construction of the entire electoral political system is founded on the necessary participation of political parties (PRADO FILHO, 2017, p. 15).

In addition to the proposals for constitutional modification, the theme of individual candidacies was published in the Special Electoral Appeal - RE 1238853, in which Rodrigo Mezzomo and Rodrigo Barbosa appear as plaintiffs, who, after having their candidacy

rejected for the positions of Mayor and Vice-Mayor, respectively, of the city of Rio de Janeiro, appealed the decision and took the case to the Federal Supreme Court (STF).

In the appeal, it was argued that: “linking candidacy to the imperiousness of party affiliation is an attack on individuality of thought, insult to personal circumspection, aggression against particular convictions”, using the item XX, of article 5 of the Federal Constitution, which states that “ no one can be compelled to associate or remain associated ”(MEZOMO and MEZOMO, 2016). This being an “irrevocable command”, which should be understood in the broadest possible way, defends that the term “to associate” includes the partisan affiliation. In conclusion, it was stated that it can’t be admitted “compelling someone to join or remain affiliated with a party as a conditioning way of exercising the fullness of their political life (MEZZOMO and MEZZOMO, 2016).

The Appeal was also based on the American Convention on Human Rights, better known as the San José Pact of Costa Rica (OEA, 1969), whose article 23 provides:

“1. All citizens must enjoy the following rights and opportunities: a) to participate in the conduct of public affairs, directly or through freely elected representatives; b) to vote and be elected in periodic, authentic elections, held by universal and equal suffrage and by secret ballot, which guarantee the free expression of the voters’ will; c) to have access, under general conditions of equality, to the public functions of his country. 2. The law may regulate the exercise of rights and opportunities, as referred to in the previous item, **EXCLUSIVELY on grounds of age, nationality, residence, language, education, civil or mental capacity, or conviction, by a competent judge, in criminal proceedings** ”(OAS, 1969). (emphasis added).

Therefore, the appeal states that, from the moment that Brazil joined the American Convention on Human Rights, “the citizen could no longer be required to be affiliated with a political party to be elected,” as the convention is very enlightening towards the conditions

that can regulate the right to eligibility (MEZZOMO and MEZZOMO, 2016).

The Appeal also invokes arguments based on the International Covenant on Civil and Political Rights and the 1948 Universal Declaration of Human Rights.

It is worth noting now that the rapporteur Min. Luís Roberto Barroso stated that he rather not to anticipate his vote, but he hinted that he is in favor of allowing everyone to participate in the elections even without a partisan link: “The comparative law is largely favorable to separate candidacies”. He recognized the importance of the topic and said that it was necessary to study it before forming a conviction about it. “Recognizing the general repercussion, we will have time to better analyze the matter and arrange an encounter to make a decision” (SUPREMO TRIBUNAL FEDERAL, 2018). The Minister marked public hearing to address the issue and dismissed the injunction request under the argument of the proximity of the elections and the commitment of their security. On October 1, 2017, the General Republic Attorney had given a favorable opinion to individual candidacies based on the San José Pact.[\[4\]](#)

In the case of infraconstitutional, there are several judged as the one transcribed below, of the TSE, that reject the application of article 23 of the San José Pact of Costa Rica.[\[5\]](#)

3 INDEPENDENT APPLICATION UNDER OPTICAL COMPARED LAW

In this topic, it's explored the independent candidacy in several countries. It developed out of ideological disruptions between party members, from the organization of independent citizens engaged in the political scene, as well as structural changes related to the behavior of voters and the way in which candidates relate to parties.

Åsa von Schoultz, in her article “Party Systems and Voter Alignments” states that “there has been a shift of values in modern Western societies” that reveal “more multidimensional political competition than before”. Elements such as ideological propagation, the

transformation of conservative party systems into moderates, ideological realignments and polarized pluralism come into scene. From this perspective, the author states that “it seems that the changes have occurred, or are about to occur, in many countries” (SCHOULTZ, 2017, p. 43-44).

