



Judicial Activism or Constitutionality Review: Analysis of the Vaquejada Case in Light of Direct Action of Unconstitutionality No. 4983

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Submissão / Submission: 14/02/2025

Aceite / Acceptance: 22 /03/2026

SONCIN, Angela Carolina. Ativismo judicial ou controle de constitucionalidade: Análise do caso da vaquejada ante a Ação Direita de Inconstitucionalidade n.º 4983. *Periódico Eletrônico Fórum Ambiental da Alta Paulista*, [S. l.], v. 22, n. 1, p. e2522, 2026. DOI: [10.17271/1980082722120265487](https://doi.org/10.17271/1980082722120265487). Disponível em: https://publicacoes.amigosdanatureza.org.br/index.php/forum_ambiental/article/view/5487

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Judicial activism or constitutional control: analysis of the case of vaquejada in light of Direct Action of Unconstitutionality n. 4983

ABSTRACT

Objective – To analyze the role performed by the Brazilian Supreme Federal Court (Supremo Tribunal Federal – STF) in the protection of the environment, based on the examination of Direct Action of Unconstitutionality No. 4983 (the “Vaquejada Case”) and its consequences, focusing on the distinction between activist decisions and those related to the exercise of constitutional review, especially considering Article 225 of the Federal Constitution.

Methodology – The study adopts a qualitative approach, drawing on bibliographic and documentary research techniques. Doctrinal sources, scientific articles, and relevant judicial decisions were also analyzed, making it possible to demonstrate the tensions existing between politics and law in the treatment of environmental issues, as well as in the exercise of constitutional jurisdiction by the STF.

Originality/Relevance – The research is relevant in view of the increasing judicialization of politics and the tensions among the Legislative, Executive, and Judicial branches, particularly in sensitive matters such as environmental degradation and animal cruelty. The originality of the study lies in its critical analysis of the STF’s role in the Vaquejada Case, revealing the risks inherent in the dispute for the power of the “last word.”

Results – The analysis shows that, in its judgment of ADI No. 4983, the Supreme Federal Court exercised constitutional review, reaffirming the normative force of the Federal Constitution. It is concluded that the Court acted within the limits of its jurisdictional function, ensuring compliance with the provisions of Article 225 of the Constitution, without characterizing judicial activism. On the other hand, considering the observed backlash effect, it was possible to identify a lack of institutional dialogue, which led to the filing of two new Direct Actions of Unconstitutionality (ADIs Nos. 5728 and 5772). An examination of the votes rendered reveals that the positions adopted fall far short of what the constituent legislator intended when enacting Article 225, paragraph 1, item VII, of the Federal Constitution.

Theoretical/Methodological Contributions – The study contributes to the theoretical deepening of the distinction between judicial activism and constitutional review, offering analytical parameters for understanding the STF’s role in environmental matters. From a methodological perspective, it reinforces the importance of institutional dialogue so that decisions may be reached in a more assertive manner, grounded in technical and legal reasoning.

Social and Environmental Contributions – There is no denying how devastating human action can be when the limits of nature are disregarded in the relentless pursuit of profit, or when those responsible for ensuring environmental protection act outside their constitutional competences. In this sense, the analysis of Direct Action of Unconstitutionality No. 4983 and its developments is of paramount importance for understanding the limits of the actions of each actor involved in the creation and control of legislation, highlighting their role in ensuring environmental preservation for present and future generations.

KEYWORDS: Judicial Activism. Constitutionality Control. Vaquejada.

Ativismo judicial ou controle de constitucionalidade: análise do caso da vaquejada ante a Ação Direita de Inconstitucionalidade n.º 4983

RESUMO

Objetivo – analisar a função desempenhada pelo Supremo Tribunal Federal (STF) na proteção do meio ambiente, a partir do exame da Ação Direta de Inconstitucionalidade nº 4983 (Caso Vaquejada) e suas consequências, com foco na distinção entre decisões ativistas e aquelas que realizam o controle de constitucionalidade, especialmente à luz do art. 225 da Constituição Federal.

Metodologia – o estudo adota abordagem qualitativa, valendo-se das técnicas da pesquisa bibliográfica e documental. Foram também analisados registros doutrinários, artigos científicos e decisões judiciais relevantes, o que possibilitou demonstrar as tensões existentes no campo da política e do direito, no tratamento de questões

ambientais, assim como no exercício da jurisdição constitucional pelo STF.

Originalidade/relevância – a pesquisa mostra-se relevante diante da crescente judicialização da política e das tensões entre os Poderes Legislativo, Executivo e Judiciário, especialmente em temas sensíveis como a degradação ambiental e os maus-tratos aos animais. A originalidade do trabalho reside na análise crítica do papel do STF no caso Vaquejada, revelando o risco existente na disputa pelo poder da “última palavra”.

Resultados – a análise demonstra que, no julgamento da ADI nº 4983, o Supremo Tribunal Federal exerceu o controle constitucionalidade, reafirmando a força normativa da Constituição Federal. Conclui-se que a Corte atuou dentro dos limites de sua função jurisdicional, assegurando o respeito aos ditames do art. 225 da Constituição, sem caracterizar uma atuação ativista. Por outro lado, foi possível identificar, diante do efeito *backlash* visualizado, a ausência de diálogo entre as instituições, com consequente propositura de duas novas Ações Diretas de Constitucionalidade (ADIs nº 5728 e 5772), revelando, quando da análise dos votos proferidos, que os entendimentos firmados estão muito aquém do que foi almejado pelo legislador ao editar o § 1º do inciso VII do art. 225 da Constituição Federal.

Contribuições teóricas/metodológicas – O trabalho contribui para o aprofundamento teórico da distinção entre ativismo judicial e controle de constitucionalidade, oferecendo parâmetros analíticos para a compreensão da atuação do STF em matérias ambientais. Metodologicamente, reforça a importância do diálogo institucional para que decisões sejam tomadas de modo mais assertivo, com embasamento técnico e legal.