The former minister and ex-president of the Supreme Federal Court (STF) Joaquim Barbosa declared that he was in favor of detached candidacy with the argument that they are successfully allowed in democracies:

Why not? Since our democracy lacks identification between the elected and the voter, why not allow the people to choose directly whom to vote for? Why an intermediation for worn-out political parties, totally without credibility? There are some democracies that allow the individual vote, with success (OLIVEIRA 2013).

As stated by Joaquim Barbosa, independent candidacy works perfectly in other democracies. A study by the ACE Project (2020) revealed that in 43% of the countries surveyed, independent candidacies are allowed in all possible political instances. Among the countries where this happens are Portugal, France, the United States. Chile since 2010 has accepted individual candidatures, as provided for in Article 18 of the Chilean Constitution (CONSTITUCION POLITICA DE LA REPUBLICA DE CHILE, 2005).[\[6\]](#)

Countries that make independent candidacies impossible are a minority across the globe. Nunes *et al.* (2019, p. 197), when analyzing the world scenario, concludes that there are few countries that make impossible to elect individual candidates, “Some countries only adopt it to assume positions in the lower chamber, others in the upper chamber, however, only 9% of countries do not adopt at all, one of them being Brazil.” The author believes that the Brazilian electoral system is archaic when compared to other global electoral systems.

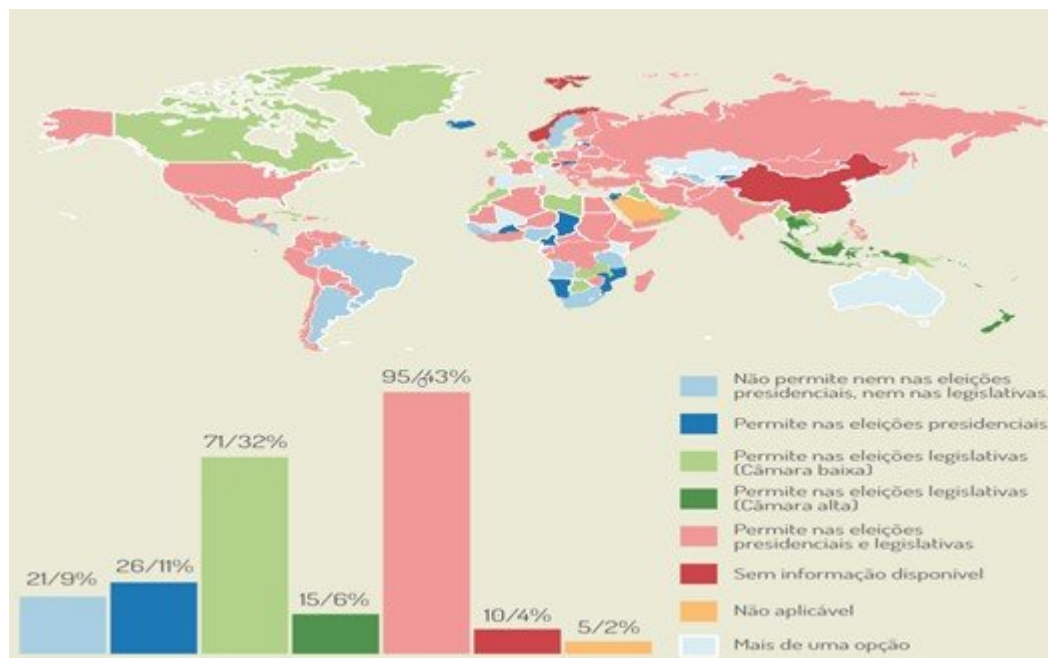
This data on countries that do not adopt the independent candidates is relatively consensual. According to Aleixo, Brazil is part of the group of “9.68% of the countries in the world that do

not adopt any type of separate candidates in their claims, together with Argentina, Uruguay, South Africa, Angola, Suriname, Tanzania” (ALEIXO, 2017, p. 57), Sweden, Costa Rica, Nicaragua, Guatemala, Aruba, French Guiana, Sweden, Monaco, Israel, Jordan, Cambodia, Nigeria, Uzbekistan, Guinea Bissal, Honduras and Zanzibar (ACE PROJECT, 2020).

The ACE Project or “ACE The Electoral Knowledge Network”, made up of the United States, Canada, Mexico and the United Nations Development Program (UNDP), is a database on global electoral systems that “shows that only 21 countries in the world world do not allow any kind of independent candidacy” (ACE PROJECT, 2020; SCHREIBER, 2017; LUCENA, 2017, p. 40).

The following chart shows this data in more detail:

Figura 1 - Independent candidacies around the world



Fonte: ACE Project, 2020.

Some countries have a mixed system, which authorizes this type of dispute in only a few

positions, such as Canada. Other data from the ACE Project estimates that 43% of the total of countries “foresee this possibility for both presidential and legislative disputes – the list includes the United States, Mexico, Chile, Colombia, France, Russia, India, Egypt and Mozambique” (ACE PROJECT, 2020; SCHREIBER, 2017; CORONA NAKAMURA, VELAZCO, 2015; LUCENA, 2017, p. 40).

In countries that adopt the candidacy it is possible to find, quite often, the occurrence of elections that surprised political scientists and their predictions. In France, for example, the independent candidate Emmanuel Macron (TRIBUNA, 2017) came to the presidency in 2017, from the political movement of party emancipation, called “Republique En Marche” (NAVARRE, 2018), driven by the fact that at the time, “30% of the French” did not feel “close to any political party” (PIETRALUNGA; BONNEFOUS, 2016). In 2015, candidate Enrique Peñalosa was independently elected Mayor of the capital of Colombia (LAFUENTE, 2016). In Iceland in 2016, the presidential election was won by independent candidate Gudni Johannesson (JORNAL DE NOTÍCIAS, 2016). On January 26, 2017, the stand-alone candidate in the Austrian presidential election, Alexander van der Bellen took over (SENADO FEDERAL, 2018). In the Tokyo prefecture election independent candidate Yuriko Koike won (TERRA, 2016).

These and other elections won by independent candidates demonstrate that the institution of independent candidates is entirely possible and very effective for the development of a fuller democracy.

Sylvio Guedes argues that for every 10 nations, 4 of them admit that candidates, even “without party affiliation, dispute at least legislative seats at local or national level, Germany, Japan, Italy and the United Kingdom exemplifies that statement”. The author affirms that “37.79% of the countries, accept detached candidacies also for the post of President of the Republic, as in the USA, France, Chile, Iran and the overpopulated democracy of India” (GUEDES, s.d.).

In Brazil, there are currently 33 political parties registered with the TSE (BRASIL, 2020), however, on average, only 12.9% of voters voted for the caption and “a large part of the voters affiliated to parties have no voice, and these are a percentage of 10%, because power is concentrated in the hands of the few called political chiefs” (MIRANDA, *et al.*, 2017, p. 6). It is mandatory to reflect on what is most appropriate: whether to pay more attention to the partisan legend, to the party candidate, or to accept the separate candidacies as a third way.

4 ARGUMENTS AGAINST AND IN FAVOR OF THE DETACHED CANDIDACY REQUEST FOR POLITICAL PARTIES

4.1 Arguments in favor of independent candidacy

The present topic deals with the arguments in favor of individual candidacies. The first argument is that its admission would allow: I – The expansion of political rights, considering that “No one should be forced to join any party. It is, therefore, a democratic freedom that is being disrespected in Brazil. Allowing independent candidates would be more compatible with the principles of democracy ” (BLUME, 2016).

As already mentioned above, the item XX of Article 5 of the Federal Constitution states that “no one may be compelled to join or remain associated” (BRASIL, 1988) that being said, it’s an attack on citizens political rights, that one of the conditions of eligibility is mandatory membership of political parties. Wherefore, the stand-alone candidacy would bring greater realization of political rights, through greater passive political participation.