Contribuições sociais e ambientais – Não há como negar quão devastadora pode ser a ação humana quando não se observa os limites da natureza na busca incessante pelo lucro ou, do mesmo modo, quando aqueles que devem garantir a preservação do meio ambiente agem em desacordo com suas competências. Deste modo, a análise da Ação Direta de Inconstitucionalidade nº 4983, e de seus desdobramentos, é de suma relevância para se compreender os limites da atuação de cada ente envolvido na criação e controle da legislação, de modo a destacar a importância destes entes na garantia da preservação do meio ambiente para a presente e para as futuras gerações.

KEYWORDS: Judicial Activism. Constitutionality Review. Vaquejada.

Activismo judicial o control de constitucionalidad: análisis del caso de la vaquejada a la luz de la Acción Directa de Inconstitucionalidad n.º 4983

3

RESUMEN

Objetivo – Analizar la función desempeñada por el Supremo Tribunal Federal (STF) en la protección del medio ambiente, a partir del examen de la Acción Directa de Inconstitucionalidad n.º 4983 (Caso de la Vaquejada) y sus consecuencias, con énfasis en la distinción entre decisiones de carácter activista y aquellas que ejercen el control de constitucionalidad, especialmente a la luz del artículo 225 de la Constitución Federal.

Metodología – El estudio adopta un enfoque cualitativo, recurriendo a las técnicas de investigación bibliográfica y documental. Asimismo, se analizaron fuentes doctrinales, artículos científicos y decisiones judiciales relevantes, lo que permitió evidenciar las tensiones existentes entre la política y el derecho en el tratamiento de las cuestiones ambientales, así como en el ejercicio de la jurisdicción constitucional por parte del STF.

Originalidad/Relevancia – La investigación resulta importante ante la creciente judicialización de la política y las tensiones entre los Poderes Legislativo, Ejecutivo y Judicial, especialmente en temas sensibles como la degradación ambiental y el maltrato animal. La originalidad del trabajo radica en el análisis crítico del papel del STF en el Caso de la Vaquejada, enseñando el riesgo existente en la disputa por el poder de la “última palabra”.

Resultados – El análisis demuestra que, en el juzgamiento de la ADI n.º 4983, el Supremo Tribunal Federal ejerció el control de constitucionalidad, reafirmando la fuerza normativa de la Constitución Federal. Se concluye que el Tribunal actuó dentro de los límites de su función jurisdicional, asegurando el respeto a los mandatos del artículo 225 de la Constitución, sin caracterizar una actuación activista. Por otro lado, a la luz del efecto *backlash* observado, fue posible identificar la ausencia de diálogo institucional, con la consecuente interposición de dos nuevas Acciones Directas de Inconstitucionalidad (ADI n.os 5728 y 5772), enseñando, a partir del análisis de los votos emitidos, que las interpretaciones adoptadas se encuentran muy abajo de lo pretendido por el legislador al editar el § 1.º del inciso VII del artículo 225 de la Constitución Federal.

Contribuciones teóricas/metodológicas – El trabajo contribuye al profundizamiento teórico de la distinción entre activismo judicial y control de constitucionalidad, ofreciendo parámetros analíticos para la comprensión de la

actuación del STF en materia ambiental. Desde el punto de vista metodológico, refuerza la importancia del diálogo institucional para que las decisiones sean adoptadas de manera más asertiva, con fundamento técnico y jurídico.

Contribuciones sociales y ambientales – No se puede negar cuán devastadora puede ser la acción humana cuando no se respetan los límites de la naturaleza en la búsqueda incesante del lucro o, de igual modo, cuando quienes deben garantizar la preservación del medio ambiente actúan en desacuerdo con sus competencias. En este sentido, el análisis de la Acción Directa de Inconstitucionalidad n.º 4983 y de sus desarrollos resulta de suma relevancia para comprender los límites de la actuación de cada actor involucrado en la creación y el control de la legislación, destacando la importancia de estos entes en la garantía de la preservación del medio ambiente para las generaciones presentes y futuras.

PALABRAS CLAVE: Activismo judicial. Control de constitucionalidade. Vaquejada.

INTRODUCTION

First and foremost, given the environmental crisis scenario that has persisted for decades, it is important to highlight the fragility and finite nature of natural resources. Likewise, there is no denying how devastating human action can be when it incessantly pursues profit and the exploitation of flora and fauna without respecting legally established or naturally existing limits.

Nevertheless, since the United Nations Conference on the Human Environment (UNCHE), held in Stockholm in 1972, regarded by the United Nations as the “first world conference to make the environment a major issue” (United Nations, 1972), there has been a gradual — albeit slow — development of rights and duties in the field of interactions between human activities and nature.

In Brazil, the Federal Constitution of 1988 addresses the protection of the environment, which is of paramount importance for Environmental Law. The 1988 Constitution, in addition to establishing the legislative and administrative competences related to the environment in its arts. 22, 23, 24, and 30, and providing — with respect to the Economic and Financial Order — for the necessity of environmental protection in item VI of art. 170, further sets forth in Chapter VI, specifically in art. 225, that “everyone has the right to an ecologically balanced environment, which is a public good for common use and essential to a healthy quality of life; the Government and the community share the duty to defend and preserve it for present and future generations” (Brazil, 1988).

Thus, the constituent legislator expressly recognized the fundamental right to an ecologically balanced environment in art. 225, *caput*, of the Federal Constitution, granting it the character of a collective right in the broad sense, of a trans-individual nature, therefore of immediate application and transgenerational character (aiming at the protection of present and future generations).

Nevertheless, the constitutional provision alone is not sufficient to guarantee the desired balance; it is the duty of the Government, as well as of the community at large, to concretely defend and preserve the environment, both for present and future generations.

Therefore, as a fundamental right guaranteed by the Federal Constitution, it falls to the Supreme Federal Court (STF), as guardian of the Constitution, to ensure that society may enjoy an ecologically balanced environment, preventing animal cruelty and the degradation of nature as a whole.

In this regard, a question arises: to what extent is a decision rendered by the Judiciary — particularly when issued by the Supreme Federal Court — legitimate in guaranteeing the “ecologically balanced environment, which is a public good for common use and essential to a healthy quality of life” (Brazil, 1988), without encroaching upon the sphere of action of the Legislative and Executive Branches?

The growing judicialization of politics, as well as the questions surrounding the limits of decisions handed down by the Superior Courts on sensitive matters — such as those dealing with the degradation of nature and animal cruelty — justify the need to confront the issues presented here. Through this study it is possible to demystify the theme of judicial activism and underscore the important role to be played by the STF in the realm of environmental protection,

namely that of guardian of the Federal Constitution.

Thus, this article aims to demonstrate, through the analysis of the judgment of Direct Action of Unconstitutionality No. 4983 (ADI No. 4983) involving the *vaquejada* in Brazil, the difference between activist decisions and decisions aimed at conducting constitutional review, so as to clarify the role of the STF in the defense of the environment, highlighting the tensions existing between politics and law when dealing with environmental issues such as the one highlighted here.

Furthermore, the developments arising from the judgment of ADI No. 4983, generated in the face of the *backlash* observed, such as the filing of Direct Actions of Unconstitutionality Nos. 5728 and 5772, will also be addressed.

To this end, a qualitative study of the subject to be examined will be conducted, employing bibliographic and documentary research techniques, with analysis of doctrinal records, scientific articles, and judicial decisions.

1 JUDICIAL ACTIVISM AND JUDICIALIZATION OF POLITICS

Before specifically addressing the discussions this study aims to tackle, it is important to distinguish between the phenomena of judicial activism and the judicialization of politics, since many academic works approach the topic of judicial activism by identifying it with the judicialization of politics, ultimately conflating the two.

Although legal scholarship is not unanimous regarding the concept of judicial activism, as will be detailed further below, certain peculiarities that distinguish activism from judicialization can be immediately highlighted.

Streck (2011, p. 589) articulates this distinction very clearly when he argues that “a judge or court practices activism when it decides based on political or moral arguments — in short, when the law is replaced by the personal convictions of each magistrate.” On the other hand, he states that judicialization is a “phenomenon that arises from the relationship between the branches of the State.”

Along the same lines, Garapon (1998) distinguishes these two phenomena by noting that judicial activism is directly linked to the will of the judge, whereas judicialization is tied to the political system.

In this context, it can be stated that the Judiciary has played a fundamental role over time, especially in social and political matters, rendering significant decisions — sometimes involving issues that are not within its exclusive jurisdiction, given the social and political nature of those issues.

As a result, intense debates have arisen about judicial activism and the judicialization of politics. Decisions of both higher courts and first-instance judges have been criticized and debated, raising questions about the legitimacy of such conduct. Similarly, an increasing number of lawsuits addressing sociopolitical matters has overburdened the Judiciary.

As Mendes (2021) highlights, the judicialization of politics is understood primarily as a descriptive concept, used to identify and portray a particular phenomenon. Judicial activism, in turn, goes beyond the mere observation of a fact, as it involves a critical assessment of the conduct of the Judiciary.

The controversies surrounding judicial activism have highlighted the complexity and challenges of balancing legal interpretation with social and political demands. Moreover, the Judiciary's involvement in sociopolitical matters — including those involving controversial moral dilemmas or the implementation of public policies — has intensified discussions about the incessant judicialization of politics.

It can also be stated that judicialization has increased significantly due to the growing volume of laws aimed at regulating social behavior, and this phenomenon is independent of the will or the expressed will of the Judiciary.

In this context, it is important to highlight the judicializing tendency present in contemporary society, which, according to Oliveira and Tassinari (2014), is characteristic of mass democracies, due to the extensive number of laws in force and the constitutionalization of rights.

These authors emphasize that the manifestation of this judicializing tendency

does not directly obey the wishes of the adjudicating body. On the contrary, it presents itself as the product of political and social contingencies. At the political level, phenomena such as constitutional dirigism and legislative inflation contribute to expanding the (potential) sphere of Judiciary interference in the regulatory framework projected by the text of the Constitution and the legislative corpus *lato sensu* (Laws, Provisional Measures, Regulations, Administrative Orders, etc.) (2014, p. 76).

It can be observed, therefore, that the enactment of countless Laws, Provisional Measures, Regulations, Administrative Orders, and Decrees — aimed at addressing the needs of specific and immediate situations — has weakened the regulation of rights and duties.

The same holds true with regard to environmental matters, which have assumed a prominent role on the global stage in recent decades. The need for awareness and collective engagement to ensure that collective rights prevail over individual ones — safeguarding the rights of present and future generations — has increased the demands placed on the Judiciary to intervene and ensure the effectiveness of existing laws.

The growing judicialization and judicial activism, despite initially aiming at the realization of a right, ultimately lead to judicial decision-making that is not anchored in the legal order, but rather in morality, shifting values, and the personal subjectivism of judges — all of which brings legal uncertainty to society, which must deal with the unpredictability of future rulings. As Abboud (2022, pp. 161-162) aptly points out in this regard, the discretion arising from judicial activism “is incompatible with democracy, and if the law wishes to be democratic, it must be controllable.”

Despite this, there are those who argue, as do Mello (2008) and Tavares (2008), that judicial activism is essential for delivering justice, providing fairer decisions. According to this perspective, the Judiciary, even in the absence of specific legislation on a given matter, must ensure adequate protection of fundamental rights and the rights guaranteed by the Constitution.

Authors such as these defend the necessity of proactive action by the Judiciary to guarantee rights to those who need them, given the recurring slowness of the Executive and Legislative Branches in implementing them.