The second argument in favor of individual candidacies is that there could be: II – Positive effects on the party system. This is because, “The parties would lose their monopoly on candidacies, consequently, they would be weakened. This could mean the beginning of important changes in these entities that are largely physiological and involved in corruption schemes”. (BLUME, 2016).

The individual candidacies institution does not intended to eliminate political parties, instead, through them, parties will be obliged to improve their ideals and better develop their role in society. This would bring beneficial effects over time, reducing the negative view that hangs over policy, motivating citizens to participate more actively in it.

This negative view is credited, also by the proportional representative system. As Dori pointed out (2019, p. 34):

[...] which creates unbelief, and creates in the voter the feeling of not being represented. Thus, the proportional system generates the belief that it consists of an inefficient system, since voters do not have their candidates elected and, even more unusual, they see elected candidates who are not even known in the political environment.

Third, it is argued that: III – Growth in political participation is possible. “As the distrust of the population towards parties is great, many aspirants to elective positions would then enter this world without being obligated to commit to party politics” (BLUME, 2016).

Many well-intentioned people with nice proposals for their city, state or country, fail to enter political life because of the degradation that predominates within the parties, under the impression that to have a voice inside these associations, they would have to give in to the pressure exercised by the corruptions schemes leaders.

Thomas Hare, published his book in 1859, entitled Treaty on the election of representatives, parliamentary and municipal, argues that ‘the fundamental purpose of an electoral system is to ensure the representation of individual opinions and not the communities or political parties. For this reason, voters should have ample choice, not only of parties, but of candidates [...]’ (NICOLAU, 2012).

With the end of obligatory party affiliation, these people could participate more actively in political life, contributing to the growth of the country as a whole and of each citizen, that

would exert more motivated, their rights / duties.

4.2 Arguments against the individual candidacy

The present topic deals with the arguments against individual applications. The first argument is that: I – Political parties are an essential basis for representative democracy. In this way, “they group the main social demands, mobilize people, represent interests, organize elections and, finally, present candidates in the elections. For all these reasons, it is through them that politicians must present themselves to society ” (BLUME, 2016).

The existence of practices such as coronelismo, political clans and monopoly of representation (MIRANDA *et al.*, 2017) as already explained, make citizens not feel represented by politicians and their parties, instead, less than 1% of the Brazilian population has credibility in them (CFM, 2020). Therefore, the only reason that makes these organizations the basis of our representative democracy is due to the fact that the parties have acquired a total monopoly on representation, so this argument is far from being credible.

As Rodrigo Mezzomo explains, voters in this state of affairs:

[...] they will attend the electoral election with a compelled spirit, conformed to the domain of others, bent, resigned, broken or surrendered to the interests of the partisans machines and political leaders. Therefore, the representatives will not be ‘freely chosen’, as the Universal Declaration of Human Rights so clearly assures (MEZZOMO E MEZZOMO, 2016).

According to Ruiz, (2019, p. 10-11):

[...] Political parties seem to constitute possible criminal cartels that use public spaces to commit crimes in a structured way, both for the personal benefit of their leaders and their bureaucracy and to guarantee favorable conditions that assures their continuity in the spaces of representation and leadership [...] The proposed phenomenon provoked reactions that

were originated from disinterest in political activities, and in particular, regardless participation in electoral processes (with the known increase in abstention of voters) to the search for alternatives outside the system, through an electoral non-partisan participation or parties-independent. (livre tradução)

The argument that political parties are the basis of representative democracy, can even be used in favor of individual candidacies, since it unravels a reality that damages our democracy, embodied in the fact that voters cannot truly choose whom to vote for, going through a fake sense of freedom of choice, when in the reality, they can only choose among alternatives that were previously delimited by political parties. Those are still who “dominate political campaigns”, defining which issues “will be prominent and which positions on these issues will be presented to voters, providing most of the propaganda and receiving the most media attention” (BIEZEN; NAPEL, 2014, p.18).

The following argument against detached candidacies it's that it: II - Would provoke a governability problem because “The Executive would have to individually negotiate with parliamentarians since there would be no more party leaders. This would bring new difficulties to the relationship between government and Congress, which already has conflicts” (BLUME, 2016).