Along the same lines, Victal and Zanferdini (2025, p. 114) state that

judicial intervention in the environmental sphere, especially in the face of omission or harmful action by political branches, does not represent an excess of power or a usurpation of politics, but rather an action that ensures the continuity of human and non-human life and secures justice for future generations.

Views favorable to judicial activism, such as those of the recently mentioned authors, bring to the fore the debate about good versus bad activism. In this regard, Abboud and Mendes (2019, p. 47), when addressing the existing discussion about good activism, defend the need to change the legal mindset based on this idea and “on the unreflective defense of the discretionary character of the administration of justice.” They assert that in place of these ideas “it must be established, as an unquestionable premise, that no adjudicator – regardless of their position in the judicial hierarchy – has the right to ignore legal texts” (2019, p. 47).

As previously mentioned, there is no doctrinal consensus regarding the concept of judicial activism. For those who defend judicial activism as a legitimate judicial policy, the Judiciary is authorized to act proactively and will do so with the aim of delivering to society the fundamental rights guaranteed by the Federal Constitution; whereas those who hold a contrary view regarding the legitimacy of activist decisions argue that, in rendering such decisions, the Judiciary oversteps the competence assigned to it by the Constitution, imparting a subjective character to its rulings, which cannot be permitted.

For those who defend the possibility of a broader role for the Judiciary — as Carmona (2012) does — the proactive action of the Judiciary is legitimate and does not constitute an encroachment upon the competences of the other Branches, since its proactive activity is authorized by the Federal Constitution itself, and it is only through judicial activism that the preservation of the Democratic Rule of Law can be assured.

Along the same lines, Parizi (2017, p. 841-842) states that:

Despite the criticism, the truth is that the legitimacy of the Judiciary in acting to invalidate acts and/or laws of branches filled by members elected by the people derives from the Federal Constitution itself, and thus the risk to the democratic legitimacy of the magistrate in intervening to apply constitutional norms is considerably reduced.

It is within the competence of the Judiciary to safeguard the Constitution and ensure the effectiveness of fundamental rights; however, one must not lose sight of the need to respect the Legislative sphere in order to guarantee the Democratic Rule of Law.

On the other hand, among those who criticize the proactive role of the judge, Sarmento (2007, p.14) states that

many judges, dazzled by principles and the possibility of using them to pursue justice – or what they understand as justice – have begun to neglect their duty to rationally ground their judgments. This “euphoria” with principles has opened much wider space for judicial decisionism. A decisionism disguised in politically correct garb, proud of its grandiloquent jargon and its inflamed rhetoric, but decisionism nonetheless. Constitutional principles, in this framework, have become veritable “magic wands”: with them, the judge on duty can do almost anything he or she wishes.

Thus, while proponents of judicial activism see in it the possibility of compensating for the slowness of those who should be guaranteeing the rights of society, critics emphasize the danger of legal uncertainty associated with proactive decisions, asserting that it is not the Judiciary's place to encroach upon the competences of the other Branches.

There is certainly no denying the existence of a *déficit* in the performance of the Executive and Legislative Branches, which hinders — and often prevents — the preservation of a balanced environment. On the other hand, the Judiciary cannot be permitted to render decisions based on personal convictions, drawing upon its own sense of justice, without observing the will of the legislator and the existing constitutional mandates.

In any case, it is important to emphasize here that the Judiciary must ensure that the laws are respected and, in particular, that the Supreme Federal Court — in its capacity as guardian of the Federal Constitution — must ensure that the constitutional mandates are upheld, without thereby encroaching upon the competences of the other Branches.

It is worth reiterating that judicial activism is not present when constitutional review is conducted or when decisions guarantee the application of a norm. Activist decisions are those in which the adjudicator exceeds the competence assigned by the Federal Constitution — whether by declaring the constitutionality of laws that disregard constitutional mandates, or by rendering decisions imbued with subjectivism, which cannot be permitted.

Therefore, having made the appropriate distinctions and highlighted the relevant issues, it is important to analyze the conduct of the Judiciary in environmental matters, particularly with regard to the “vaguejada case,” given the sensitivity of the subject matter.

2 THE JUDICIARY'S ROLE IN ENVIRONMENTAL MATTERS

There are countless cases in which we can see the need to call upon the Judiciary to resolve controversies involving environmental matters.

From the simplest case involving tree pruning in urban environments to environmental catastrophes, it is possible to identify the importance of the Judiciary in guaranteeing an meio ambiente ecologicamente equilibrado para a presente e para as futuras gerações.

Thus, the Judiciary is frequently called upon to give effect to laws, to rule on questions involving their interpretation, or even to review and assess their constitutionality. The case of State Law No. 15,299, of January 8, 2013, was no different.

This law dealt with the regulation of the vaguejada as a sporting and cultural practice in the State of Ceará and brought about an important discussion on the balancing of fundamental rights, calling upon the Judiciary to rule on which right should prevail — namely, the practice of the vaguejada as a cultural expression guaranteed by § 1 of art. 215 of the Federal Constitution¹, notwithstanding the serious and painful injuries caused to the animals involved, or the right to a duly protected and balanced environment in its dimension of protecting animals

¹ “Art. 215. The State shall guarantee to all the full exercise of cultural rights and access to sources of national culture, and shall support and encourage the appreciation and dissemination of cultural expressions. § 1 The State shall protect the expressions of popular, indigenous, and Afro-Brazilian cultures, as well as those of other groups participating in the national civilizational process.”

against cruelty and mistreatment, pursuant to item VII of § 1 of art. 225 of the Federal Constitution².

Thus, this article does not aim to conduct a strict and detailed analysis of the law from Ceará, but rather to analyze the conduct of the Judiciary when called upon to rule on the constitutionality of the aforementioned State Law in Direct Action of Unconstitutionality No. 4983, as will be explained below.

2.1 The Vaquejada Case (Direct Action of Unconstitutionality No. 4983)

The practice of vaquejada has long existed in Brazil. Originating from the need of the sertanejo (northeastern rural worker) to round up cattle that were raised loose in the brush, and later transformed into a competition in which the vaqueiro (cowhand) demonstrates his skill in controlling the animal, it gained momentum when economic and political interests were added to the cultural dimension.

The practice of vaquejada was incorporated into a context of regionalized festivals that gradually grew in scale and moved millions of reais throughout the national territory.

The indigenous forms of the vaquejada practice

se transformaram em enormes torneios com calendários e regras bem definidas, patrocinados por grandes empresas. Atualmente há eventos que movimentam diversas formas de negócios: inúmeros profissionais (vaqueiros, juizes de prova, locutores, veterinários, equipes de limpeza e inúmeros outros), um grande comércio (de venda de roupas, artigos de couro, hotéis, restaurantes), além de produções artísticas (cantores, empresas de equipamentos de som) e outros negócios paralelos (leilões de animais, comércio de rações, medicamentos, vacinas para animais, compra/venda de sêmen e outros) (Mattes, 2018, p. 108-109).

10

The prominence given to the practice of vaquejada, along with the political and economic interests mentioned, served as motivation for the regulation of the activity. Likewise, discussions about animal cruelty and the right to free cultural expression became inevitable, generating tensions between the fields of economics, politics, and Law.

In Ceará, on January 8, 2013, the first law aimed at regulating the practice of vaquejada was enacted: Lei n.º 15.299. This law sought to recognize the vaquejada as a sporting and cultural activity, on the grounds that it was a century-old practice of the sertanejo of the northeastern region of Brazil.

The enactment of this law prompted a major debate involving, on one hand, the right to a balanced environment – which prohibits the practice of animal cruelty – and, on the other, the right to cultural expressions as an expression of plurality.

Amid this extensive debate, the then Attorney General of the Republic filed Direct Action of Unconstitutionality No. 4983 before the Supreme Federal Court, which, upon judging

² “Art. 225. Everyone has the right to an ecologically balanced environment, which is a public good for common use and essential to a healthy quality of life; the Government and the community share the duty to defend and preserve it for present and future generations. § 1 In order to ensure the effectiveness of this right, it is incumbent upon the Government to: (...) VII - protect fauna and flora, and prohibit, as provided by law, practices that endanger their ecological function, cause the extinction of species, or subject animals to cruelty.”

the action, by a vote of six to five, ruled the Ceará law unconstitutional.

In its analysis of the constitutionality of the State Law in question, the Supreme Federal Court took into account the challenge raised by the Attorney General of the Republic, namely the conflict between art. 225, § 1, item VII, of the Constitution — which ensures the right to an ecologically balanced environment and, therewith, the prohibition of cruel practices against animals — and art. 215, § 1, also of the Constitution, which guarantees the right to cultural expressions as an expression of plurality.

The rapporteur, Justice Marco Aurélio, and Justices Roberto Barroso, Rosa Weber, Celso de Mello, Cármen Lúcia, and Ricardo Lewandowski voted for the unconstitutionality of the law, recognizing that the practice is cruel to the animals involved and, therefore, violates the provisions of item VII of § 1 of art. 225 of the Federal Constitution. Justices Edson Fachin, Gilmar Mendes, Teori Zavascki, Luiz Fux, and Dias Toffoli were outvoted; they had held the law to be constitutional.

Justice Marco Aurélio (BRAZIL, STF, ADI 4983, 2016), the rapporteur of the case, noted in his vote that “the STF’s decisional behavior, when faced with the need to weigh the right to the environment against individual rights of various natures, has been to give preference to the collective interest,” placing important emphasis on the approach the STF must adopt in cases of this kind, curbing practices involving animal cruelty, in line with the provisions of art. 225, § 1, item VII, of the Federal Constitution.

Furthermore, in support of his vote, the rapporteur attached to the case record a technical report demonstrating the cruelty inflicted on the animals involved in the vaquejada, in which, as a result of the forced pulling of the animal’s tail followed by being knocked to the ground, the animals suffer fractures in the legs, torn ligaments and blood vessels, and traumatic injuries — not to mention the dislocation or even avulsion of the tail joint — resulting in “damage to the spinal cord and spinal nerves, physical pain, and mental suffering” (BRAZIL, STF, ADI 4983, vote of Justice Marco Aurélio, 2016).

Concurring with the rapporteur’s understanding, Justice Barroso (BRAZIL, STF, ADI 4983, 2016) introduced into the case record a detailed study on the subject, highlighting that “no regulation would be capable of preventing the cruel practice to which these animals are subjected,” since the activity itself, by its very nature, causes suffering to the animal.

As previously noted, the STF, in its capacity as guardian of the Federal Constitution, must ensure that society is afforded the rights guaranteed by the Constitution. In the case of the vaquejada, the subjection of the animal to cruelty violates art. 225, § 1, item VII, of the Federal Constitution, which cannot be permitted.

When called upon to rule on the constitutionality of a norm, the STF does so on the grounds that it is within its competence to uphold constitutional mandates — that is, it cannot decide by mere discretion or convenience, but rather to ensure that the will of the legislator is in accordance with what the Constitution prescribes, without any subjectivity.

In this regard, Bickel (1986) upheld the importance of constitutional review, while at the same time emphasizing its exceptional character, arguing that, in order to be legitimate, it should be exercised sparingly. From this perspective, the invalidation of laws would only be justified in cases where there was an actual incompatibility with the Constitution, excluding any element of subjectivity and grounding itself, therefore, in neutral principles.

In the present case, there is no basis for speaking of judicial activism, since the STF, in its decision declaring the unconstitutionality of the norm, ensured — in its capacity as guardian of the Federal Constitution — that the constitutional mandates were respected in their exact terms.

What the STF did was to ensure that a norm that violated the Federal Constitution could not validly remain in force. It did not engage in judicial activism. It engaged in constitutional review, since judicial activism is characterized precisely by the adjudicator going, in the decision rendered, beyond what the constitutional text or the law says and intends — whether to serve one's own interests or those of others, or to adopt a personal moral or axiological perspective, imparting subjectivism to the ruling — which is not identifiable in the judgment of Direct Action of Unconstitutionality No. 4983.