This argument is weak, considering that it is a consensus among authors that Brazilian electoral rules tend to perpetuate political individualism.

The thought chain comprehends that Brazilian parties have historically been weak and fragmented, constituting, in almost all cases, alliances of patronage machines, instruments in the hands of local or regional leaders who use public resources to build and sustain a support base. The formulation of policies focuses on the executive sphere; parties, as collective agents, don't have a huge involvement in the policy-making process within the legislative sphere. On the contrary, parliamentarians negotiate votes about political issues in exchange

of the patronage provided by the executive sphere (Ames, 1995a; 1995b; Ames e Nixon, 1993; Avelino Filho, 1994; Geddes, 1994; Kinzo, 1993; Mainwaring, 1991; 1992; Novaes, 1993) (SAMUELS, 1997). (grifo nosso)

The first mistake that can be found in this argument is based on the fact that, as previously mentioned, detached candidacies don't intended to eliminate the existence of the parties or party leaders, but rather, they intend to expand the access to power in a democratic way. Besides that, the comparative law could bring answers for the matter on the relationship between the executive and the congress, if this relationship works so well in the 43% of countries in the world that allow independent candidacy in all instances, it would be very negativistic to believe that only in Brazil this system would not work (BLUME, 2016). In the beginning it may be some difficulties to be faced, but all the major changes that have occurred and brought significant progress have also gone through this stage of adaptation.

Third, it is argued that: III - It would be a problem in the proportional elections of deputies and councilors, "To the extent that the system is proportional and depends on the votes of each party, it would have to be reformed, so that the individual could compete on an equal footing with party-affiliated candidates" (BLUME, 2016).

We will not even go into the matter of proportional elections, referring to the authors previously mentioned such as Dori (2019) and Nicolau (2012) - which have also been widely criticized - we limit ourselves to argue that, a reform is more than necessary in the Brazilian politics scenario, and this becomes evident through the data presented in the course of the article.

It should be noted that the problem of the faithful representation of the electorate is a thorny issue, object of several questions and the political reform and in the electoral system "has been treated as an escape valve to resolve various dissatisfactions of the population" (RUBIÃO, 2017, p. 9-10).

As pointed out by Kataoka and Souza (2018) admitting the separate candidacies reveal a way of reconciling the “democratic postulate, citizenship and contemporary wearable technologies”:

In addition to this systematic hermeneutics, the admission of individual candidacies is a mechanism for reconciling the democratic postulate, citizenship and contemporary wearable technologies. The speed and easiness with which internet connects the population has already produced effects on the exercise of citizenship and popular participation in democratic regimes, giving rise to what has been called the crowdsourced constitution. It is a democracy that uses tools and technologies that ensure the direct expression of citizens in the State’s political decisions². These new mechanisms of participation are able to give voice and reflect differences they find in caucuses obstacles to their proliferation.

In another perspective, the possibility of candidacies without parties has the potential to provide an adequate response to the increasing worldwide wave of representativeness crisis, characterized by the disbelief of the population in the current political party system.

This scenario, combined with the information provided by the freedom of the press, the strengthening of institutions such as the Public Ministry and the Judiciary, besides the maturation of democracy itself, provoked a real revolution in the perception of the Brazilian citizens about the political party system.

Amid the Brazilian political crisis, changes are needed, and in the particular case of Brazilian politics, they can bring hope, credibility and motivation, contributing to greater participation of citizens in political life, strengthening our democracy and consequently bringing citizenship to everyone in perspective.

FINAL CONSIDERATIONS

Based on what has been said, it can be concluded that Brazilians do not place their credibility

or feel represented by political parties, which makes mandatory the need of a political reform, especially in the electoral system, very evident.

This need for a reform opens space for a discussion that has been gaining more and more repercussion; the possibility of returning individual candidacies to Brazil, a theme that is seen by many as the best solution to the problems of lack of representativeness and partisans monopoly.