Furthermore, it is necessary to highlight the *backlash*³ effect that resulted from the STF's decision, leading, in an extremely short period of time, to the passage of a Constitutional Amendment recognizing the *vaquejada* as cultural heritage and guaranteeing its practice, making clear the tension between politics and law in this case.

The *backlash* effect refers to society's reaction to a decision rendered by the STF that alters the *status quo ante*; in this regard, analyzing the understanding put forth by Greenhouse and Siegel (2013), the intense reaction in opposition to the decision rendered

would express a particularly virulent and polarized reaction from the supposed majority who, having had their decision censured by the Judiciary, begin to identify themselves as the "losers," which may bring about the end of the ordinary exercise of politics, replaced by a new and distorted way of achieving the results blocked by the Court.

Shortly after the STF's decision declaring the Ceará law unconstitutional, federal bills on the subject were introduced in the National Congress, most notably Bill No. 24/2016, aimed at regulating the *vaquejada* as intangible cultural heritage.

This bill was signed into law and enacted as Law No. 13,364/2016, elevating the practice of *vaquejada* to the status of a national cultural expression and intangible cultural heritage.

Furthermore, in October 2016, Proposed Constitutional Amendment No. 50/2016 was submitted to the National Congress, aiming to permit the performance of cultural expressions registered as Brazilian cultural heritage, with the caveat that such expressions could not endanger animal welfare.

Between February and May 2017, the proposal was approved by both Houses of Congress and was enacted as Constitutional Amendment No. 96/2017, adding § 7 to Article 225,

³ The response given by the Judiciary did not satisfy the advocates of *vaquejada*, and the *backlash* effect became evident, with extensive involvement of society and the other Branches, culminating in Constitutional Amendment No. 96/2017 relating to the *vaquejada*. Sobre o assunto, haja vista que a análise do efeito *backlash* and its consequences is not the object of this study, I recommend reading the text authored by me: "THE SUBJECTION OF ANIMALS TO CRUELTY VERSUS VAQUEJADA COMO PATRIMÔNIO CULTURAL: O EFEITO *BACKLASH* AND THE NEED FOR INSTITUTIONAL DIALOGUE" (Soncin, Angela Carolina. The subjection of animals to cruelty versus *vaquejada* as cultural heritage: the backlash effect and the need for institutional dialogue, p. 42-53 In: NUNES, César Augusto R. *et al.* (org). Proceedings of the V CIDH Complete Articles. Coimbra, 2020, v.1. Campinas/Jundiaí: Brasília/Brazil/Fibra, 2021. (V CIDH Symposia Series)).

with the following text:

§ 7 For the purposes of the final provision of item VII of § 1 of this article, sporting practices using animals shall not be considered cruel, provided they constitute cultural expressions, as set forth in § 1 of art. 215 of this Federal Constitution, registered as intangible cultural heritage of Brazil, and must be regulated by specific legislation ensuring the welfare of the animals involved.

As a result, the practice of vaquejada came to be authorized by the Federal Constitution, recognized by law as intangible cultural heritage, with the implicit understanding that its practice would not expose animals to cruelty, and therefore being permitted.

It is worth noting that

the speed with which the bill and the Constitutional Amendment were passed — without any public hearings, debates among specialized bodies, veterinarians, environmental organizations, cultural associations, or communities — reveals a clear contest for the power of the last word, further reinforcing the evident need for institutional dialogue so that sensitive matters such as the vaquejada may be carefully considered and decided in a manner that preserves the fundamental principles contained in the Federal Constitution (Soncin, 2020, p. 47).

Thus, decision-making in sensitive matters such as the present one — with the evident purpose of satisfying individual, economic, and political interests to the detriment of vulnerable beings, such as the animals protected by environmental law — cannot be permitted.

According to Mariconda (2025, p. 162), “the boundary between the legal and the political remains difficult to define, not only in institutional practice but also at the level of constitutional theory”⁴, which is reflected in the comparative analysis of judicial decisions on climate matters, revealing, among other things, divergent understandings regarding the very notion of separation of powers (2025).

In compliance with the mandate of art. 225 of the Federal Constitution, it is the duty of all Branches to guarantee the protection and preservation of the environment — including fauna — and it cannot be permitted that the contest for the “last word” may prejudice the fundamental rights and guarantees provided and protected by the Constitution, especially from a trans-individual perspective, as is the case with the right to an ecologically balanced environment.

As Ribeiro, Oliveira and Amarante (2026) affirm, environmental protection is the primary objective to be achieved, and thus the use of alternative dispute resolution mechanisms — such as conciliation, mediation, and arbitration — can prevent the escalation of these conflicts and increase the chances of reaching better-grounded solutions.

In this context, to resolve the controversies raised, Direct Actions of Unconstitutionality 5728/DF and 5772/DF were filed — by the National Forum for Animal Protection and Defense and by the Attorney General of the Republic, respectively — seeking a declaration of unconstitutionality of Constitutional Amendment No. 96/2017, as well as, in the case of ADI 5772/DF, a declaration of unconstitutionality of the expression “a vaquejada” found

⁴ Original text: “The boundary between the legal and the political remains difficult to define, not only in institutional practice but also at the level of constitutional theory.” (MARICONDA, 2025, p. 162).

in arts. 1, 2, and 3 of Law No. 13,364/2016, and of the expression “as vaquejadas” found in art. 1, sole paragraph, of Law No. 10,220, of April 11, 2001.

On December 6, 2024, the virtual judgment of these ADIs commenced. Initially, the rapporteur, Justice Dias Toffoli, analyzed the petitions and decided to dismiss the actions, thereby affirming the constitutionality of Constitutional Amendment 96/2017. In addition, he validated the legal recognition of vaquejada as intangible cultural heritage of Brazil, as provided in articles 1, 2, and 3 of Law 13,364/2016, and the classification of the vaqueiro who practices vaquejada as a professional athlete, pursuant to article 1, sole paragraph, of Law 10,220/2001. Subsequently, Justice Flávio Dino requested to review the records, which resulted in the suspension of the judgments.

Although the analysis of the aforementioned ADIs is not the primary object of this study, it is important to highlight their relevance for examining the STF’s role as guardian of the Federal Constitution, as well as for analyzing the developments arising from the *backlash* effect identified in the present case, which will be addressed below.

2.1.1 On the Judgment of Direct Actions of Unconstitutionality Nos. 5728 and 5772

As mentioned in the preceding section, on December 6, 2024, the virtual judgments of ADIs 5728 and 5772 commenced, having been suspended due to a request to review the records submitted by Justice Flávio Dino.

With the resumption of the judgment of ADI 5728 on March 17, 2025, the Supreme Federal Court unanimously dismissed the action, thereby declaring the constitutionality of Constitutional Amendment No. 96 of June 6, 2017, in accordance with the vote of the rapporteur, Justice Dias Toffoli. The judgment was published on April 9, 2025, with final res judicata occurring on the 23rd of the same month.

In so doing, the STF recognized that Constitutional Amendment No. 96/17 provided constitutional grounding for the protection of sporting cultural practices involving animals, ensuring effectiveness to the fundamental right linked to the exercise of cultural rights. The rapporteur’s conclusion regarding the constitutionality of the norm was based on the argument that the Constitutional Amendment “did not disregard the fundamental right to an ecologically balanced environment and the prohibition of cruelty against animals” (Brazil, 2025, p. 4), affirming that only “the cultural expression involving animals registered as intangible heritage forming part of Brazilian cultural heritage” (2025, p. 4), when subject to specific legislation capable of guaranteeing the welfare of the animals involved, may be deemed legitimate.

In this regard, then, the STF recognizes that the constitutional text is capable of ensuring what the legislator intended when enacting item VII of § 1 of art. 225 of the Federal Constitution, since the addition of § 7 to art. 225 of the Federal Constitution, through the Constitutional Amendment under analysis, came to reinforce the constituent legislator’s intent to guarantee to all “the right to an ecologically balanced environment, which is a public good for common use and essential to a healthy quality of life” (Federal Constitution, 1988).

There is no question as to the legitimacy of the STF in rendering such a judgment, given that it is the guardian of the Federal Constitution and therefore competent to conduct constitutional review. On the other hand, it raises doubts among scholars on the subject regarding the analysis of the effectiveness of the norm that underpins the constitutionality of

the Amendment, since this norm, on its own, does not appear to adequately address the protection and guarantee of animal welfare.

Furthermore, Costa and Nacur Rezende (2024, p. 31) criticize the enactment and the declaration of constitutionality attributed to EC 96/17, stating that there was “a setback in the protection of Intangible Cultural Heritage through the passage by the National Congress of Constitutional Amendment No. 96 in 2017,” as it was the result of the discontent of some in the face of the declaration of unconstitutionality of the Ceará law, even though the Court’s arguments were anchored “in technical reports that documented the suffering inflicted on both bulls and horses in the course of the sporting practice” (2024, p. 31).

Notwithstanding the decision rendered in ADI 5728, the judgment of ADI 5772 is still ongoing, which — as already set forth — examines the unconstitutionality of Constitutional Amendment No. 96/2017, as well as the declaration of unconstitutionality of the expression “a vaquejada” found in arts. 1, 2, and 3 of Law No. 13,364/2016, and of the expression “as vaquejadas” found in art. 1, sole paragraph, of Law No. 10,220 of April 11, 2001.

The judgment of the aforementioned ADI has been suspended pending the announcement of the outcome since August 22, 2025, with a divergence of views among the Justices.

The rapporteur, Justice Dias Toffoli, voted for the constitutionality of EC 96/17, as well as of the expressions “vaquejada” and “vaquejadas” challenged in the ADI. Concurring with the rapporteur are Justices Gilmar Mendes (with reservations), André Mendonça, Nunes Marques, and Luiz Fux.

Justices Zanin and Fachin voted for the partial granting of the Action, issuing an interpretation in conformity with the Constitution

15

to establish that the expression “a vaquejada” found in arts. 1, 2, and 3 of Law No. 13,364/2016, as amended by Law No. 13,873/2019, and the expression “as vaquejadas” found in art. 1, sole paragraph, of Law No. 10,220/2001, are constitutional provided that, in their practice, the criteria established in art. 3-B, § 2, of Law 13,364/2016, as amended by Law 13,873/2019, are at minimum observed, without prejudice to other measures that may prove necessary to ensure the welfare of the animals in the specific case (BRAZIL, 2025).

On the other hand, concurring with Justice Flávio Dino’s dissenting vote are Justice Cármen Lúcia, Justices Alexandre de Moraes, and Luís Roberto Barroso, who assert that Law 13,364/2016 does not comply with the provisions of art. 225, § 7, of the Constitution, but acknowledge that

until the constitutional mandate is fulfilled, with the effective enactment of specific legislation regulating the matter, and in order to avoid interrupting the activities deemed cultural by the National Congress, they would order that: a) the “specific regulations,” issued by private entities, referred to in Law No. 13,364/2016 must be analyzed and approved (or not) by the Ministry of Agriculture and Livestock within 90 (ninety) days, under penalty of losing effect; and b) the sanctions must necessarily comply with Law No. 9,605/1998 and its regulatory decree (BRAZIL, 2025).

ADI 5772 was forwarded for the announcement of the final decision; however, at the time this study was concluded, the decision had not yet been announced. In any case, the same caveat made with respect to the judgment of ADI 5728 applies here, regarding the effectiveness of the decision rendered.