The named “dictatorship of political parties” is protected by item V of § 3 of art. 14 of the 1988 Constitution, which establishes party affiliation as an eligibility requirement, denying the right to passive political participation to all citizens who do not want to join a party. This condition although it’s made to guarantee the legitimacy of candidacies, in addition to being in conflict with other CRFB rules and the American Convention on Human Rights, contributes to the perpetuation of the political power monopoly and corruption schemes. To reverse this calamitous situation, several jurists and politicians have drafted “Constitution Amendment” Projects proposing the return of individual candidacies, attempts that were frustrated, some PECs being archived, others rejected and the most recent, which was presented in 2017, it is still pending and has no date to be voted on, which leads us to ask, if this delay is not intentional, in order to soften the relevance that this issue has gained.

It is more than noticeable that there are people who benefit from this monopoly of power and do not intend to lose it by subjecting themselves to fairer and more competitive elections. Due to this fact, they are opposed to independent candidacies and as a justification for such act, they argue that political parties are the main basis of Brazilian representation – which is true, since political positions are totally monopolized by partisans machines – stating, that such form of election would harm the parties, besides being contrary to the Federal Constitution and that the lack of parties would bring problems to the communication between the Executive and the parliamentarians.

Through this article, it was possible to verify that these arguments are very weak When compared to the arguments in favor of candidacies unlinked from parties, after all, Brazil has a wide history of allowing detached candidacies, during which has not been registered of any damage against the democracy, representativeness, governance or the Electoral System.

In addition, through Comparative Law it is possible to verify the good performance of candidacies without party affiliation, that are accepted and practiced by the majority of countries in the world, a fact that clears up any remaining doubts related to their functioning, and exposes the lack of veracity in the allegation of non-adherents to the individual candidacy system. Contrary to what is advocated by those who support mandatory party affiliation, independent candidacies do not intend on weakening parties, but at strengthening democracy, allowing citizens to fully exercise their right to decide, as they would not have their options reduced to the will of parties, in addition to allowing greater dynamics in the exercise of political power, conceding well-intentioned citizens who have good proposals the possibility to come to power without having to subject themselves to ideologies which they are not adept of or to corruption as a way desperate to achieve prestige within such organizations.

Finally, it is stated that although it is not possible to know exactly in what extent the establishment of individual candidacies would bring good results, it is a fact that Brazilian politics need a reform, since it is worn out, apparently, there is no absolute obstacle to the inadmissibility of independent candidacies, because through them, Brazilian voters could, in perspective, have higher hopes and participation in the electoral system.

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[4] The referred PGR opinion consigned that: “the conflict between art. 14, § 3, v, of the CR and art. 3, item. 1, b, c / c item. 2, of the San José Pact must be resolved in favor of the norm of international law. Especially when reading item. 2, it is clear that party affiliation is not part of the reasons why candidates can be restricted in American elections.

Despite the relevance of political parties to the democratic process 40, art. 60, § 4, ii, of the “CR” did not include parties in the eternity clause of the 1988 Constitution. Instead, in this aspect of the Brazilian social organization, the Constitution only states that “direct, secret, universal and periodic vote” are safe from changes. Therefore, there does not seem to be any incompatibility between the international standard referred to and the restrictions to constitutional amendments or the incorporation of the mentioned pact in the Brazilian order”.

[5] Art. 23 of the American Convention on Human Rights (Pact of San José of Costa Rica), indicated in the appeal grounds, cannot be invoked to rule out the condition of eligibility provided for in the original text of the Constitution of the Republic (party affiliation), whose infraconstitutional discipline appears- if reasonable and proportionate. [...]” (Ac. de 26.9.2018 no AgR-Pet nº 060088614, rel. Min. Admar Gonzaga.)

[6] In Chile, 2016 municipal elections, the “Cartilla Informativa para Candidatios Independientes” (2016, p. 6) warned that “With regard to Article 4, final paragraph of Law No. 18,700, establishes that independent candidates, in any case, must not have been affiliated to a political party in the months prior to the end of the period for submission of application statements” (livre tradução).