If the constitutional review of EC 96 was prompted by the need to verify whether the inclusion of § 7 in the constitutional text would result in non-compliance with the terms of art. 225 – given that this provision was inserted into the Federal Constitution under the justification of ensuring that cruel practices would not occur – linking, upon the declaration of constitutionality of the said amendment, that declaration to a law that, on its own, cannot be effective, does not appear to be coherent.

Thus, while not in the face of an activist decision – far from it – the declaration of constitutionality affirmed by the STF does not appear to secure what the legislator intended when drafting art. 225 of the Federal Constitution. The mere insertion of four items into § 2 of art. 3-B of Law No. 13,873/2019, under the argument that such a measure would guarantee animal welfare, falls far short of what the legislator aimed for when enacting § 1 of item VII of art. 225 of the Federal Constitution. Along these lines, the STF does not appear to have successfully fulfilled its role as guarantor of the Federal Constitution.

CONCLUSION

Considering all that has been set forth, it is possible to recognize the importance of the joint action of the Executive, Legislative, and Judicial Branches in the defense of the environment.

The existing body of laws, together with the constitutional provisions aimed at guaranteeing an ecologically balanced environment for present and future generations, are not sufficient if each Branch moves in an opposite direction in the contest for the “last word,” seeking to guarantee the interests of a segment of society that pursues profit without any regard for the balance or coexistence between development and preservation.

We cannot accept that the Judiciary — even with the intention of compensating for the slowness of other Branches — exceeds its competence and renders activist decisions. Equally, we cannot accept that the Legislature, ignoring the STF’s competence as guardian of the Federal Constitution, act in pursuit of the economic interests of a minority, to the detriment of the environment, thereby harming present and future generations.

It is possible for the Judiciary to render legitimate decisions to guarantee an ecologically balanced environment — a public good for common use and essential to a healthy quality of life — without encroaching upon the competences of other Branches. To do so, it suffices that the Judiciary renders decisions free from subjectivism, upholding the written text of the Constitution, and fulfilling its primary function as guarantor of the Federal Constitution.

In the *vaquejada* case analyzed here, the Brazilian Supreme Federal Court (STF), in its judgment of ADI No. 4983, reviewed State Law No. 15,299/2013 of the State of Ceará and declared the provision unconstitutional on the grounds that it violated Article 225, § 1, item VII, of the Federal Constitution, concluding—based on a technical and legal analysis of the case—

that vaquejada could not be considered a sporting or cultural practice, as it subjects the animals involved to cruelty and mistreatment.

On the other hand, in the judgment rendered in ADI 5728, the constitutionality of EC 96/17 was upheld, on the understanding that the inclusion of § 7 in art. 225 of the Federal Constitution — establishing a list of practices involving animals regarded as cultural expressions registered as intangible cultural heritage — secures what the legislator intended when enacting item VII of §1 of art. 225 of the Federal Constitution.

Thus, despite being a decision that is, a priori — given the current legislation — ineffective, there is no basis for speaking of judicial activism in this case, since the STF decided in the exercise of its constitutionally assigned competence.

Constitutional review is not equivalent to judicial activism. Constitutional review is a competence assigned to the STF by the Constitution itself, in order to ensure that infra-constitutional laws and normative acts do not disrespect what the Federal Constitution establishes and stipulates.

What stands out in the analysis of the vaquejada case is precisely the tension between the spheres of politics and law: even in the face of a legitimate decision rendered by the Brazilian Supreme Federal Court (STF), Congress mobilized to give effect to the intent underlying the Ceará law, enacting a constitutional amendment in record time in order to reverse the effects of the Court's decision.

What stands out in the analysis of the vaquejada case is precisely the tension in the fields of politics and law that was revealed: even in the face of a legitimate decision rendered by the STF, the Congress mobilized to enforce the intent of the Ceará law, enacting a constitutional amendment in record time in order to reverse the effects of the Supreme Court's decision.

This makes the need for change evident. There is an environmental crisis triggered by human action through deforestation, the invasion of environmental preservation areas, species extinction, and animal cruelty — all generating the climate change being experienced worldwide — and there is no longer room for political or partisan disputes.

Therefore, we cannot allow that, in addition to degrading human action, the Branches act in a self-serving manner, to the detriment of the community, in the contest for the “last word,” violating fundamental rights and guarantees essential to the well-being of present and future generations.

It is essential that there be effective dialogue among institutions, ensuring that both the Legislature and the Judiciary are equipped with scientific studies and a thorough understanding of social reality, which will enable more appropriate decisions and the formulation of more effective laws.

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DECLARATIONS

AUTHOR CONTRIBUTIONS

- **Study Conception and Design:** Angela Carolina Soncin.
 - **Data Curation:** Angela Carolina Soncin.
 - **Formal Analysis:** Angela Carolina Soncin.
 - **Funding Acquisition:** This research received no external funding.
 - **Investigation:** Angela Carolina Soncin.
 - **Methodology:** Angela Carolina Soncin.
 - **Writing – Original Draft:** Angela Carolina Soncin.
 - **Writing – Critical Review:** Angela Carolina Soncin.
 - **Writing – Review and Final Editing:** Angela Carolina Soncin.
 - **Supervision:** Angela Carolina Soncin.
-

DECLARATION OF CONFLICTS OF INTEREST

I, **Angela Carolina Soncin**, declare that the manuscript entitled "**Judicial Activism or Constitutional Review: An Analysis of the Vaquejada Case in Light of Direct Action of Unconstitutionality No. 4983**" meets the following conditions:

1. **Financial Relationships:** I declare that I **have no financial relationships** that could have influenced the results or interpretation of this work. No funding institution or sponsoring organization was involved in the development of this study.
 2. **Professional Relationships:** I declare that I **have no professional relationships** that could have affected the analysis, interpretation, or presentation of the results. No professional relationship relevant to the content of this manuscript has been established.
 3. **Personal Conflicts of Interest:** I declare that I **have no personal conflicts of interest** related to the content of this manuscript. No personal relationship that could have influenced the objectivity of this study has been identified.
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